1998

The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone

Karsten Nowrot

Emily W. Schbacker

Follow this and additional works at: http://digitalcommons.wcl.american.edu/auilr

Part of the International Law Commons

Recommended Citation
THE USE OF FORCE TO RESTORE DEMOCRACY: INTERNATIONAL LEGAL IMPLICATIONS OF THE ECOWAS INTERVENTION IN SIERRA LEONE

KARSTEN NOWROT and EMILY W. SCHABACKER

INTRODUCTION .................................................................................................. 322
I. FACTUAL BACKGROUND ........................................................................... 325
II. THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES .................... 332
III. THE LEGALITY OF ECOWAS ACTIONS IN SIERRA LEONE ......................... 334
   A. ECOMOG ACTION TO RESTORE DEMOCRACY IN SIERRA LEONE AND THE SCOPE OF ARTICLE 2(4) OF THE UNITED NATIONS CHARTER ........................................ 335
   B. THE LEGAL BASIS FOR ECOWAS INTERVENTION IN SIERRA LEONE ..................... 349
      1. Legitimization by the Security Council as a Justification for the Intervention .................................................. 352
         b. The Relevance of the Presidential Statement of February 26, 1998 ....................................................... 362
      2. Did the ECOMOGTroops Act in Self-Defense? ....................... 365
      3. Humanitarian Intervention .................................................... 368
         a. Humanitarian Intervention: Defining the Term ............ 369

* Karsten Nowrot, LL.M., Indiana University School of Law—Bloomington, 1998; First State Exam in Law, University of Kiel (Germany), 1997.

** Emily W. Schabacker, B.A. McGill University (Canada); M.A., University of East Anglia (England); J.D., Indiana University School of Law—Bloomington, December 1998.
b. When Is Humanitarian Intervention Permitted Under International Law? ........................................ 372
c. Application of the Law on Humanitarian Intervention to Sierra Leone ........................................ 376

4. The Right of Pro-Democratic Intervention ......................................................................................... 378
   a. Restoring Democracy as a Justification for Military Interventions—Inconclusive State Practice Prior to the End of the Cold War .................................................... 380
   b. Consent of the Legitimate Government as the Decisive Factor ..................................................... 386
   c. Did President Kabbah Remain the Legitimate Government of Sierra Leone after the Coup d'État? ... 388
d. Was President Kabbah Entitled to Ask for Foreign Military Assistance? ........................................ 396

5. The Conakry Agreement ...................................................................................................................... 402

IV. THE USE OF REGIONAL ARRANGEMENTS IN AFRICA ................................................................ 403
   A. OVERVIEW OF THE ROLE OF REGIONAL ORGANIZATIONS UNDER THE UNITED NATIONS CHARTER ................................................................. 404
   B. THE CONTRIBUTION OF REGIONAL ORGANIZATIONS TO PEACE AND SECURITY IN AFRICA ...................................................................... 406

CONCLUSION ...................................................................................................................................... 410

INTRODUCTION

On April 13, 1998, the Secretary-General of the United Nations, Kofi Annan, issued a report entitled "The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa."1 The report emphasized the important role democracy plays in fostering "an environment where peace and development can flourish."2 Annan highlighted the need to strengthen and reinforce the ability of African countries to operate peacekeeping missions and


MILITARY INTERVENTION IN SIERRA LEONE

carry out forceful actions within a framework of regional or sub-regional initiatives. 3

While a number of African states struggle with political instability, economic stagnation, and cultural disunity, 4 events in some African countries suggest a fragile hope for the future. 5 One such event is the recent reinstatement of the democratically elected president of Sierra Leone. 6 In May 1997, military forces ousted President Ahmed Tejan Kabbah from power and, in the following year, Kabbah became the first democratically elected African leader restored to power through military intervention. 7 Significantly, Kabbah returned to power as the result of actions by a West African regional organization, the Economic Community of West African States ("ECOWAS"). 8 The events in Sierra Leone and the reactions of the international community indicate the increasing pressures pushing African states toward democratization and raise a host of issues under international law.

This article evaluates the international legal aspects of the ECOWAS intervention in Sierra Leone and the possible consequences of the intervention for traditional concepts of international law. As the situation in Sierra Leone suggests, the concept of governmental legitimacy has been fundamentally altered in the post-Cold War era. 9 In the post-Cold War international system, states ap-

---


5. See id. (commenting on the active role many African states have played in global conferences and summit meetings in recent years).


7. See Sierra Leone: Putting a Country Together Again, ECONOMIST, Feb. 21, 1998, at 44 (noting the difficult task of building a national force out of an untrustworthy army upon Kabbah's return to power).

8. See James Rupert, Nigerians Welcome in Freetown, WASH. POST, Feb. 15, 1998, at A27 (reporting that Nigerian troops were sent to Sierra Leone under Economic Community of West African States ("ECOWAS") authority).

9. See FERNANDO R. TESÓN, HUMANITARIAN INTERVENTION 225 (1997) (observing that awareness of the link between human rights and peace has produced a change of opinion concerning humanitarian intervention and governmental legiti-
pear increasingly willing to accept military interventions to restore democracy even though, under traditional legal analysis, such interventions may lack legal justification. This article also discusses the implications of the intervention in Sierra Leone for the future role of regional arrangements in the maintenance of international peace and security in general, and in particular, the role in Africa. Although Africa is often viewed as a continent that is the recipient of, rather than a contributor to, the development of international law, its recent contribution to the development of international legal norms governing regional enforcement actions is significant.

Part I provides a factual background to the events leading to the ECOWAS intervention in Sierra Leone. Part II examines the international legal rules governing ECOWAS and its intervention. Part III focuses on the legality of ECOWAS actions in Sierra Leone following the coup d'état and examines whether the intervention, despite its purpose of restoring democracy, falls within the prohibition on the use of force pursuant to Article 2(4) of the United Nations Charter. Additionally, the analysis focuses on whether ECOWAS's use of force is justified under international law. A number of possible justifications for the intervention are evaluated, particularly, authorization by the Security Council, the right of self-defense, the doctrine of humanitarian intervention, and the right to restore democracy based on the consent of the legitimate government. This article reveals that, given a paradigmatic shift in the concept of legitimate government since the end of the Cold War, the ECOWAS intervention in Sierra Leone is justified by the request of the democratically elected President-In-Exile for foreign military assistance.

Finally, Part IV examines the benefits and problems associated with the use of regional organizations for the resolution of civil conflicts. Using the example of the ECOWAS Military Observer Group ("ECOMOG") actions in West Africa, this article concludes that al-

10. See id. at 227-58 (providing examples of interventions in Haiti, Rwanda, and Somalia).

11. See Mutharika, supra note 4, at 1719 (suggesting that the marginalization of Africa has led to this "recipient" status).

12. See id. at 1712 (pointing to Africa's participation in global summit diplomacy in the mid-1990s).
though the development of effective regional organizations benefits the international community, these organizations must operate under the authorization and watch of the United Nations to remain effective and acceptable under international law.

I. FACTUAL BACKGROUND

On May 25, 1997, soldiers in Sierra Leone seized power, overthrowing the fourteen-month old civilian government of President Ahmed Tejan Kabbah. The rebel soldiers of the Revolutionary United Front ("RUF") forced President Kabbah into exile in neighboring Guinea and established themselves as Sierra Leone's new government. Although the coup d'état received relatively little attention from the international press, in West Africa the event commanded attention as cutting short one of West Africa's "most promising political evolutions."

Sierra Leone has long struggled with authoritarian, oppressive governance. From its days as a British colony, through successive military rulers brought to power by four coups, the people of Sierra Leone know well the costs of political instability. The country is one of the world's poorest, with an average per capita income of $150 per year. The elections that placed Kabbah, a former lawyer, in the President's Palace were the first free elections in Sierra Leone in over thirty years.

Kabbah came to power in March 1996 and quickly won the favor of Sierra Leoneans and West African statesmen for his role in ending a five year civil war with the RUF. The Abidjan Accord, signed on


16. See id. (describing the history of authoritarianism in Sierra Leone).

17. See id. (describing Kabbah's election as president as one of West Africa's most promising political evolutions).

18. See James Rupert, Nigerians Drive Junta from Sierra Leone, WASH. POST, Feb. 14, 1998, at A23 (explaining that Major Johnny Paul Koromah, head of the
November 30, 1996, declared an immediate end to the armed conflict, provided for the demobilization of RUF forces, and set forth political provisions whereby the RUF would register and function as a political party. In addition, the Abidjan Accord called for the deployment of neutral international observers and a "capable security presence" to "deter undisciplined elements" from interrupting the peace process. Kabbah's government indicated to the United Nations that it did not have the means to ensure an adequate security presence. In January 1997, United Nations Secretary General Kofi Annan proposed a peacekeeping operation in Sierra Leone to "aid in the implementation of the Abidjan Accord." The eight-month plan included "720 troops, 60 military observers, and 276 civilian staff, at an estimated total cost of $47 million."

The Secretary General's report, however, was never adopted. Reports indicate that Security Council members felt the operation would not gain the support of the United States. Specifically, Security Council members felt the Clinton administration would be loath to engage in a new peacekeeping operation in Africa while in the midst of "delicate negotiations with Congress on the payment of $1 billion in arrears."

Without supervisory presence to ensure enforcement, the Abidjan Accord began to unravel when RUF rebels failed to disarm and de-
mobilize according to schedule.\textsuperscript{27} Soldiers in Sierra Leone's national army, frustrated by unpaid wages and perceived ethnic favoritism, began to support the rebels.\textsuperscript{28} Tensions exploded on May 25, 1997, when soldiers seized government buildings and freed armed prisoners from Freetown's main jail.\textsuperscript{29} Notably, the prisoners freed by RUF forces included the head of the RUF, Major Johnny Paul Koromah. Koromah quickly declared himself head of the new government, suspended the constitution, and banned all political parties.\textsuperscript{30}

Sierra Leone's struggles with democracy were watched closely by its West Africa neighbor, Nigeria.\textsuperscript{31} Since 1990, during the darkest days of Sierra Leone's civil war, Nigerian troops, operating through the ECOWAS, have been present in Sierra Leone.\textsuperscript{32} When the RUF staged the \textit{coup d'état}, Nigeria responded by sending more troops and engaging in full-fledged military combat with the rebels.\textsuperscript{33} From exile in Guinea, President Kabbah invited Nigeria to take military action in order to overturn the \textit{coup d'état}.\textsuperscript{34} A week after the \textit{coup d'état}, Nigerian warships commenced heavy shelling of Freetown, specifically targeting rebel-held locations. Ultimately, military efforts failed, and Nigerian troops were forced to withdraw.\textsuperscript{35}

\begin{itemize}
  \item \textsuperscript{27} See Rupert, supra note 13, at A21 (describing RUF leaders' failure to attend the scheduled demobilization and the continued acts of violence designed to undercut the peace accord).
  \item \textsuperscript{28} See id. (reporting that soldiers resorted to looting as a result of frustration with low wages).
  \item \textsuperscript{29} See id.
  \item \textsuperscript{30} See id.
  \item \textsuperscript{31} See Gerard Vanderberghe, \textit{West African Troops Join Attack on Liberian Faction}, CHI. SUN TIMES, Sept. 17, 1990, at 19 (stating that Nigeria provided the largest contingent of troops in the ECOWAS force).
  \item \textsuperscript{32} For example, during Sierra Leone's 1997 democracy struggle, Nigerian troops guarded the international airport in Freetown, the state house, and the presidential complex. See McElroy, supra note at 14, at 13.
  \item \textsuperscript{33} See id. (explaining that Nigerian troops resulted in some civilian casualties).
  \item \textsuperscript{34} See Anthony Goldman, \textit{Humiliated Nigerian Army Retires Hurt: Botched Intervention in Sierra Leone Has Left the Military Regime Morally Exposed}, FIN. TIMES, June 4, 1997, at 3 ("There is complete anarchy in the country. Somebody needs to restore law and order . . . .").
  \item \textsuperscript{35} See id. (explaining that Nigerian ground troops could not defend against the alliance between government troops and former rebels).
\end{itemize}
The Organization of African Unity ("OAU") swiftly condemned the coup d'État in Sierra Leone and called for the restoration of democracy. The United Nations Security Council, however, did not act as rapidly. Five months after the coup d'État, the Security Council passed Resolution 1132, requesting the military junta to "relinquish power" and allow the "restoration of the democratically elected government." Although the Security Council found that the situation in Sierra Leone constituted a threat to international peace and security in the region, the Security Council stopped short of authorizing military intervention. Instead, it authorized the imposition of sanctions against the regime, prohibiting the sale of petroleum, arms, and military equipment to the RUF junta. The Security Council authorized ECOWAS to ensure the "strict implementation" of the sanctions, but again stopped short of authorizing the use of force by ECOWAS in implementing the provisions of the Resolution.

While the Security Council debated appropriate responses to the coup d'État, West Africans attempted to negotiate an end to the RUF's illegitimate regime. After numerous breakdowns and impasses, the negotiations eventually bore fruit. In October 1997, representatives of Major Koromah and President Kabbah signed a peace agreement in Conakry, Guinea. The Conakry Agreement set out a peace plan for Sierra Leone and a six-month timetable for its imple-

36. See Andrew Meldrum, Annan and OAU Leaders Endorse Intervention against 'Usurpers', GUARDIAN, June 3, 1997, at 14 (explaining that both the OAU and Kofi Annan supported Nigeria’s assault on Freetown); see also Howard W. French, Nigeria, Set Back by Sierra Leone Rebels, Flies in More Troops, N.Y. TIMES, June 4, 1997, at A7 (noting that "one OAU delegate after another supported Nigeria’s efforts").


38. See id. para. 4 (encouraging ECOWAS to search for a peaceful end to the crisis).

39. See id. para. 8 (calling for ship inspections to verify cargo and final destinations).

40. See id.

mentation. Under the agreement, rebels were to begin demobilizing and disarming immediately, and Kabbah was to be restored as President of Sierra Leone no later than April 22, 1998.

The six-month clock governing the Conakry Agreement began ticking on October 23, 1997. By late 1997, however, it became clear that the peace process was not progressing according to schedule. RUF rebels resisted disarmament and fighting continued in the countryside. By early 1998, guerrilla activity against the junta were intense, particularly around the rural centers of Kenema and Bo. An organization known as the Civil Defense Unit ("CDU"), comprised of a rural militia known as the "Kamajors" and traditional village-based fighters, escalated their activities against the junta forces. As military activities continued, the humanitarian situation in the rural areas, particularly around the southern town of Bo, deteriorated. In February 1998, the United Nations Special Envoy to Sierra Leone reported critical food shortages and a rising number of attacks on civilians. By this time it was clear that the Conakry Agreement alone would not bringing peace to Sierra Leone.

On February 13, 1998, with two months remaining for the implementation of the Conakry Agreement timetable, Nigerian troops

42. See id. para. 3.
43. See id.
44. See id. (providing that ECOWAS Military Observer Group ("ECOMOG") will monitor all parties involved to ensure adherence to the timetable).
45. See id. paras. 14-16 (noting that the junta appears to be hesitant to negotiate the implementation of the Conakry Agreement).
47. See id. (describing intensified guerilla-type actions employed by the Civil Defense Unit ("CDU") against the junta).
48. See id. (noting that the CDU obtained control of all major roads in Sierra Leone).
49. See id.
50. See id. paras. 32-41 (stressing the need for assistance and support from the entire international community in the implementation of the Agreement).
captured Freetown, and ousted Koromah's government.\footnote{See Rupert, supra note 18, at A23.} Nigeria's actions were no surprise to those in the region. For months, Nigerian troops in neighboring Liberia armed, trained, and supported the Ka-majors in their civil war against the junta.\footnote{See Howard French, A West Africa Border with Back-to-Back Wars, N.Y. TIMES, Jan. 25, 1998, at 3.} The fall of Freetown marked the end of a nine-day full military offensive by the Nigerian forces, which operated nominally under the auspices of ECOMOG.\footnote{See Rupert, supra note 18, at A23 (explaining overthrow of the coup d'état by the Nigerian offensive nine months prior).} Nigerian forces captured junta military leaders, but Koromah apparently escaped the country and fled to Guinea.\footnote{See Ousted Sierra Leonean Junta Leader Sighted, XINHUA ENG. NEWSWIRE, Mar. 2, 1998, available in 1998 WL 2793516 (stating that Koromah escaped by wearing a false beard and posing as a priest).} Sierra Leoneans welcomed Nigeria's intervention and reacted with joy to the overthrow of Koromah's regime.\footnote{See Rupert, supra note 8, at A27 (describing Freetown residents' warm welcome of Nigerian troops and local praise for the ECOMOG).}

The international community accepted the Nigerian actions in Sierra Leone, apparently willing to turn a blind eye to legality of the intervention.\footnote{See id. (noting that OAU has nominal control of ECOMOG).} The OAU welcomed Nigeria's actions almost immediately.\footnote{Sierra Leone: Putting a Country Together, supra note 7, at 44 (arguing that Nigerians did not have a proper mandate to intervene in Sierra Leone).} The United Nations Security Council issued a statement welcoming "the fact that the military junta has been brought to an end" and commended "the important role" that the ECOWAS played in the "peaceful resolution" of the crisis.\footnote{See Statement by the President of the Security Council, U.N. SCOR, 53d Sess. at 1, U.N. Doc. S/PRST/1998/5 (1998).}

On March 10, 1998, President Kabbah returned to power in Sierra Leone and became the first democratically elected African leader to be restored through the use of force.\footnote{See French, supra note 6, at A3 (discussing the details of President Kabbah's return to power).} Nine of the fifteen members of the new cabinet served under Kabbah before the May 1997 coup
On March 16, 1998, the Security Council adopted Resolution 1556, welcoming Kabbah's return to power and partly terminating the sanctions imposed by Resolution 1132.61

Although a democratically elected government again governs Sierra Leone, the wounds of the civil war have yet to heal.62 The security situation remains tense in many of the rural areas, and factions loyal to Koromah pose a threat to the fragile peace.63 In its resolution of April 17, 1998, the Security Council authorized the deployment of up to ten military liaison and security advisory personnel to work with the government of Sierra Leone and ECOMOG to design a disarmament plan and identify former combatants to be disarmed.64

Most recently, the situation in Sierra Leone has again deteriorated, with renewed violence spreading throughout the country.65 RUF soldiers, operating under the code name "No Living Thing" are trying to regain power by capturing rural areas through a campaign of violence and gross violations of human rights. On June 13, 1998, the Security Council passed Resolution 1181 condemning the "continued resistance of the ousted junta and members of the RUF to the authority of the legitimate government," and demanding that the rebels "lay
down their arms immediately. RUF soldiers continue, however, to terrorize rural communities with violence. The Sierra Leonean government estimates that over 1,000 people have had limbs amputated by the RUF since the junta was forced from power.

II. THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES

In overthrowing the illegitimate Kabbah regime, Nigerian troops acted under the auspices of the ECOWAS. Although ECOWAS has served increasingly as a military force in West Africa, its founders envisioned an economic community similar to the European Community. In May 1975, the Treaty of the Economic Community of West African States entered into force, creating a community of States covering most of West Africa. The founding aims of ECOWAS are to "promote co-operation and development in all fields of economic activity, particularly in the fields of industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, and in social and cultural matters." The founding ECOWAS treaty contained no provisions concerning the establishment of a multinational military force.


68. Since 1990, ECOWAS troops have been stationed in both Liberia and Sierra Leone, playing a critical role in the Liberian civil war. See Rupert, supra note 62, at A27.


71. Original ECOWAS signatories were Benin, Gambia, Ghana, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo, and Upper Volta (now Burkina Faso). See id.

72. Treaty of the Economic Community of West African States (ECOWAS), supra note 70.

73. See id.
Indeed, in 1978, the ECOWAS members signed a Protocol on Non-Aggression calling for the peaceful settlement of disputes within the Community. 74

In 1981, however, ECOWAS members entered into a Protocol Relating to Mutual Assistance on Defense, which established the multinational ECOWAS defense force. 75 The Protocol envisioned a defense force authorized to act in cases of armed conflict between two or more members and "in cases of internal armed conflict within any Member State engineered and supported actively from outside likely to endanger the security and peace of the entire Community." 76 In both cases, intervention is permitted only when the head of state of the member concerned submits a written request to ECOWAS authorities. 77 The Protocol explicitly states that "Community forces shall not intervene if the conflict remains purely internal." 78 As well as authorizing military intervention under certain strict guidelines, the Protocol establishes a command structure to implement its provisions. 79

The Protocol Relating to Mutual Assistance on Defence remained untested until the Liberian civil war in the early 1990s. 79 When civil


75. See Protocol Relating to Mutual Assistance on Defence, U.N. Doc. A/SP3/5/81, available in 4 Nigeria’s Treaties in Force 898 (1990) (reasoning that the "external defence" of member states will be more effective with the coordination and mutual assistance of other member states).

76. Id. art. 4.

77. See id. art. 16 (explaining that a written request indicates proper notification of ECOWAS authority and placement of ECOWAS forces under a state of emergency).

78. Id. art. 18.

79. See id. art. 12.

war erupted in Liberia in 1990, no ECOWAS member had committed troops to serve under the common defense force. When ECOMOG forces landed in Liberia in August 1990, the forces operated under the Chairmanship of ECOWAS, and not within the institutional framework established by the Protocol on Mutual Assistance on Defence. ECOMOG troops, comprised largely of Nigerians, remained active in Liberia through the Liberian elections in July 1997.

The Nigerian troops intervened in Sierra Leone under the auspices of ECOWAS and served, technically, as ECOMOG troops. Many observers in the region, however, considered the intervention a Nigerian action and the international media reported the overthrow of the junta as a Nigerian victory. Nevertheless, the United Nations and the OAU accepted the intervention as an ECOWAS action.

III. THE LEGALITY OF ECOWAS ACTIONS IN SIERRA LEONE

The legality of ECOMOG's actions in Sierra Leone must be measured according to applicable rules of international law, particularly the international legal norms governing the use of force between states.

81. See Nolte, supra note 74, at 606-08 (explaining ECOWAS's initial attempts to resolve the conflict through peaceful negotiations).

82. See id. (noting that ECOWAS, not the United Nations Security Council, authorized the intervention).


84. See Rupert, supra note 62, at A27.

85. See French, supra note 6, at A3. Critics of Nigeria's own military government see the intervention as a means to divert international attention away from Nigeria's unpopular military leader, General Sani Abacha, and as a thinly veiled play for Sierra Leone's mineral wealth. See A. Bolaji Akinyemi, End the Military Meddling, GUARDIAN, June 5, 1997, at 21.


Specifically, the legality of the intervention to restore the democratically elected government of President Kabbah must be weighed in light of the general prohibition on the use of force in Article 2(4) of the United Nations Charter and the broader principle of non-intervention, recognized under customary international law."

A. ECOMOG Action to Restore Democracy in Sierra Leone and the Scope of Article 2(4) of the United Nations Charter

Article 2(4) of the United Nations Charter explicitly prohibits Member States from threatening or using force against other states. ECOMOG troops clearly adopted aggressive military measures against another state. The shelling of Freetown by Nigerian warships and planes and the attack on Sierra Leonean soldiers with ground troops undoubtedly represents a use of force envisioned by Article 2(4). Thus, there appears to be sufficient grounds to conclude that these measures fall within the scope of this United Nations Charter...

88. See Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 106 (June 27); Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 4, 35 (Apr. 9) (explaining that the alleged right of intervention cannot find a place in international law); see also 1 SIR ROBERT JENNINGS & SIR ARTHUR WATTS, OPPENHEIM'S INTERNATIONAL LAW 428-29 (9th ed. 1997); MALCOLM N. SHAW, INTERNATIONAL LAW 797 (4th ed. 1997).

89. See U.N. CHARTER art. 2, para. 4. The United Nations Security Council had the responsibility of implementing and enforcing Article 2. See EHRLICH & O'CONNELL, supra note 87, at 305.


91. See James Rupert, Nigerian Navy Shells Sierra Leone Rebels; Move Draws Counterattack in Capital, WASH. POST, June 3, 1997, at A13 (describing the Nigerian attack on Freetown after rebels overthrew the government). Significantly, the goal of the Nigerian-led effort was to force the rebels to surrender. See id.

92. The discussion whether Article 2(4) of the United Nations Charter encompasses only armed force or is also applicable to economic coercion is therefore not relevant in the analysis of this case. For an overview of this problem, see Albrecht Randelzhofer, Article 2(4), in THE CHARTER OF THE UNITED NATIONS—A COMMENTARY 106, 112 (Bruno Simma et al. eds., 1994) (reviewing the question of whether Article 2(4) of the United Nations Charter encompasses only armed force, or is also applicable to other contexts, such as economic conversion).
Article 2(4), however, requires Member States to refrain from the threat or use of force only in cases where it is used "against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." The formulation of this provision suggests that Article 2(4) is not an absolute prohibition on the use of force. Because the ECOWAS intervention in Sierra Leone sought to restore the democratically elected government, questions arise as to whether ECOMOG's military actions fall beyond the reach of the Article 2(4) prohibition on the use of force.

It has been argued that Article 2(4) must be read to prohibit only those military measures that are accompanied by a specific intent to violate the territorial integrity or political independence of a state. Some authors suggest that force aimed at restoring a democratically elected government does not fall within the scope of the prohibition on the use of force contained in Article 2(4). These authors argue that such interventions are not undertaken with the intent to annex another state's territory and, thus, do not threaten a state's territorial integrity.

93. See EHRLICH & O'CONNELL, supra note 87, at 305 (noting that the United Nations General Assembly drafted the definition of aggression in response to the debate surrounding Article 2(4)). Specifically, the definition of aggression describes those state actions, which are prohibited uses of force. See id.


95. See PHILIP C. JESSUP, A MODERN LAW OF NATIONS 162 (1950) (stating that "if force can be used in a manner which does not threaten the territorial integrity or political independence of a state, it escapes the restriction of the first clause").

96. See id. at 158 (noting that justifications for war have frequently been placed on high political aspirations and ideals).

97. See Argumentation of the United Kingdom Agent, Sir Eric Beckett, before the ICJ in the Corfu Channel Case, I.C.J. Pleadings (3 Corfu Channel) 264, 296 (Nov. 11, 1948); see also D. W. BOWETT, SELF-DEFENCE IN INTERNATIONAL LAW 152 (1958).

98. See FERNANDO R. TESÓN, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 151 (2d ed. 1996) (arguing that the use of force to overthrow "despotic regimes" cannot be prohibited).

99. See Anthony D'Amato, The Invasion of Panama Was a Lawful Response to Tyranny, 84 AM. J. INT'L L. 516, 520 (1990) (stating that "there was never an intent to annex part or all of Panamanian territory, and hence, the intervention left the territorial integrity of Panama intact"); see also Malvina Halberstam, The Copenhagen Document: Intervention in Support of Democracy, 34 HARV. INT'L L.J.
Furthermore, pro-democratic interventions do not violate the political independence of a state.\textsuperscript{100} Rather, interventions to restore democratically elected governments support the political independence of a state by enforcing the nation's political will and sovereignty, which was violated by the overthrow of the government.\textsuperscript{101} Thus, pro-democratic interventions are consistent with the purposes of the United Nations as they seek to further human rights\textsuperscript{102} in accordance with the Preamble and Article 55 of the United Nations Charter, as well as principles of self-determination.\textsuperscript{103}

Article 2(4)'s exclusion of pro-democratic interventions is further supported by the teleological argument that democracies do not attack

\begin{footnotesize}
\begin{itemize}
\item 163, 167 (1993).
\item 100. See Teson, supra note 98, at 150 (stating that the use of force is banned when its use impairs territorial integrity, affects political independence, or goes against the purposes of the United Nations).
\item 101. See W. Michael Reisman, Sovereignty and Human Rights in Contemporary International Law, 84 Am. J. Int’l L. 866, 873 (1990) (citing claims of the Nicaraguan Permanent Representative to the United Nations that the both the United Nations and OAS Charters establish “a flagrant violation of Panama’s sovereignty and territorial integrity”); see also Lois E. Fielding, Taking the Next Step in the Development of New Human Rights: The Emerging Right of Humanitarian Assistance to Restore Democracy, 5 Duke J. Comp. & Int’l L. 329, 374 (1995) (observing that sovereignty is derived from the will of the people, therefore, sovereignty does not belong to the ruler and, consequently, the ruler can actually violate state sovereignty).
\item 102. For the discussion about an evolving human right to democratic governance, see, e.g., Thomas M. Franck, The Emerging Right to Democratic Governance, 89 Am. J. Int’l L. 46 (1992); Gregory H. Fox, The Right of Political Participation in International Law, 17 Yale J. Int’l L. 539 (1992) (explaining the manner in which domestic democratic developments are affecting traditional concepts of state sovereignty in international law). See also Christina M. Cerna, Universal Democracy: An International Legal Right or the Pipe Dream of the West?, 27 N.Y.U. J. Int’l L. & Pol. 289 (1995) (arguing that democracy has achieved universal recognition as an international legal right).
\item 103. See W. Michael Reisman, Coercion and Self-Determination: Construing Charter Article 2(4), 78 Am. J. Int’l L. 642, 643 (1984) (noting that “the basic policy of contemporary international law has been to maintain the political independence of territorial communities so that they can continue to express their desire for political community in a form appropriate to them”); see also Robert F. Turner, Haiti and the Growth of a Democracy Entitlement, in The United Nations at Fifty—Sovereignty, Peacekeeping, and Human Rights 18, 25 (Don M. Snider et al. eds., 1995); Jeanne Kirkpatrick, Dep’t St. Bull., No. 2081, Dec. 1983, p. 74; Halberstam, supra note 99, at 167.
\end{itemize}
\end{footnotesize}
each other and are less likely to wage war. The fundamental purpose of Article 2(4), when read with the Preamble and Article 1(1) of the United Nations Charter, is the maintenance of international peace. If democracy is viewed as a *conditio sine qua non* of peaceful relations among states, the United Nations Charter provision on the prohibition of the use of force may be interpreted as excluding “pro-democratic” interventions in its scope.

104. For further discussion on this argument, see Immanuel Kant’s explanations of his First Definitive Article in **IMMANUEL KANT, ETERNAL PEACE**, 76 (W. Hastic & Edwin D. Mead, eds., 1914); Michael W. Doyle, **Kant, Liberal Legacies, and Foreign Affairs** (pts. 1-2), **12 PHIL. & PUB. AFF.** 205, 323 (1983). See also Lori Fisler Damrosch, **Use of Force and Constitutionalism**, 36 COLUM. J. TRANSNAT’L L. 449, 454 (1997) (tracing the roots of the theory linking constitutional organization to international peace).

105. See **ANTONIO CASSESE, THE CURRENT LEGAL REGULATION OF THE USE OF FORCE** 3 (1986) (explaining that the United Nations Organization and its proclaimed purpose in Articles 1(2) and 2(4) are primarily “an attempt to institute a regime of collective peace enforcement”).

106. In addition to the argument of war avoidance through democratization, democracy is also closely linked to other important policy goals such as the protection of human rights, economic development, and environmental protection. See W. Michael Reisman, **Humanitarian Interventions and Fledgling Democracies**, 18 FORDHAM INT’L L.J. 794, 804 (1995) (stating that “[d]emocracy is a right guaranteed by international law and the *condition sine qua non* for the realization of many other internationally prescribed human rights”); see also Fernando R. Tesón, **Collective Humanitarian Intervention**, 17 MICH. J. INT’L L. 323, 332 (1996) (detailing reasons to doubt the conclusion that international law should be concerned with democratic legitimacy). These include; the question of agency, grounds for believing democratic rule to be a necessary condition for other human rights, and the democratic peace thesis. See *id.* In addition to the argument of war avoidance through democratization, democracy is also closely linked to other important policy goals, such as, the protection of human rights, economic development, and environmental protection. For further analysis of this proposition, see John Norton Moore, **Towards a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance**, 37 VA. J. INT’L L. 811, 833, 826 (1997) (noting that this link suggests “a multiplicity of reasons to support democratic structures”).

107. See Reisman, *supra* note 103, at 644 (describing various constructions of Article 2(4)); D’Amato, *supra* note 99, at 520 (submitting that the use of force for territorial aggrandizement or colonialism does not qualify as humanitarian intervention); see also Richard B. Lillich, **Kant and the Current Debate over Humanitarian Intervention**, 6 J. TRANSNAT’L L. & POL’Y 397, 402 (1997) (interpreting Kant as supportive of the argument for humanitarian intervention to protect human rights).
A legal construction excluding the use of force for "benign ends" from the scope of Article 2(4), however, raises serious issues concerning the interpretation of the prohibition of force, which is considered "the cornerstone of peace in the Charter." These concerns are not based on the character of inventions seeking to restore democratically elected government, but on the fear that any exception to the prohibition will create the possibility of a "legion of loopholes" in the norm and leave it vulnerable to abuse. Making exceptions for "higher values," Oscar Schachter points out, may lead to a dilution of the norm to a point where "it could have no application except in the unlikely case of an announced aggression." Such a narrow reading

108. See Oscar Schachter, The Right of States to Use Armed Force, 82 Mich. L. Rev. 1620, 1626 (1984) (noting that the use of force to achieve a "benign end" does not fall within the scope of Article 2(4)). The International Court of Justice, for example, answered this question in the Corfu Channel Case of 1949 by rejecting the British claim that it has used minesweeping to vindicate legal rights. See id.


110. See Yoram Dinstein, War, Aggression and Self-Defense 85 (2d ed. 1994) (arguing that the injunction against resort to force in international relations should not be confined to specific situations affecting the territorial and political independence of states). Another author suggests that:

[S]ituations may arise in which attempts to settle disputes by peaceful means may be so delayed, and prospects of success so fantastically remote, that a minimal regard for law and justice in interstate-state relations might require the use of force in due time to vindicate these standards, and avoid even more catastrophic resort to force at a later stage....


112. Oscar Schachter, Is There a Right to Overthrow an Illegitimate Regime?, in Le Droit International au Service de la Paix, de la Justice et du Developpement—Melanges Michel Virally 423, 427 (1991); see Louis Henkin, How Nations Behave 145 (2d ed. 1979) (noting that even intervention for humanitarian purposes can all too readily be used as a pre-text for aggression); Sarah A. Rumage, Panama and the Myth of Humanitarian Intervention in U.S.
of Article 2(4), excluding military measures undertaken by states for a variety of purposes from the scope of this provision, cannot control when the accepted rules of interpretation of international treaties, which apply to the United Nations Charter, are employed.

The wording of Article 2(4) is ambiguous. The language concerning territorial integrity and political independence may be understood as restricting the scope of the prohibition on the use of force. Alternatively, territorial integrity and political independence may simply explicate particularly egregious violations of the prohibition, in order to strengthen the guarantee against foreign military intervention. In that case, the last clause functions as "a residual 'catch-all' provision." Given this ambiguity in Article 2(4), alternative methods of interpretation, such as a systematic interpretation of the treaty, its purpose, and the travaux préparatoires, should be considered.

---


113. See Nawaz, supra note 111, at 409.


115. See CASSESE, supra note 105, at 3 (commenting on the various differences of opinion concerning the scope and content of Charter provisions).

116. See id. at 4 (observing that only certain specified types of force are proscribed by the Charter "namely, force directed against the territorial integrity or political independence of any State, or force inconsistent with the purposes of the United Nations").


Under the systematic method of interpretation, the meaning of the norm is ascertained by comparison with other norms set forth in the treaty and by referencing the entire structure of the treaty. The first section of the Preamble of the United Nations Charter, which sheds an interpretive light on the ensuing provisions, refers to the goal of "sav[ing] succeeding generations from the scourge of war . . . ." Furtherance of this goal requires "that armed force shall not be used, save in the common interest . . . ." Article 1 defines the purpose of the United Nations and characterizes the Organization as a system of collective security, which holds a general prohibition on the use of force as its central tenant. This tenant is also expressed in Article 24, under which Member States confer primary responsibility for the maintenance of international peace and security upon the Security Council. Reviewing these provisions, it is possible to conclude that customary international law. See Jennings & Watts, supra note 88, at 1271.


121. See Rüdiger Wolfrum, Preamble, in The Charter of the United Nations—A Commentary 45, 48 (Bruno Simma et al. eds., 1994) (discussing the function of preambles in the interpretation of international treaties). To this end, the Preamble serves "as an interpretive guideline for the provisions of the Charter." Id. For further discussion on the function of preambles in the interpretation of international treaties, see Asylum Case (Colom. v. Peru), 1950 I.C.J. 266, 282 (Nov. 20).

122. U.N Charter preamble (explaining the United Nation's commitment to establish an international organization committed to human rights, justice, social programs and better standards of living).

123. Id. The attainment of the United Nation's goals are sought by practicing tolerance, maintaining international peace and security, and employing international machinery for the promotion of economic and social advancement. See id.

124. See Jost Delbrück, Collective Security, in 1 Encyclopedia of Public International Law 646, 651 (Rudolf Bernhardt ed., 1992); Wolfrum, supra note 121, at 51 (explaining the defining characteristic of collective security to be the protection of members of a system from attack by other members).

the primary purpose of the United Nations Charter is to prohibit unilaterally recourse to the use of force as broadly as possible.\textsuperscript{126}

The fact that the United Nations adopts the promotion of human rights among its purposes does not contradict this finding.\textsuperscript{127} Although there is no general agreement on how to resolve a possible conflict between the different purposes and principles of the Charter, the order in which the purposes and principles are set forth indicates a substantive priority.\textsuperscript{128} In both the Preamble and Article 1, the prevention of war and the maintenance of international peace and security are listed before the promotion of human rights.\textsuperscript{129} Thus, the United Nations Charter expresses a clear hierarchy by declaring peace "as the supreme value . . . more compelling even than human rights."\textsuperscript{130} This does not mean human rights must always be subordinate to the maintenance of international peace and state sovereignty.\textsuperscript{131} It indicates, however, that the protection of human rights through military measures are primarily

\begin{itemize}
\item \textsuperscript{126} See Krysztof Skubiszewski, \textit{Use of Force by States, Collective Security, Law of War and Neutrality, in} MANUAL OF PUBLIC INTERNATIONAL LAW 739, 746 (Max Soerensen ed., 1968) (explaining that the framers of the Charter intended to remove force as a means of settling international disputes).
\item \textsuperscript{127} See TESÓN, supra note 98, at 3 (explaining that restraint from use of force and fundamental human rights are central concepts in legal and moral judgments).
\item \textsuperscript{128} See Albrecht Randelzhofer, \textit{Purposes and Principles of the United Nations, in 2 UNITED NATIONS: LAW, POLICIES AND PRACTICE} 994, 996 (Rüdiger Wolfrum & Christiane Philipp eds., 1995).
\item \textsuperscript{129} The Preamble states, in relevant part, "[w]e the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights." U.N. CHARTER preamble. Similarly, Article 1 of the Charter provides that "[t]he Purposes of the United Nations are to maintain international peace and security, and . . . [t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." U.N. CHARTER art. 1.
\item \textsuperscript{130} LOUIS HENKIN, INTERNATIONAL LAW: POLITICS, VALUES AND FUNCTIONS 146 (1990); see Tom J. Farer, \textit{Human Rights in Law's Empire: The Jurisprudence War}, 85 AM. J. INT'L L. 117, 121 (1991) (explaining that an interpretation of the Charter that considers any use of force, humanitarian or otherwise, illegal is consistent with the intent of the Charters framers); see also EHRlich & O'CONNELL, supra note 87, at 328 (discussing the legal context for asserting a right of forcible humanitarian intervention).
\item \textsuperscript{131} See JESSUP, supra note 95, at 169 (stating that "[t]raditional international law has recognized the right of a state to employ its armed forces for the protection of the lives and property of its nationals abroad").
\end{itemize}
reserved to collective actions under the authority of the United Na-

tions.

This interpretation is supported by Article 2(3), which obliges

Member States to pursue the peaceful settlement of disputes, and in-

fluences the interpretation of Section 4 of this Article.\textsuperscript{132} In addition, other United Nations Charter provisions that include exceptions from

the prohibition on the use of force, such as Articles 42, 51, and 53, set up detailed procedural requirements.\textsuperscript{133} From these provisions, one

may conclude that the United Nations Charter permits the use of force

only under narrow, explicitly stated prerequisites.\textsuperscript{134} Thus, the system-

atic interpretation demonstrates that Article 2(4) entails a comprehen-

sive prohibition on the use of force covering all forms of interstate

armed conflicts regardless of their purpose.\textsuperscript{135}

This conclusion is supported by a teleological interpretation of Arti-

cle 2(4).\textsuperscript{136} The teleological interpretation addresses the meaning of a

treaty provision in light of the purpose pursued by the treaty as a

whole.\textsuperscript{137} The primary purpose of the United Nations Charter is to

\begin{flushleft}
132. See U.N. CHARTER art. 2, para. 3 (stating that "[m]embers shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered"); DINSTEIN, supra note 110, at 85 (noting that the term "war" is not dispensed within the Preamble).

133. See DINSTEIN, supra note 110, at 86 (articulating that, "[n]ot counting the license to take action against the enemy states of the Second World War (Articles 53 and 107), there are only two enduring settleings in which the Charter permits the use of inter-state force: collective security (Article 42) and self-defense (Article 51")).

134. See id. (describing attempts to limit the scope of the prohibition on the use of force).

135. See LASSA OPPENHEIM & HERSCH LAUTERPACHT, INTERNATIONAL LAW 154 (7th ed. 1952); IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 267 (1963); Eduardo Jiménez de Aréchaga, International Law in the Past Third of a Century, 159 RECUEIL DES COURS 1, 91 (1978 I).

136. See Ress, supra note 114, at 42.

137. See, e.g., Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951 I.C.J. 15, 23 et seq. (May 28) (listing elements of interpretation of the Genocide Convention to include, "[t]he origins and character of that Convention, the objects pursued by the General Assembly and the contracting parties, [and] the relations which exist between the provisions of the Convention"); Case Concerning the Aerial Incident of July 27th. 1955 (Isr. v. Bulg.), 1959 I.C.J. 127, 142 (Preliminary Objections of May 26); Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter), 1962 I.C.J. 151, 157 (July 20); see also Ress, supra note 114, at 42 (stating that interpretations relating to the
comprehensively prohibit the use of force with the explicitly and detailed provisions of the United Nations Charter itself as the only exceptions. 138 Contrary to this goal, a narrow interpretation of Article 2(4) would exclude a substantive portion of intrastate armed conflicts from the scope of the prohibition. 139 In accordance with the interpretive rule of effet utile or the effectiveness principle, used to interpret international treaties such as the United Nations Charter, 140 when two or more possible interpretations conflict the one that best serves the recognizable purpose of the treaty prevails. 141 Because a broad understanding of Article 2(4) best serves the United Nations Charter’s aim to prohibit the use of force, the teleological interpretation also supports a wide reading of this United Nations Charter provision. 142

Finally, the legislative history as manifested in the travaux préparatoires indicates the wording of Article 2(4) was not intended to restrict the scope of this provision but to give specific guarantees to small states fearful of foreign interventions by powerful countries. 143

138. See Ress, supra note 114, at 42.

139. See DINSTEIN, supra note 110, at 85 (commenting that violation of territorial integrity does not occur where the use of force is confined within a foreign state’s boundaries).

140. See International Status of South-West Africa, 1950 I.C.J. 128, 187 (July 11) (de Visscher, J., dissenting) (urging that an interpretation of treaty clauses should not deprive the treaty of the practical effect of benefiting others); see also Ress, supra note 114, at 42 (discussing the “Practical-Effects” rule).

141. See International Status of South-West Africa, 1950 I.C.J. at 187 (arguing for systemic-wide efforts at reconciling treaty texts and for the preservation of the practical effects of each treaty); see also Ress, supra note 114, at 42 (stating that an interpretation which best serves the purpose of the treaty should be followed); Hersch Lauterpacht, Restrictive Interpretation and the Principle of Effectiveness, 26 BRIT. Y.B. INT’L L 48, 67 (1949).

142. See Bert V.A. Röling, The Ban on the Use of Force and the U.N. Charter, in CASSESE, supra note 105, at 7 (explaining Article 2(4) as a prohibition on war and a “precondition of life itself in the atomic era”).

143. For a more detailed description, see BROWNLIE, supra note 135, at 266. An indication of the original intent is revealed in discussions of the preparatory committee. The delegate from Brazil, for example, objected to the possibility of a restricted interpretation of the wording of Article 2(4) of the United Nations Charter. In response, the United States delegate made clear that the intention of the authors of the original text was to state in the broadest terms an absolute, all-inclusive prohibition. See VI UNC.I.O., at 334-35; see also Edward Gordon, Article 2(4) in
Accordingly, an interpretation of Article 2(4) indicates a presumption against unilateral military measures underlying the United Nations Charter as a whole.\textsuperscript{144} Any military intervention by a foreign state falls under the scope of Article 2(4), regardless of whether its purpose is benign or hostile.\textsuperscript{145}

Another line of argument against this interpretation of Article 2(4) emphasizes that the potential contribution of international law to controlling the use of force remains of limited practical significance until the international politics move toward further democratization as the only guarantee for a reciprocal observance of international norms.\textsuperscript{146} This argument is reflected in the general position of a number of legal and international relations scholars.\textsuperscript{147} Unless the system of collective security envisioned at the signing of the United Nations Charter is effectively enforced, the prohibition on the use of force in Article 2(4) is altered by the contrary subsequent practice of states, as adopted to conform to the realities of the international system.\textsuperscript{148}

\textit{Historical Context}, 10 \textsc{Yale J. Int'l L.} 271, 276 (1985).

144. See Brownlie, \textit{supra} note 135, at 268.

145. See CasseSE, \textit{supra} note 105, at 4 (commenting that the qualification that force must be directed "against the territorial integrity of political independence" of the injured state stems from Article 10 of the Covenant of the League of Nations).

146. See David P. Fidler, \textit{War, Law & Liberal Thought: The Use of Force in the Reagan Years}, 11 \textsc{Ariz. J. Int'l & Comp. L.} 45, 75 (1994) (noting that the progressive liberal thought believes in the notion that the "use of force in international politics could be controlled through international law").

147. See Jeane J. Kirkpatrick, \textit{Law and Reciprocity}, 78 \textsc{Am. Soc. Int'l L.} 59, 60 (1984). For an overview of this position, see Fidler, \textit{supra} note 146, at 75 (arguing that liberal realism recognizes the potential limitations of international law to control the use of force "unless international political conditions charge significantly so that reciprocity will be effective when vital national interests are at stake").

148. See, e.g., Anthony D'Amato, \textit{Trashing Customary International Law}, 81 \textsc{Am. J. Int'l L.} 101, 105 (1987) (commenting that the state practice of interpreting customary international law or the Charter has drastically altered the meaning of Article 2(4)); W. Michael Reisman, \textit{Criteria for the Lawful Use of Force in International Law}, 10 \textsc{Yale J. Int'l L.} 279, 281 (1985); Alberto R. Coll, \textit{The Limits of Global Consciousness and Legal Absolutism: Protecting International Law from Some of Its Best Friends}, 27 \textsc{Harv. Int'l L.J.} 599, 620 (1986); see also \textsc{Julius Stone, Aggression and World Order} 96 (1958) (questioning what it means to be in the position of a wronged state when the determination of "collective interest" fails); A.V. \textsc{Thomas} & A.J. \textsc{Thomas, Non-Intervention} 209 (1956). The most extreme position in the legal literature suggests that due to a lack of effective
These arguments, however, are not sufficient to justify a narrow interpretation of the prohibition on the use of force in Article 2(4).\textsuperscript{149} In addition, no state has invoked another state’s breach of Article 2(4) as a legal justification for abrogating this provision.\textsuperscript{150} Furthermore, whether the United Nations Charter’s rules on the use of force have changed through contrary subsequent state practice remains questionable.\textsuperscript{151} Although the practice of states is a generally recognized method of treaty interpretation,\textsuperscript{52} the frequent violations of the prohibition on the use of force throughout the history of the United Nations did not lead to a reinterpretation or even abrogation of Article 2(4). It is questionable whether the Charter, in light of its express and detailed enforcement, Article 2(4) has become a “dead letter.” See Thomas M. Franck, Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States, 64 AM. J. INT’L L. 809 (1970); see also Eugene Rostow, The Legality of the International Use of Force by and from States, 10 YALE J. INT’L L. 286, 287-88 (1985); Anthony Clark Arend, International Law and the Recourse to Force: A Shift in Paradigms, 27 STAN. J. INT’L L. 1, 45 (1990) (explaining that states have chosen to reject the strict norm of Article 2(4)). Instead, states favor a more permissive interpretation that allows for the use of force in certain circumstances. See Arend, supra, at 45. States have not reached a consensus on a permissive norm that limits intervention to situations where it is used for democratic self-determination. See id.

149. As one author observes, the legislative history of this provision does not support the notion that an effective functioning of the collective security system is a prerequisite to renouncing the use of force. See Oscar Schachter, In Defense of International Rules on the Use of Force, 53 U. CHI. L. REV. 113, 125 (1986) (arguing that the Charter’s drafters realistically and properly preserved the right of self-defense in response to an armed attack); see also HENKIN, supra note 130, at 138; Randelzhofer, supra note 92, at 128.

150. See Schachter, supra note 149, at 128-29 (discussing various legal theories supporting the view that new developments in international relations have weakened rules on the use of force).

151. See id. at 130 (stating that some commentators consider consistent violations of Article 2(4) to supercede the Charter rules and corresponding customary international law).

provisions concerning amendments to the treaty, is open to a process that amounts not to a mere reinterpretation, but a fundamental change in the meaning of one of its core provisions."

Assuming the United Nations Charter is a flexible, "living constitution" that permits such extreme interpretations, it is not clear that state practice supports the proposition that the scope of Article 2(4) has changed. Treaties are never changed through the practice of states alone. Change requires at least an implicit agreement between all parties concerning the changed meaning of the treaty provision in question. In nearly every case, when a state turned to military means without a valid justification, a large number of states condemned these


156. For a discussion on modification of the Charter in connection with the requirement of the 'concurring votes' of the permanent members of the Security Council under United Nations Charter Article 27(3), which in practice also allows abstentions of the permanent members, see Simma & Brunner, supra note 154, at 447. The validity of the practice was also confirmed by the I.C.J. See Vienna Convention on the Law of Treaties, supra note 119, art. 31(3)(b), 1155 U.N.T.S. at 340; see also Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16 (June 21).

157. See Ress, supra note 114, at 39 (discussing subsequent practice in a historical subjective perception).

acts as a violation of international law.\footnote{159} Furthermore, in justifying the use of force, states have been reluctant to rely on a narrow interpretation of Article 2(4), they have instead based their actions on a broad understanding of the right of self-defense, thus recognizing the validity of this Charter provision.\footnote{160} If these arguments had merit during Cold War super-power confrontations, they have now lost much of their factual basis.\footnote{161} The end of the Cold War marked a revitalization, indeed the awakening, of the Security Council and the system of collective security.\footnote{162} This revitalization materialized with the adoption of sanctions and the authorization to use force against Iraq after its invasion of Kuwait in August 1990.\footnote{163}

The military actions of the ECOWAS states, primarily Nigeria, fall within the scope of the prohibition on the use of force of Article 2(4), regardless of the purpose pursued. This does not necessarily render the military action illegal under international law. To justify the use of armed force by ECOMOG, however, it is necessary to examine the possible legal basis of ECOWAS's intervention.

\footnote{159} See John Murphy, The United Nations and the Control of Violence 125 (1982).


\footnote{161} See Jennings & Watts, supra note 88, at 423-27 (providing ten Cold War examples of various countries invoking the right of self-defense); Peter Malanczuk, Humanitarian Intervention and the Legitimacy of the Use of Force 25, 26 (1993) (recognizing the argument against authorizing the use of force in response to human rights violations confined to the territory of violating state); Nolte, supra note 74, at 620; Tesón, supra note 98, at 158 n.81 (conceding the growing weakness of this argument).


B. THE LEGAL BASIS FOR ECOWAS INTERVENTION IN SIERRA LEONE

Although the military intervention of ECOWAS in Sierra Leone falls within the scope of Article 2(4) of the United Nations Charter, the action nevertheless may be justifiable under accepted norms of international law permitting the use of armed force by states. ECOWAS presented a number of reasons to justify the intervention. The most prominent justifications include: the right to self-defense, the appeal by President Kabbah seeking ECOWAS assistance, the atrocities committed by junta troops against Sierra Leonean citizens, the threat to international peace and security in the region caused by the flow of


165. See Jonah, May 27 Press Conference, supra note 164 (reporting that President Kabbah appealed to ECOWAS for immediate assistance to restore civilian rule to Sierra Leone); Jonah, Feb. 18 Press Conference, supra note 164 (stating President Kabbah's sentiments that the ECOMOG would probably remain in Sierra Leone for a considerable period of time).

166. See Final Communiqué of the Meeting of the Foreign Ministers of ECOWAS in Conakry, Guinea, U.N. SCOR, 52d Sess., at 3, U.N. Doc. S/1997/499 (declaring that the ECOWAS Minister for Foreign Affairs deplored the bloodshed and other human losses which followed the coup d'état in Sierra Leone); James Jonah, Press Conference by Sierra Leone, Sept. 11, 1997 (visited Sept. 19, 1998) <http://www.un.org> [hereinafter Jonah, Sept. 11 Press Conference] (describing the manner in which the military junta carried out atrocities against the Sierra Leonean populace). For example, the junta killed seven students demonstrating against the military regime. See id. In addition, junta plans included civilian detention, landmines, poison gas, and use of human shields. See id.
Sierra Leonean refugees to neighboring countries,\textsuperscript{167} and the prevention of the execution of a "genocide plan" by the junta.\textsuperscript{168}

Some of the justifications for use of armed forces, which lack basis in international law, can be dealt with briefly.\textsuperscript{169} A general interest in the political stability and security of the region is understandable from a political point of view, but cannot provide a basis under international law for a military intervention.\textsuperscript{170} The recent practice of the Security Council in connection with Iraq,\textsuperscript{171} Haiti,\textsuperscript{172} Rwanda,\textsuperscript{173} Burundi,\textsuperscript{174} and

\textsuperscript{167}. See Final Communiqué of the ECOWAS Summit in Abuja, U.N. SCOR, 52d Sess., Annex II, at 19, U.N. Doc. S/1997/695/Annex II (1997) [hereinafter "Abuja Final Communiqué"] (reaffirming the ECOWAS Member States' collective commitment to restore constitutional order to Sierra Leone). This commitment is required because of the potential influx by Sierra Leonean refugees in neighboring states, which, in turn, threatens international peace and security in the region. See id.

\textsuperscript{168}. See Jonah, June 9 Press Conference, supra note 164 (describing how the military junta targeted supporters of the Kabbah government); Jonah, Sept. 11 Press Conference, supra note 166 (affirming that the military junta planned to direct the genocide plan against Sierra Leoneans).

\textsuperscript{169}. For example, intervention based on humanitarian concerns, particularly for the "restoration of democracy," is not accepted in international law given the explicit provisions of the United Nations Charter. See Shaw, supra note 88, at 803; see also Anthony Chukwukaa Ofodile, The Legality of ECOWAS Intervention in Liberia, 32 Colum. J. Transnat'l L. 381, 413 (1994) (arguing that ECOWAS acted illegally because such actions ventured beyond general peacekeeping and attempted to influence the outcome of the civil war in Liberia).

\textsuperscript{170}. See Nolte, supra note 74, at 619 (emphasizing that although "security interests" may be invoked to justify military intervention from a political standpoint, such interests are too general and imprecise to provide justification under international law).


Zaire\textsuperscript{175} seems to suggest that massive flows of refugees across borders constitute a threat to international peace and security capable of activating the enforcement powers of the Security Council under Chapter VII of the United Nations Charter.\textsuperscript{176} Such a situation in itself, however, does not justify unilateral use of force by the affected states.\textsuperscript{177} Furthermore, President Kabbah's accusations that the junta was executing a "genocide plan" in Sierra Leone, or at least planned to in case of a foreign intervention, are not substantiated by any objective proof.\textsuperscript{178}

Other possible justifications, however, deserve a more careful analysis. In the following sections, possible justifications for the significant internal displacement of the Rwandan population, and massive exodus of Rwandan refugees to neighboring countries. The United Nations Security Council also stressed the need for coordinated international action to alleviate the suffering of the Rwandan people. See id. at 2; see also S.C. Res. 1161, U.N. SCOR, 53d Sess., 3870th mtg. at 1, U.N. Doc. S/RES/1161 (1998) (re-emphasizing the need for a solution to the refugee problem in the Great Lakes region of sub-Saharan Africa).


177. Compare Nolte, supra note 74, at 619 (arguing that nations may not resort to the use of force, for general security reasons, despite the United Nations enforcement provision in Chapter VII), with Brian K. McCalmon, States, Refugees, and Self-Defense, 10 GEO. IMMIGR. L.J. 215, 238 (1996) (arguing that a state has a right to use force to defend itself against massive influxes of refugees).

178. See Jonah, June 9 Press Conference, supra note 164 (stating that, although the permanent representative of Sierra Leone to the United Nations claimed evidence of a junta-planned genocide, the Secretary-General indicated no such planned undertaking).
tary intervention will be evaluated to determine whether there is a legal basis for the use of armed force in Sierra Leone.

1. Legitimization by the Security Council as a Justification for the Intervention

In searching for a justification for ECOMOG's use of force in Sierra Leone, the initial inquiry is whether the Security Council of the United Nations authorized the intervention.\textsuperscript{179} Pursuant to the powers of the Security Council under Chapters VII and VIII of the United Nations Charter, such an authorization would turn the ECOWAS intervention into a legalized "enforcement action," thus constituting a permissible exception to the prohibition of the use of force of Article 2(4) of the United Nations Charter.\textsuperscript{180}


The situation in Sierra Leone may qualify as an exception to the Security Council's prohibition on the use of force.\textsuperscript{181} In contrast to ECOWAS intervention in Liberia seven years earlier,\textsuperscript{182} the Security Council reacted in a number of ways to the coup d'\'état in Sierra Leone.\textsuperscript{183} After the President of the Security Council repeatedly con-

\textsuperscript{179}. See Ulrich Beyerlin, Regional Arrangements, in 2 UNITED NATIONS LAW, POLICIES AND PRACTICE 1040, 1042 (Ruediger Wolfrum & Christiane Philipp, eds. 1995) (suggesting that there is no clear distinction between regional enforcement, which may or may not require prior authorization).

\textsuperscript{180}. See Randelzhofer, supra note 92, at 119.

\textsuperscript{181}. See generally Jochen A. Frowein, Article 39, in THE UNITED NATIONS CHARTER—A COMMENTARY 612 (Bruno Simma et al. eds., 1994) (highlighting the mandate that the Security Council find, at a minimum, a threat to international peace and security before adopting economic and military sanctions).

\textsuperscript{182}. See Binaifer Nowrojee, Joining Forces: United Nations and Regional Peacekeeping—Lessons from Liberia, 32 HARV. HUM. RTS. J. 129, 134 (1995) (stating that ECOWAS unexpectedly intervened in an attempt to prevent an impending bloodbath in the Liberian capital of Monrovia); Ofodile, supra note 168, at 382 (commenting on ECOWAS's active role in the Liberian conflict). ECOWAS not only demanded that all parties refrain from hostilities, but also declared it would enforce a cease-fire without the parties consent. See id. See Nolte, supra note 74, at 618 (describing the official justification for ECOWAS's Liberian intervention).

\textsuperscript{183}. See Statement by the President of the Security Council from May 27, 1997,
demanded the overthrow of the democratically elected government of Sierra Leone and called for an immediate restoration of President Kabbah. The Security Council adopted Resolution 1132 on October 8, 1997. The Resolution determined that the situation in Sierra Leone constituted a threat to international peace and security under Article 39 of the United Nations Charter, thus opening the door for the adoption of mandatory economic and military sanctions. The resolution also expressed the Security Council's grave concerns about the "continued violence and loss of life in Sierra Leone following the military coup of 25 May 1997, the deteriorating humanitarian conditions in that country, and the consequences for neighboring countries." Nearly all state representatives, however, made clear in their statements prior to the adoption of the resolution that the reason for adopting the sanctions was to condemn the military coup. These


184. See id. (calling for an immediate restoration of Sierra Leone's democratically elected government); Statement by the President of the Security Council from July 11, 1997, U.N. Doc. S/PRST/1997/36, at 1 (declaring the attempt to overthrow President Kabbah to be unacceptable); Statement by the President of the Security Council from Aug. 6, 1997, U.N. Doc. S/PRST/1997/42 (calling on the military junta that overthrew President Kabbah to immediately and unconditionally restore the Kabbah regime).

185. See S.C. Res. 1132, supra note 37, at 2 (demanding that the military junta relinquish power in Sierra Leone).

186. See id. (declaring that the military junta takeover satisfies the official threshold as a threat to international peace and security).

187. At a minimum, the Security Council must find a threat to international peace and security in accordance with Article 39 of the United Nations Charter as a prerequisite for the adoption of economic as well as military sanctions under Chapter VII of the United Nations Charter. See Frowein, supra note 181, at 612-13. The fact that the Security Council does not expressly mention Article 39 in adopting Resolution 1132 has no further legal implications. It is sufficient if the Security Council implicitly refers to this provision by stating the existence of a threat to the peace. See Helmut Freudenschü, Article 39 of the U.N. Charter Revisited: Threats to the Peace and the Recent Practice of the U.N. Security Council, 46 AUS. J. PUB. & INT'L L. 1, 31 (1993); Ruth Lapidoth, Some Reflections on the Law and Practice Concerning the Imposition of Sanctions by the Security Council, 30 ARCHIV DES VOLKERRECHTS 114, 115 (1992) (supporting the idea that it is possible for the Security Council to proceed directly to a resolution without prior determination of a threat or breach of peace).

188. S.C. Res. 1132, supra note 37, at 2.

statements demonstrate the Resolution sought to reinstate Sierra Leone’s elected government.\footnote{190}

A military coup is generally not the kind of “aggressive use of force across a boundary” traditionally understood to constitute a threat to international peace;\footnote{191} however, the violent overthrow of a democratically elected government as a threat to international peace and security under Article 39 of the United Nations Charter is not without precedence.\footnote{192} In 1994, the Security Council determined that the overthrow of the democratically elected government of President Aristide in Haiti constituted a threat to international peace and security. Furthermore,
the Security Council authorized enforcement measures to remove the military leaders from power under Chapter VII of the United Nations Charter.193

While the Security Council remained cautious in the Haitian situation by stressing the unique circumstances that led to the adoption of the resolution, Resolution 1132 fails to note any such special circumstances.194 Furthermore, while the Haitian resolution may have been adopted because of the political interests of the United States in reducing the flow of refugees to its country, the situation in Sierra Leone did not directly effect the national interest of one of the permanent members of the Security Council.195 Thus, Resolution 1132 may be regarded as a further step by the Security Council towards extending its powers under Chapter VII to a certain variety of crisis within a state.196 The collapse of a government followed by civil war, massive state-sponsored violations of fundamental human rights, and the violent overthrow of a democratically elected government may no longer be regarded as matters essentially within the domestic jurisdiction of a state.197 Recent United Nations practice suggests that these situations are now issues of international concern.198

---


194. See id. (recognizing that the unique character of the situation in Haiti and its complex and extraordinary nature requires "an exceptional response").

195. See S.C. Res. 1132, supra note 37, para. 15 (expressing concern with the military coup's consequences on Sierra Leone's neighboring countries).

196. See MALANCZUK, supra note 161, at 24 (asserting that the special circumstances prompting United Nations Security Council 794 to authorize humanitarian intervention in Somalia). The combination of chaotic and endless civil war, mass starvation, and threats to humanitarian assistance prompted the United Nations to intervention. See id.

197. See id. (determining that the magnitude of human tragedy caused by the internal Somalian conflict constituted a "threat to international peace and security").

198. See id. (declaring that, given the Somalian situation, a Security Council Resolution stated that internal aspects of a humanitarian problem may require military enforcement measures).
The Security Council apparently enjoys wide discretion—although in light of the relevant Charter provisions not unlimited—in determining a threat to international peace under Article 39 of the United Nations Charter. This discretion correlates with the notion of peace in the Charter that is not merely restricted to the absence of interstate military conflicts, but is positively defined as a process of growing justice, democratization, and respect for human rights.

199. See, e.g., Bruno Simma, From Bilateralism to Community Interest in International Law, 250 RECUEIL DES COURS 217, 269-70 (1994 VI) (arguing that Article 39 provides the Security Council with a wide margin of appreciation, with respect to both the assessment of factual situations and the legal significance of the events); Jochen A. Frowein, Reactions by Not Directly Affected States to Breaches of Public International Law, 248 RECUEIL DES COURS 345, 382 (1994 IV) (questioning the extent to which a Security Council recommendation under Article 39 creates a presumption for the lawfulness of the behavior recommended to the member states of the United Nations).

200. See U.N. SCOR, 47th Sess., 3046th mtg. at 143, U.N. Doc. S/PV.3046 (1992) (“The absence of war and military conflicts amongst states does not in itself ensure international peace and security . . . [N]on-military sources of instability [include] the economic, social, humanitarian, and ecological fields”); see also Jost Delbrück, A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations, 67 IND. L.J. 887, 898 (1992) (asserting that the Security Council may authorize forcible intervention aimed at ending or preventing actions by individual states other that acts of aggression or threats or breaches to peace so long as the actions are a threat to international peace and security); David P. Fidler, Caught between Traditions: The Security Council in Philosophical Conundrum, 17 MICH. J. INT’L L. 411, 431-32 (1996) (“The Security Council’s backing of the use of military force to restore Haitian democracy illustrates the Security Council’s potential to include democracy as an element of maintaining international peace and security”); Christian Tomuschat, Obligations Arising for States Without or against Their Will, 241 RECUEIL DES COURS 195, 341 (1993 IV) (stating that international peace requires the lack of uncontrolled inter-state violence and minimally orderly in-state conditions). Tomuschat adds that the “(e)joyment of basic human rights pertains to those core elements of a situation which truly deserve a characterization as peace.” Id. But see Falk, supra note 191, at 356 (questioning the United Nations; authorization of the use of force in Haiti where the only threat to international peace and security resulted from the outflow of refugees); Ruth E. Gordon, United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond, 15 MICH. J. INT’L L. 519, 559 (1994) (supporting United Nations’ Secretary General Dag Hammarskjold’s warning against employing United Nations elements in internally-based situations); Mary Ellen O’Connell, Regulating the Use of Force in the 21st Century: The Continuing Importance of State Autonomy, 36 COLUM. J. TRANSNAT’L L. 473, 487 (1997) (discussing the Security Council’s rejection of an expansive interpretation of the United Nations Charter where the interests of a single state is involved, even in cases of massive human rights abuses); Oscar Schachter, The Decline of the Nation-State and Its Implications for International
In Resolution 1132, the Security Council again demanded that the military junta relinquish power to the democratically elected government and adopted a variety of sanctions against Sierra Leone pursuant to its powers under Article 41 of the United Nations Charter. The Council requested, with binding force, that all states prevent members of the military junta and adult members of their families from entering into or traversing through their territory. The Council also requested states to adopt a petroleum and arms embargo against Sierra Leone, subject to exceptions on a case-by-case basis for humanitarian purposes approved by a Committee of the Security Council.

The Security Council invoked Chapter VIII of the United Nations Charter to authorize ECOWAS, in cooperation with the legitimate government of Sierra Leone, "to ensure strict implementation of the provisions of this resolution relating to the supply of petroleum . . . and arms . . . including, where necessary and in conformity with applicable international standards, by halting inward maritime shipping in order to inspect and verify their cargoes and destinations . . . ." Thus, the Security Council employed its powers to authorize regional arrangements and agencies to enforce economic sanctions pursuant to its authority under Article 53(1), Clause 1 of the United Nations Charter.

In the absence of a definition in the Charter itself, some dispute exists about the elements that constitute regional arrangements in accordance with Article 52 of the United Nations Charter. Generally,
regional arrangements may be defined as a union of states closely linked in territorial terms or an international organization based upon a collective treaty, whose primary task is the maintenance of peace and security within the framework of the United Nations. Originally, ECOWAS was designed to function as an economic union. Eventually, however, ECOWAS became a regional system of collective security through the Protocol of Non-Aggression of April 22, 1978, particularly the Protocol Relating to the Mutual Assistance on Defense of May 29, 1981. Accordingly, ECOWAS maybe regarded as a regional organization under Chapter VIII of the United Nations Charter. This view is consistent with the fact that the Security Council, under an apparently broad understanding of Article 52 re-

Civil War, in ENFORCING RESTRAINT—COLLECTIVE INTERVENTIONS IN INTERNAL CONFLICTS 157, 183 (Lori Fisler Damroseh ed., 1993) (identifying the lack of consensus as to the definition of a Chapter VIII regional organization).

206. See Waldemar Hummer & Michael Schweitzer, Article 52, in THE CHARTER OF THE UNITED NATIONS—A COMMENTARY 679, 699 (Bruno Simma et al. eds., 1994) (defining regional arrangement or agency as a union of states or an international organization based on a collective treaty or a constitution with the primary task of maintaining peace and security); see also Joachim Wolf, Regional Arrangements and the U.N. Charter, in 6 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 289 (Rudolf Bernhardt ed., 1984) (characterizing regional arrangements as comprising all those arrangements whereby states of a particular region regulate political, economic, or other relations).

207. See Edward Kannyo, Civil Strife and Humanitarian Intervention in Africa: A Preliminary Assessment, 4 AFR. Y.B. INT’L L. 51, 60 (1996) (stating that ECOWAS was established primarily to coordinate the economic development of the African region West of Cameroon and Chad, and South of Algeria and Morocco); see also Ofodile, supra note 168, at 410-11 (noting that ECOWAS was initially an economic union).

208. See Ofodile, supra note 168, at 411 (commenting on the 1978 modification of the ECOWAS Charter by ECOWAS heads of state so as to adopt the Protocol on Non-Aggression, thereby committing members to the duty of non-intervention). The 1981 Protocol provided for mutual assistance and defense in cases of, inter alia, external aggression and internal armed conflict engineered and actively supported externally so as to endanger regional security and peace. See id.

209. See Hummer & Schweitzer, supra note 206, at 708 (claiming that Articles 16 through 18 of the Protocol Relating to the Mutual Assistance on Defense contains all of the rules necessary to make ECOWAS both a defensive alliance and a regional system of collective security under Chapter VII of the United Nations Charter). But see Wippman, supra note 205, at 183 (questioning whether sub-regional organizations such as ECOWAS qualify as a Chapter VII regional organization).
gional arrangements, acknowledged ECOWAS by citing Chapter VIII of the United Nations Charter in context of the Liberian civil war.

In previous cases, the Security Council authorized individual states or regional organizations to ensure the observance of economic sanctions by halting inward maritime shipping. These resolutions either explicitly legitimized the use of military force, or might at least be interpreted as permitting military measures to ensure the implementation of the embargo. In 1966, for example, the Security Council authorized the United Kingdom to ensure "by use of force if necessary" the enforcement of an economic embargo imposed upon Rhodesia. Although the Security Council rarely acted with such decisiveness during the Cold War, authorization to ensure the observance of economic sanctions became frequent in the 1990s. Resolution 665 of 1990, for


212. See S.C. Res. 221, U.N. SCOR, 21st Sess., 1277th mtg. at 1, U.N. Doc. S/RES/221 (1966) (calling upon the United Kingdom to prevent vessels reasonably believed to be carrying oil from reaching Rhodesia); see also Beyerlin supra note 210, at 108 (stating that the Security Council, for the first time under Chapters VII and VIII of the United Nations Charter, called upon states acting nationally or through regional agencies, to use such measures as necessary to halt maritime shipping to and from the former Yugoslavia).

213. See id. (allowing the United Kingdom to use necessary force to intercept Rhodesia-bound vessels).

214. See S.C. Res. 221, supra note 212, at 1 (authorizing the use of force against vessels carrying oil to Rhodesia); see also Frowein, supra note 199, at 377-78 (describing how the Security Council empowered the United Kingdom to arrest and detain the Joanna VI tanker); see generally Tomuschat, supra note 200, at 337 (arguing that the denial of rights of the people of Southern Rhodesia prompted measures such as the oil embargo).

215. See Kelly-Kate Pease & David P. Forsythe, Humanitarian Intervention and International Law, 35 AUS. J. PUB. & INT’L L. 1, 11-14 (1993) (contrasting the pre- and post-Cold War Security Council usage of Article 39 authorization to use force for threats or breaches of peace). The Cold War and other divisions among the permanent members of the Security Council made it politically impossible to utilize this authority, with the exception of South Africa’s apartheid issues. See id.
instance, authorized Member States to use all necessary measures to
hold all inward shipping to or from Iraq, with the Resolution often in-
terpreted as authorization for the use of force. Similarly, the Security
Council called upon Member States and regional organizations, such
as NATO and the West European Union ("WEU"), to enforce an em-
bargo against the former Yugoslavia during Operation Sharp Guard,
and to ensure compliance with a ban on flights in the Bosnian and
Herzegovinian airspace under Operation Deny Flight.

The Security Council authorization of ECOWAS to ensure the strict
implementation of the economic embargo by halting inward maritime
shipping may also be interpreted as authorizing the use of military
force to stop ships where necessary to ensure the observance of the
embargo. In contrast to Resolution 940 passed in 1994 concerning

at 11-12. By the 1990s, however, the Security Council imposed mandatory eco-

S/RES/665 (1990) (calling upon Member States to halt all Iraq shipping in order to
inspect and verify cargoes and destinations); see also Jochen A. Frowein, Article
42, in THE CHARTER OF THE UNITED NATIONS—A COMMENTARY 628, 634 (Bruno
Simma et al. eds., 1994) (mandating that Member States deploy maritime forces to
use measures commensurate with specific circumstances as may be necessary to
prevent maritime shipping from entering or leaving Iraq).

S/RES/787 (1992) (prohibiting shipment of products such as crude oil, coal, iron,
steel, and vehicles through Yugoslavia).

S/RES/816 (1993) (deploring the failure of parties to cooperate with United Na-
tions airfield monitors); see also Antonia Handler Chayes & Richard Weitz, The
Military Perspective on Conflict Prevention: NATO, in PREVENTING CONFLICT IN
THE POST-COMMUNIST WORLD—MOBILIZING INTERNATIONAL AND REGIONAL
ORGANIZATIONS 381, 392 (Abram Chayes & Antonia Handler Chayes eds., 1996)
(stating that NATO aircraft initially monitored and later enforced the "no-fly zone"
established by Resolution 816); Beyerlin, supra note 210, at 1048-49 (noting the
Security Council authorization to take all necessary measures to ensure compliance
with the ban on flights established pursuant to Resolution 795).

219. See Lori Fisler Damrosch, The Civilian Impact of Economic Sanctions, in
ENFORCING RESTRAINT—COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS
274, 301 (Lori Fisler Damrosch ed., 1993) (arguing that collective forcible meas-
ures may be justifiable when collective non-forcible sanctions impair the ability of
Haiti, however, Resolution 1132 does not generally authorize ECOWAS to take military measures to remove the junta in Sierra Leone. 220 The legitimization of the use of force in the Resolution is expressly limited to ensuring the strict implementation of the economic embargo. 221 Although the Security Council’s request that “all those concerned, including ECOWAS,” ensure the safe delivery of humanitarian assistance may also be interpreted as a limited mandate to use military protection measures, such a request does not provide a legal basis for an intervention aimed at restoring democracy. 222 The Security Council’s Resolution takes note of the communiqué issued at the meeting of the Foreign Ministers of ECOWAS on Sierra Leone from June 26, 1997. 223 In the communiqué, the ministers called for the reinstatement of the legitimate government of Sierra Leone by use of force, 224 however, this does not signify implicit authorization of ECOWAS military intervention in Sierra Leone. 225 A reference in the preamble of a Resolution does not imply an authorization of military intervention, particularly if contradicted by the text of the Resolution 226 and the explicit statements of Member States of the Security Coun-

220. See S.C. Res. 1132, supra note 37, at 3 (authorizing ECOWAS to halt maritime shipping to search for petroleum, petroleum products, arms and related materials).

221. See id. (inquirng ECOWAS to ensure strict implementation of the embargo and halt maritime shipping in conformity with international standards).

222. Id. at 4.


224. See S.C. Res. 1132, supra note 37, at 1 (referring to the communiqué issued at the meeting of foreign ministers of ECOWAS on Sierra Leone).


226. See S.C. Res. 1132, supra note 37, para. 8 (limiting ECOWAS enforcement capacities to enforcement of the maritime embargo).

227. See id. para. 4 (supporting ECOWAS efforts toward reaching a peaceful resolution).
Consequently, Resolution 1132 does not provide a legal basis for the ECOWAS intervention in Sierra Leone in February 1998, leaving aside ECOMOG attempts in June and July of 1997 to overthrow the military junta following the coup d'etat.229

b. The Relevance of the Presidential Statement of February 26, 1998

Although the Security Council did not initially authorize the military actions undertaken by ECOWAS, a possible ex post justification for the intervention may be found in the later statement made by the President of the Security Council on February 26, 1998.230 In this statement, the Council “welcomes the fact that the rule of the military junta has been brought to an end.”231

Statements by the President of the Security Council are far from being legally insignificant.232 By expressing consensus among the Member States, presidential statements can have the same legal effect as a formal resolution.233 The question remains, however, whether

228. See, e.g., U.N. Doc. S/PV.3822, supra note 189, at 6 (documenting France’s encouragement of a peaceful resolution in Sierra Leone). The French representative stated that “[t]he draft expresses the support of the United Nations for the efforts of the members of the Economic Community of West African States (ECOWAS) to bring about, through negotiations, the peaceful restoration of constitutional order and the return of the democratically elected Government.” Id. (emphasis added). The Swedish representative also encouraged a peaceful resolution stating that, “[b]y voting in favor of this draft resolution, Sweden wants to contribute to a solution by peaceful means, without the use of armed violence . . . .” Id. at 11 (emphasis added).

229. See Beyerlin, supra note 210, at 1042 (questioning regional organization acts without prior authorization for the Security Council).

230. See Statement by the President of the Security Council, supra note 58, at 2 (commending ECOMOG for liberating hostages held by former members of the deposed junta).

231. Id. at 1.


233. See S.D. BAILEY, VOTING IN THE SECURITY COUNCIL 83 (1971) (remark-
military measures by regional organizations like ECOWAS require *prior* authorization under Article 53(1) of the United Nations Charter; or whether this provision allows for later "approvals," which justify military interventions *ex post facto.*

Some authors argue that the Security Council is not required to authorize Article 53 enforcement actions before such actions are actually carried out. Rather, an authorization by the Security Council at any stage should be regarded as an implicit authorization of the prior actions undertaken by the regional organization. Such a broad understanding of "authorization" under Article 53, however, is incompatible with the requirement that the Security Council exercise effective control over regional enforcement actions. As control necessarily includes power to prevent enforcement actions, the Security Council will only maintain effective control through prior authorizations. Any other interpretation of Article 53 results in legal uncertainty at the time of the action. The use of *ex post facto* authorization may also encourage regional arrangements to initiate military actions

---

234. *See* Beyerlin, *supra* note 210, at 1042 (discussing the measures regional organizations may undertake under Article 52(1)). In this regard, the possibilities for a regional organization depend on the interpretation of "enforcement action." *Id.*


237. *See* Ress, *supra* note 204, at 724 (maintaining that the Security Council exercises effective control only with clear, prior authorizations).

238. *See id.* at 734 (averring that implicitly authorizing prior regional actions contravenes the general principle that legislation should not be interpreted to permit retroactive decisions to the detriment of another party); *see also* Oscar Schachter, *International Law in Theory and Practice,* 178 RECUEIL DES COURS 8, 159 (1982 V) (contending that a regional organization does not have a right to use armed force coercively against another state without the Security Council's prior authorization).

239. *See* Schachter, *supra* note 238, at 159 (asserting that authorization of the prior acts of regional organizations would encourage illegal acts).
with the expectation or hope that the Security Council would give its authorization afterwards. 240

Even if such a broad interpretation of Article 53 is considered legal, Security Council authorization to use force can only be assumed if such an intention can be derived from the circumstances and the wording of the statement. 241 The Presidential Statement of February 26, 1998, although welcoming the fact “that the rule of the military junta has been brought to an end,” also expressed that the Security Council “remains gravely concerned at the continued violence in the country and calls for an urgent end to the fighting.” 242 Furthermore, the Council commended the important role of ECOWAS “towards the peaceful resolution of the crisis,” 243 and encouraged ECOMOG “to proceed in its efforts . . . in accordance with relevant provisions of the Charter of the United Nations.” 244 The careful wording of the statement indicates the Security Council did not wish to give the impression that it welcomes the use of armed force by ECOMOG in ousting the military junta from power. 245 From the wording of the statement, it

240. See Michael Akehurst, Enforcement Action by Regional Agencies, with Special Reference to the Organization of American States, 42 BRIT. Y.B. INT’L L. 175, 214 (1967) (claiming that the Security Council might find it politically awkward to withhold information for what has already been carried out); Ress, supra note 204, at 734 (asserting that such an interpretation of Article 53 would create situations where regional organizations would engage in an act with the intent of seeking approval after such act has been carried out).

241. See Nolte, supra note 74, at 632 (noting the limitation on the Security Council’s authorization to use force); see also Rosalyn Higgins, The Advisory Opinion on Namibia: Which U.N. Resolutions are Binding Under Article 25 of the Charter ?, 21 INT’L & COMP. L.Q. 270, 281-82 (1972) (claiming that the binding or non-binding nature of United Nations Resolutions depends on whether the parties intended the Resolutions as “decisions” or “recommendations”).

242. Statement by the President of the Security Council, supra note 58, at 1.

243. Id. at 1 (emphasis added).

244. Id. at 1-2 (emphasis added).

245. For the analysis of a similar statement made by the President of the Security Council following ECOWAS intervention in Liberia in 1990, see Nolte, supra note 74, at 632. See also Ofodile, supra note 168, at 414 (“The carefully chosen words indicate that the Security Council was taking a neutral stand by not explicitly approving or condemning ECOWAS action.”).
is difficult to argue that the Security Council intended to authorize ECOWAS’s action *ex post facto*.

Resolution 1156 of March 16, 1998, in which the Council terminated the petroleum embargo, supports the conclusion that the Security Council never extended *ex post* authorization to ECOWAS actions in Sierra Leone. The Council welcomed “the return to Sierra Leone of its democratically elected President,” but did not mention the role of ECOWAS in restoring the president. Thus, a prospective authorization by the Security Council cannot provide a legal basis for ECOWAS military intervention in Sierra Leone.

2. Did the ECOMOG Troops Act in Self-Defense?

Nigeria justified ECOMOG’s use of armed force in its final major military attack, which ultimately led to the overthrow of the junta regime within a week of the attack, primarily on the right to self-defense. Although the right of self-defense is generally recognized

246. See *Statement by the President of the Security Council*, supra note 58, at 1-2 (encouraging ECOMOG to seek peace and stability and specifically condemning reprisal killings and related violence).


248. *Id.*

249. See *id.* (maintaining the right to make authorizations with respect to continuing developments in Sierra Leone at a later date).

250. See Gambari, *supra* note 164 (“ECOMOG had eventually used force, as a last resort and only in self-defense”); Jonah, *Feb. 18 Press Conference*, supra note 164 (invoking United Nations Charter Article 51 as justification for foreign military intervention to restore democracy in Sierra Leone). It is unclear, however, whether Jonah based this assessment on an alleged support of the military junta by Liberia. See *id.* Jonah may also regard the military junta’s forceful government takeover as an armed attack within contemplation of Article 51 of the United Nations Charter. See *id.*; SHAW, *supra* note 88, at 794 (stating that organizations such as NATO and the Warsaw Pact, specifically based on the Article 51 right of collective self-defense, considers an attack upon one party as an attack on all); W.Q. Beardslee, *The United States’ Haiti Intervention: The Dangers of “Redefined” National Security Interests*, 25 DENV. J. INT’L L. & POL’Y 189, 195-96 (1996) (arguing that the 1994 intervention in Haiti should have been based on Article 51 of the Charter, in order to avoid “the ambiguous and unclear reasoning” of the Security Council); Robert W. Gomulkiewicz, *International Law Governing Aid to Opposition Groups in Civil War: Resurrecting the Standards of Belligerency*, 63
under Article 51 of the United Nations Charter, as well as under customary international law, it is doubtful whether the ECOMOG action can be based on this justification. The requirement of an “armed attack” appears to be fulfilled with evidence that the military action started as a response to an attack by junta forces on an ECOMOG military camp at Lungi. The fact that the attacked ECOMOG forces were on Sierra Leonean territory does not necessarily deprive them of the right to exercise self-defense. Military units of a state or regional organization abroad may use self-defense when attacked by forces of the territorial state, provided their presence does not itself constitute an armed attack, which would trigger the right of the territorial state to respond pursuant to Article 51. Whether the presence of ECOMOG troops in Sierra Leone constituted an “armed attack” is open to debate because the troops were originally based in Sierra Leone as a result of a defense pact with President Kabbah’s government. Alternatively, the ECOMOG presence may have evolved into “armed attack” status


251. See Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 94 (June 27) (commenting that Article 51 mentions the “inherent right” of individual or collective self-defense); see also Dinstein, supra note 110, at 182 (asserting that Article 51 permits self-defense exclusively where an “armed attack” occurs and that many commentators believe that international law permits the same).

252. See Beyerlin, supra note 179, at 108 (noting that Article 51 limits acts of collective self-defense to external armed attacks).


254. See id. (discussing self-defense rights of military forces attacked on foreign soil).

255. See Albrecht Randelzhofer, Article 51, in THE CHARTER OF THE UNITED NATIONS—A COMMENTARY 661, 670 (Bruno Simma et al. eds., 1994) (discussing authorization of the use of self-defense in response to an armed attack on foreign soil provided the attack is not induced by foreign military presence).

256. See James Rupert, Sierra Leone Junta Leader Refuses to Abdicate Power; Denial of Civilian Rule Stalls Regional Talks, WASH. POST, Aug. 1, 1997, at A23 (reporting that ECOMOG troop presence in Sierra Leone may not necessarily equate to an “armed attack” given the basis for the troops initial presence).
when Nigeria launched air and naval attacks following the *coup d'état* and commenced massive troop deployments in Sierra Leone.\(^{257}\)

In any event, the extent and consequences of ECOMOG’s response to the attack of junta forces on one of their military camps is incompatible with the principle of proportionality. The principle of proportionality serves as a limitation on actions in self-defense, requiring that defensive measures be reasonably related to the seriousness and scope of the attack.\(^{258}\) Because retaliation and punitive actions are prohibited, military actions must be restricted to those necessary to repulse the attack.\(^{259}\) From the beginning, ECOMOG’s large-scale use of counter-force was not simply aimed at repulsing the attack on its military camps.\(^{260}\) After four days of continued counter-strikes, ECOMOG’s Nigerian chief of staff, General Adul One Mohammed, made clear that the troops sought a major military victory to weaken or oust the military government, and considered the situation “an opportunity to bring sanity to the system.”\(^{261}\) Military measures taken in defense can, under certain circumstances, justify a counterattack against the “source” of the attack to deter future aggression.\(^{262}\) It is doubtful, however, that a

---

257. See id.


259. See Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 94 (June 27) (recognizing that a customary rule of international law requires military action only to the extent necessary to prevent attack); *see also* Kevin C. Kenny, *Self-Defense*, in 2 *UNITED NATIONS: LAW, POLICIES AND PRACTICE* 1162, 1168 (Rüdiger Wolfrum & Christiane Philipp eds., 1995) (asserting use of self-defense with military action is necessary to prevent further attack).


261. *Id.*

262. See STANIMIR A. ALEXANDROV, *SELF-DEFENSE AGAINST THE USE OF FORCE IN INTERNATIONAL LAW* 167 (1996) (describing the use of self-defense as a preventive measure); *see also* Schachter, *supra* note 108, at 1638 (suggesting that
broad understanding of proportionality applied to military units in the territory of another state grants a right to at least temporarily occupy the country and oust the regime from power. Leaving aside earlier ECOMOG military actions that were not responses to prior attacks, the capture of the capital and removal of the junta from power cannot be justified as an exercise of the right to self-defense.

3. Humanitarian Intervention

Another possible justification of the ECOWAS actions in Sierra Leone is rooted in the notion of humanitarian intervention. The humanitarian situation in Sierra Leone certainly deteriorated during the nine months of Koromah’s illegitimate rule. Indeed, in passing Resolution 1132, the Security Council expressly noted its concern over “the continuing violence and loss of life in Sierra Leone [and counter-attacks against military aggression constitutes justifiable self-defense]; DINSTEIN, supra note 110, at 231 (discussing self-defense by counter-attack as a justifiable method of deterrence).


264. Cf. generally Quigley, supra note 263, at 276-94 (criticizing the use of force as employed by the United States against Panama).

265. See Sierra Leone: Putting a Country Together, supra note 7, at 44 (referring to ECOWAS actions in Sierra Leone as humanitarian given the efforts to bring food into the economically crippled region). Notably, food scarcity and lack of medical provisions were major issues in Sierra Leone’s rural areas. See id. (reporting 500,000 Sierra Leoneans were in desperate need of food prior to the ECOMOG intervention).

266. See id. (noting that persistent clashes between rural based civil defense forces, known as the Kamajors, and Koromah’s military forces, left unknown numbers dead, particularly around the heavily populated areas of Kenema and Bo).
the] deteriorating humanitarian conditions in the country.\textsuperscript{267} Even a humanitarian crisis within Sierra Leone, however, may not be enough to justify intervention.\textsuperscript{268} The issue of whether and when humanitarian intervention is permissible under international law is hotly disputed.\textsuperscript{269} The fact that Nigeria's actions were unauthorized by the United Nations Security Council renders a claim of justified humanitarian intervention all the more precarious. To evaluate whether the Nigerian intervention qualifies as a justifiable humanitarian intervention, it is first necessary to define what actions qualify as "humanitarian intervention."\textsuperscript{270} Having defined the term, the question remains when, if ever, is humanitarian intervention acceptable under international law.\textsuperscript{271}

a. Humanitarian Intervention: Defining the Term

Traditionally, the term "humanitarian intervention" describes the threat or use of force by a state or group of states, designed to compel a sovereign to respect fundamental human rights in the exercise of its sovereign powers.\textsuperscript{272} According to this classic definition, to qualify as "humanitarian," the sole objective of the intervention must be to either end or prevent human rights violations.\textsuperscript{273} Recently, the

\begin{itemize}
  \item 267. S.C. Res. 1132, \textit{supra} note 37, at 2.
  \item 268. \textit{See} Michael Akehurst, \textit{Humanitarian Intervention}, in \textit{INTERVENTION IN WORLD POLITICS} 95, 111 (Hedley Bull ed., 1984) (asserting that international law does not provide a right of humanitarian intervention).
  \item 269. \textit{Compare} Akehurst, \textit{supra} note 268, at 111 (finding no right of humanitarian intervention in international law), with David J. Scheffer, \textit{Toward a Modern Doctrine of Humanitarian Intervention}, 23 U. TOL. L. REV. 253, 264 (1992) (advocating an expanded scope for humanitarian intervention, including intervention to repatriate refugees and to support anti-totalitarian rebellions).
  \item 270. \textit{See} Akehurst, \textit{supra} note 268, at 111.
  \item 271. \textit{See id.} (considering when humanitarian intervention is acceptable under international law).
  \item 273. \textit{See} Farer, \textit{supra} note 130, at 122 (describing the narrow set of circumstances which qualify as humanitarian intervention).
\end{itemize}
idea of humanitarian intervention has expanded to cover interventions designed to ensure the safe delivery of humanitarian assistance to populations in dire need, as in the case of Somalia in 1992.\textsuperscript{274} Some scholars suggest that a comprehensive definition of humanitarian assistance must account for situations similar to Somalia, where humanitarian assistance is needed to avert mass starvation or other immediate threats to life.\textsuperscript{275} Whether restricted to protecting human rights against violations committed by a sovereign or expanded to cover the provision of assistance, the classical definition of humanitarian intervention limits intervention to situations of pure humanitarian concern.\textsuperscript{276}

In tension with the traditional conception is what some scholars claim is a newly emerging right of humanitarian intervention to restore democracy.\textsuperscript{277} Under this analysis, the emerging right to democracy is a fundamental human right, the defense of which supports a claim that intervention in a country’s political affairs may be a form of humanitarian intervention.\textsuperscript{278} Thus, the United States’ intervention in Panama, although overtly political, is defended by some as a form of humanitarian intervention designed, among other things, to protect a fundamental right to democratic governance.\textsuperscript{279} There is some force to this argument, particularly in light of the Security Council’s


\textsuperscript{275} See id. at 44-45 (asserting that the definition of “humanitarian intervention” should be expanded to include termination of gross human rights violations, such as that which occurred in Somalia); see also W. Michael Reisman, Conference Proceedings, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 18 (Richard B. Lillich et al. eds., 1973) (advocating for a “pro futuro” definition of humanitarian intervention which responds to the changing nature of humanitarian crises).

\textsuperscript{276} See Gordon, supra note 274, at 44-45.

\textsuperscript{277} See Fielding, supra note 101, at 329 (arguing for expansion of definition of humanitarian intervention to include efforts designed to restore democracy); Reisman, supra note 103, at 642 (suggesting that military efforts to restore democracy be considered under an expanded definition of humanitarian intervention).

\textsuperscript{278} See Fielding, supra note 101, at 329.

\textsuperscript{279} See D’Amato, supra note 99, at 516 (arguing the United States’ intervention in Panama could be considered humanitarian under an expanded definition that includes protection of fundamental human right in democracy).
authorization of U.S. intervention in Haiti, which arguably "extended humanitarian intervention to include measures against the usurpation of the sovereign prerogative of a population to be governed by those it has democratically elected."\textsuperscript{280} The legal history of humanitarian intervention, however, resists collapsing democratic intervention and humanitarian intervention into one another.\textsuperscript{281} International law has traditionally recognized an intervention to be humanitarian in nature when the sole motivation is to terminate fundamental human rights abuses or provide purely humanitarian aid including food and medicine.\textsuperscript{282} The right to democracy is not universally accepted, and it is particularly doubtful whether it has gained the status of a fundamental human right capable of triggering a possible right of humanitarian intervention.\textsuperscript{283} Consequently, intervention aimed at vindicating democratic political ends is best understood as a "pro-democratic intervention," not as humanitarian intervention.\textsuperscript{284} For this reason, the United Nations' authorized intervention in Haiti is more accurately described as an intervention to restore democracy than as a humanitarian mission.\textsuperscript{285}

\begin{itemize}
\item \textsuperscript{280} Fielding, \textit{supra} note 101, at 329.
\item \textsuperscript{283} See Thomas Carothers, \textit{Empirical Perspectives on the Emerging Norm of Democracy in International Law}, 86 AM. SOC'Y INT'L PROC. 261 (1992) (recognizing the lack of universal acceptance of a right of democracy as a fundamental human right).
\item \textsuperscript{284} See discussion \textit{infra} Part III.B.4 (questioning the idea of democratic intervention as humanitarian given the fact that democracy is not uniformly understood as a fundamental human right).
\item \textsuperscript{285} See generally Carothers, \textit{supra} note 283, at 261 (utilizing the term "democratic intervention" rather than "humanitarian intervention" to describe efforts to restore democracy).
\end{itemize}
b. When is Humanitarian Intervention Permitted under International Law?

Even if the international community of states once accepted a customary doctrine of humanitarian intervention, it is not at all clear that the doctrine survived the United Nations Charter. Given the recent United Nations authorized humanitarian interventions in Somalia, Iraq, and the former Yugoslavia, however, it is possible to conclude that humanitarian intervention may be legally authorized by the Security Council. The legal status of unauthorized interventions, however, is tenuous.

Prior to the adoption of the United Nations Charter, a number of international military missions were undertaken for humanitarian reasons. From 1860 to 1861, France intervened with the deployment of 6,000 French troops when Turkish rule in Syria led to the massacre of thousands of Maronite Christians. In the 1870s, Russia intervened to protect Christians in Bulgaria, Turkey, Bosnia, and Herzegovina. International jurists accepted this practice as legitimate.

286. See Fonteyne, supra note 281, at 203 (asserting that the adoption of the United Nations Charter ended any previously existing customary doctrine of humanitarian intervention).


288. See generally id. at 223-24 (discussing the continuing tension between the historic respect for non-intervention and the emerging principle of the subordination of state interest on humanitarian grounds). “China’s Premier, Li Peng, . . . stress[ed] the importance of sovereignty [stating]: ‘[S]overeign equality of Member States and non-interference in their internal affairs should be observed by all Members without exception . . . . The core of these principles was non-interference in each others affairs.’” Id. at 223 (quoting U.N. Press Release (PM Summary), 3046th mtg. at Take 2, U.N. Doc. SC/5361 (1992)).

289. See Krylov, supra note 282, at 369 (observing that humanitarian interventions occurred prior to the adoption of the United Nations Charter without the need for a written legal source authorizing such interventions).

290. See Scheffer, supra note 269, at 254 n.4 (describing France’s 1860 invasion of Turkish-ruled Syria as an example of humanitarian intervention occurring prior to the adoption of the United Nations Charter).

291. See Krylov, supra note 282, at 369 (discussing Russian intervention in sev-
The ratification of the United Nations Charter in 1945 severely curtailed the legality of unilateral military actions, including humanitarian interventions. Article 2(4) clearly prohibits "the threat or use of force against the territorial integrity or political independence of any state ..." This basic principle of non-intervention, grounded in the norm of state sovereignty, regulates international interventions in the post-Charter era. A limitation on the principle of non-intervention recognized in the United Nations Charter is found in Chapter VII, which permits the Security council to authorize the use of force upon a finding of a threat or breach of international peace or when necessary for self-defense. It appears that with the ratification of the United Nations Charter, humanitarian intervention is only justified when there is a clear finding that the humanitarian situation implicates international peace. Consequently, the possibility of unilateral or unauthorized intervention appears completely precluded by the United Nations Charter.

Despite the almost universal adoption of the United Nations Charter, unilateral humanitarian interventions have not disappeared from the international scene. Prominent examples of unauthorized

---

292. See id. (noting acceptance of humanitarian intervention as a legitimate practice). Lassa Oppenheim, for example, noted that when a state treats its nationals with cruelty "as would stagger humanity," the international community is called upon to intervene and compel the offending state to establish legal order "sufficient to guarantee to its citizens an existence more adequate to the ideas of modern civilization." LASSA OPPENHEIM, INTERNATIONAL LAW 347 (1905).

293. See Krylov, supra note 282, at 371 (observing that the United Nations Charter is focused on peaceful resolution of problems and is against the use of force to resolve such problems).

294. U.N. CHARTER art. 2, para. 4.

295. See Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 100 (June 27) (confirming the prohibition of the use of force by one state against another).

296. See Krylov, supra note 282, at 377 (justifying humanitarian intervention only when international peace is implicated).

297. See Tuomala, supra note 263, at 15 (asserting that the United Nations Charter changed traditional international law by denying the right of nations to use unilateral intervention).

298. See generally RAMSBOTHAM & WOODHOUSE, supra note 272, at 4 (pro-
actions include the intervention by Tanzania in Uganda in 1979 and the Indian intervention in East Pakistan in 1971. Despite credible claims of a threat to international peace caused by the regional instability and flights of refugees, the General Assembly criticized both these actions as unauthorized interference with state sovereignty. There is little doubt, however, that both actions prevented further loss of life.

Some commentators suggest that such unilateral actions should not be judged in terms of the prohibition contained in the United Nations Charter because the Security Council deadlocked during the 1970s and did not reach any decision concerning humanitarian intervention. When the Security Council is unable to authorize intervention due to internal political squabbles, it is legitimate for a state to act unilaterally to end gross violation of human rights in another state, particularly when international peace is threatened.

If inaction by the Security Council in the 1970s and early 1980s justified unilateral humanitarian interventions, the same is not true of providing examples of unilateral humanitarian interventions that occurred since the adoption of the United Nations Charter).

299. See id. Amin’s regime engaged in extreme, widespread human rights abuses in Uganda from 1971-79. See id. It is estimated that 300,000 Ugandans were executed and thousands more were expelled until Tanzania invaded Uganda and overthrew Amin’s government in 1979. See id. Amin fled into exile in Malawi and Tanzania withdrew. See id.

300. See Scheffer, supra note 269, at 254 n.4 (outlining the West Pakistan army’s engagement in mass killings, rape, and pillage in East Pakistan subsequent to its demand for independence). In response, India invaded and defeated the West Pakistan forces, ultimately allowing for the birth of the nation of Bangladesh. See id.


302. See RAMSBOTHAM & WOODHOUSE, supra note 272, at 4 (asserting Tanzania’s intervention in Uganda prevented further loss of life); Scheffer, supra note 269, at 254 n.4 (arguing that India’s unauthorized intervention in Pakistan prevented loss of lives).

303. See sources cited supra notes 147-48 (providing the arguments presented by various scholars).

304. See generally Tuomala, supra note 263, at 15-17 (stating that the Security Council’s role in the authorization of intervention is to promote international peace).
the 1990s. The end of the Cold War, the Security Council repeatedly proved itself able and willing to authorize humanitarian intervention. The United Nations authorized humanitarian interventions in Iraq, Rwanda, Somalia, and the former Yugoslavia. The situations in Iraq and Yugoslavia had sufficiently clear repercussions in neighboring countries to create a threat to international peace. The situation in Somalia, however, was an internal crisis and the fact that the Security Council authorized intervention suggests an expansion of the concept of a threat to international peace. Somalia's internal humanitarian crisis was considered so severe that it constituted a threat to internal peace in and of itself. Given the Security Council's willingness to authorize intervention when a humanitarian crisis demands, it is possible to argue that there is no longer a justification for unilateral humanitarian interventions. Accordingly, the customary doctrine of humanitarian intervention did not survive the broad prohibition of intervention found in Article 2(4).

305. See Eisner, supra note 287, at 213 (describing authorized interventions occurring in the 1990s).

306. See supra note 215 and accompanying text (discussing the Security Council imposition of economic embargoes).


308. See Eisner, supra note 287, at 214-18 (discussing the situations in Iraq and Somalia and the ensuing effects on neighboring countries).

309. See Gordon, supra note 274, at 51.

310. See id. (reasoning that Somalia's internal crisis created a per se threat to peace).

311. See, e.g., Louis Henkin, Conceptualizing Violence: Present and Future Developments in International Law, 60 ALB. L. REV. 571, 573 (1997) (arguing that the Security Council's apparent willingness to authorize humanitarian interventions should eliminate the need for justifiable unilateral humanitarian interventions); BROWNLIE, supra note 135, at 342 (suggesting that there is less need for unilateral humanitarian interventions); DINSTEIN, supra note 110, at 91 (commenting on the new conceptual approach to humanitarian interventions); M.J. Levitin, The Law of Force and the Force of Law: Grenada, the Falklands, and Humanitarian Intervention, 27 HARV. INT'L L.J. 621, 652 (1986) (describing the
c. Application of The Law on Humanitarian Intervention to Sierra Leone

From a definitional perspective, the Nigerian intervention in Sierra Leone does not qualify as a humanitarian intervention. The classic definition of "humanitarian intervention" applies only to situations where fundamental human rights are at stake or in situations requiring emergency provisions. In Sierra Leone, the intervention's manifest objective was to restore the government of exiled President Kabbah. Nigeria immediately made this position clear by announcing that it would not withdraw from Sierra Leone until Kabbah's restoration to power. Furthermore, even assuming that Sierra Leone faced humanitarian crisis due to dwindling food supplies, the crisis was largely the creation of ECOWAS and United Nations imposed sanctions. Consequently, a strange twist on traditional notions of state sovereignty would have to exist, allowing one state to invade another in order to rectify a humanitarian crisis that the intervening state created. The Nigerian intervention, thus, cannot in good faith be called a humanitarian intervention.

Even if the traditional definition of humanitarian intervention were expanded to include political actions to restore democracy, the Nigerian action still fails to pass the test for the legality of humanitarian intervention.

312. See Krylov, supra note 282, at 366 (defining traditional notion of humanitarian intervention); see also Rupert, supra note 256, at A23 (reporting that the original reason for Nigeria's placement of troops in Sierra Leone did not qualify as humanitarian intervention).

313. See Rupert, supra note 260, at A27 (articulating the purpose of Nigerian intervention in Sierra Leone).

314. See Alec Russell, Nigeria Pledges to Oust Freetown Coup Leader, DAILY TELEGRAPH, June 13, 1997, at 17 (reaffirming Nigeria's goal in the Sierra Leone intervention).

315. See Sierra Leone: Putting a Country Together, supra note 7, at 44.

316. See Krylov, supra note 282, at 369 (commenting that humanitarian intervention trumps state sovereignty where a state frequently disregards the inherent rights of its own citizens).

317. See Sierra Leone: Putting a Country Together, supra note 7, at 44 (concluding that Nigerian troops induced the economically depressed situation in Sierra Leone).
intervention.\footnote{See U.N. CHARTER art. 2, para. 4 (prohibiting the use of force “against the territorial integrity or political independence of any state or in any manner inconsistent with the Purposes of the United Nations”).} Article 2(4) of the United Nations Charter represents a broad prohibition on forceful, unilateral interventions in the territory or politics of another state.\footnote{See id.} Although some scholars find unilateral actions acceptable in Uganda\footnote{See TESÓN, supra note 9, at 195 (arguing that the unilateral attack in Uganda qualifies as a permissible intervention).} and Panama,\footnote{See D’Amato, supra note 99, at 516 (supporting the Panamanian intervention despite the United States unilateral act).} such interventions occurred at a time when the Security Council was unable to take effective action.\footnote{See generally Tuomala, supra note 263 (suggesting that interventions in the 1970s should not be considered violations against the prohibition of unilateral action due to the existing Security Council’s indecision).} Recent interventions in Somalia and Iraq indicate that the Security Council is able to act when it finds a credible threat to international peace, thus closing the door on the only justification of unilateral humanitarian intervention.\footnote{See generally Eisner, supra note 287, at 215, 219-20 (describing situations where the Security Council took action in conflicts deemed detrimental to international peace).} Even if the definition of humanitarian intervention were expanded beyond that which is currently accepted by the international legal community, without the authorization of the Security Council, the actions of Nigeria are not a legitimate form of humanitarian intervention.\footnote{See Rupert, supra note 256, at A23 (discussing the reasons for the Nigerian presence in Sierra Leone and the lack of proper Security Council authorization for such presence).} Although the Security Council did find both a threat to regional peace and a grave humanitarian situation in Sierra Leone, it only authorized economic sanctions.\footnote{See S.C. Res. 1132, supra note 37, paras. 8-10 (outlining the Security Council’s authorization of economic, not humanitarian, sanctions in Sierra Leone).} Stopping short of authorizing military intervention, the Security Council deprived Nigeria of any means of characterizing its actions as a legal humanitarian intervention.\footnote{See id. (describing the lack of proper authorization for humanitarian intervention).}
4. The Right of Pro-Democratic Intervention

The primary justification offered by Nigeria and ECOWAS for the military intervention in Sierra Leone was the overthrow of the military junta and the restoration of the democratically elected government of President Kabbah.\(^{327}\) This attempt to justify the use of force raises questions concerning the existence of a general right of pro-democratic intervention under international law in the absence of prior Security Council authorization similar to that of the Haitian intervention.\(^{328}\)

Pro-democratic intervention, like the doctrine of humanitarian intervention, is difficult to reconcile with the prohibition on the use of force of Article 2(4).\(^{329}\) The relatively recent concept of interventions to restore democracy can be distinguished from the classical theory of humanitarian intervention, which concerns the use of force to protect those in imminent danger of death or grave injury.\(^{330}\) Pro-democratic intervention differs from humanitarian intervention in that dictators, as the targets of such force, were engaged in oppressive acts against the populace rather than perpetrating fundamental human rights violations.\(^{331}\) Generally, the doctrine of pro-democratic intervention concerns the use of force to assist oppressed populations in attaining the right of democratic self-government.\(^{332}\) In particular, however, the concept of pro-democratic intervention comprises

---

327. See Russell, supra note 314, at 17 (describing Nigeria's commitment to overthrowing the military junta in Sierra Leone).
328. See Scheffer, supra note 269, at 264 (questioning unauthorized intervention for pro-democratic reasons instead of intervention for humanitarian purposes).
329. See U.N. CHARTER art. 2, para. 4 (prohibiting use of force generally with the narrow exception of humanitarian intervention with Security Council approval).
331. See Lori Fisler Damrosch, Changing Conceptions of Intervention in International Law, in EMERGING NORMS OF JUSTIFIED INTERVENTION 91, 97 (Laura W. Reed & Carl Kaysen eds., 1993) (distinguishing humanitarian intervention from pro-democratic intervention).
332. See id. (defining the purposes of pro-democratic intervention broadly).
military interventions by third states to restore a democratic government overthrown by a coup d'état.\textsuperscript{333}

The majority of international legal scholars consider pro-democratic intervention in the absence of Security Council authorization incompatible with the prohibition on the use of force and the principle of nonintervention and, thus, illegal under contemporary international law.\textsuperscript{334} The overwhelmingly positive international reaction following restoration of the democratically elected government in Sierra Leone suggests a need to review the legality of the doctrine of pro-democratic intervention.\textsuperscript{335} In light of international reactions and the military intervention, it appears appropriate to seek a legal construction reconciling the right of pro-democratic intervention with the prohibition on the use of force of Article 2(4) and with recent state practice.\textsuperscript{336} This search is justified by the need to keep international law in conformity with the realities of international relations.\textsuperscript{337} Such confor-

\textsuperscript{333} See generally Tuomala, supra note 263, at 26-27 (offering various definitions of humanitarian intervention that would include intervention to overthrow a military government).

\textsuperscript{334} See, e.g., Louis Henkin, Use of Force: Law and U.S. Policy, in RIGHT V. MIGHT—INTERNATIONAL LAW AND THE USE OF FORCE 37, 44 (Louis Henkin et al. eds., 1991) (asserting the illegality of pro-democratic intervention under modern international law); Oscar Schachter, The Legality of Pro-Democratic Intervention, 78 AM. J. INT'L L. 645, 649 (1984) (arguing that intervention based on pro-democratic initiatives cannot be reconciled with current international law); Franck, supra note 102, at 85 (opposing notion of pro-democratic intervention); DINSTEIN, supra note 110, at 89 (citing the United Nations Charter's prohibition on the use of force to support argument that pro-democratic intervention does not justify intervention in political affairs of another country); SHAW, supra note 88, at 803 (opposing pro-democratic intervention); Ved P. Nanda, The Validity of United States Intervention in Panama Under International Law, 84 AM. J. INT'L L. 494, 498 (1990) (criticizing the United States' pro-democratic intervention in Panama); cf. Tuomala, supra note 263, at 26 (specifying the narrow exceptions to humanitarian intervention under which pro-democracy efforts might be included).

\textsuperscript{335} See French, supra note 6, at A3 (hailing Nigerians for freeing Sierra Leone from military rule); cf. Claudia McElroy, Nigeria's Intervention Puzle West Africans, GUARDIAN, June 28, 1997, at 17 (observing that criticisms of Nigeria's presence in Sierra Leone are aimed at Nigeria rather that the intervention itself).


\textsuperscript{337} See id. (describing shifting nature of international relations as justification for revisions to international law).
mity ensures the effectiveness of the international legal order by providing stability to the inherently fragile international system.  

a. Restoring Democracy as a Justification for Military Interventions—Inconclusive State Practice Prior to the End of the Cold War

The most notable examples of military interventions prior to the end of the Cold War in which the right of pro-democratic intervention was invoked are the Dominican Republic, Grenada, and Panama—all of them involving armed interventions by the United States.  In 1963, a civilian junta overthrew the freely elected government of President Bosch of the Dominican Republic. Three years later, the junta suffered the same destiny and was overthrown by a military revolt, leading to the immediate outbreak of civil war between rival military factions. On April 28, 1965 United States troops landed in the country, primarily to secure the evacuation of foreign nationals. During the Security Council debates, however, the representative of the United States also justified the military intervention on grounds closely related to the doctrine of pro-democratic intervention.

338. See Reparations for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 173, 178 (Apr. 11) ("Throughout its history, the development of international law has been influenced by the requirements of international life . . . .").


340. See Nanda, supra note 339, at 273 (describing the events surrounding the United States military intervention in the Dominican Republic).

341. The United States representative stated:

We believe that the Dominican people, under the established principle of self-determination, should select their own government through free elections . . . Our interest lies in the re-establishment of constitutional government and, to that end, to assist in maintaining the stability essential to the expression of the free choice of the Dominican people.

The reaction of other states to the intervention was, with very few exceptions, overwhelmingly negative. Although the protest did not amount to an official condemnation through the United Nations, states generally viewed the military action as a violation of the principle of non-intervention in the internal affairs of other states.342

Grenada provides a second example of pro-democratic intervention.343 The New Jewel Movement, under the leadership of Maurice Bishop, ousted the elected Prime Minister, Sir Eric Gairy, in 1979.344 After increasing disagreement among the members of the new “People’s Revolutionary Government,” a military revolt ousted Bishop from power in October 1983.345 Members of the Grenadian People’s Revolutionary Army formed a Revolutionary Military Council as the new government of the island.346 On October 25, 1983, the United States, supported by Jamaica, Barbados, and member states of the Organization of East Caribbean States (“OECS”), launched Operation Urgent Fury.347 The participating states justified the military intervention by pointing to, inter alia, the need to restore the constitutional order as a prerequisite for democracy in Grenada.348 President Reagan

342. For an overview of the diplomatic reactions, see Doswald-Beck, supra note 341, at 228. For a critical evaluation of the intervention, see Nanda, supra note 339.


345. See id.

346. See id. at 131-32 (discussing the formation of the Revolutionary Military Council).

347. See id. at 132 (attributing the purpose of the organization on rescuing foreign nationals and increasing regional security).

348. As Prime Minister Seaga of Jamaica noted, “[i]f we ignore the occurrence of brutal military takeovers or political overthrows of Governments, we would immediately give heart to every subversive group within the region to engineer disorders and instability as a means of overthrows. Address to the Jamaican House of Representatives of 25 October 1983, reprinted in WILLIAM C. GILMORE, THE GRENADA INTERVENTION—ANALYSIS AND DOCUMENTATION 98, 101 (1984); see also Address to the Barbadian People by Prime Minister Adams of 26 October 1983, reprinted in id. at 102; Press release of the Organization of Eastern Caribbean States of 31 October 1983, reprinted in id. at 106.
justified the use of force as necessary "to assist in the restoration of conditions of law and order and of governmental institutions to the island of Grenada, where a brutal group of leftist thugs violently seized power . . . ."349

The vast majority of states, including close allies of the United States, again characterized the intervention as illegal and found the justifications offered unconvincing and without legal basis in international law.350 This general sentiment is echoed in the legal literature addressing the intervention in Grenada.351 The United Nations General Assembly, in Resolution 38/7, condemned the military intervention as a "flagrant violation of international law and the independence, sovereignty and territorial integrity" of Grenada, and called for an "immediate cessation of the armed intervention and the immediate withdrawal of the foreign troops."352

A final case worth noting in the history of pro-democratic intervention is Operation Just Cause, the U.S. military invasion of Panama in December 1989.353 Tensions grew between the United States and the


353. See David J. Scheffer, Use of Force After the Cold War: Panama, Iraq, and the New World Order, in RIGHT V. MIGHT—INTERNATIONAL LAW AND THE USE OF
authoritarian Panamanian government after General Noriega nullified the election of the opposition candidate Guillermo Endara in May 1989.\textsuperscript{354} Noriega's alleged participation in drug trafficking and Panamanian sponsored violence against U.S. soldiers further intensified the situation.\textsuperscript{355} On December 20, 1989, the United States sent 14,000 troops to join troops already stationed in Panama under the terms of the Panama Canal treaties, invaded Panama, and arrested General Noriega.\textsuperscript{356}

One of the United States' justifications for the military intervention was to restore the democratic process in the country. Before the Organization of American States ("OAS"), the United States representative stated:

Today we are once again living in historic times: A time when a great principle is spreading across the world like wildfire. That principle, as we all know, is the revolutionary idea that the people—not governments—are sovereign . . . . [This principle] has in this decade—and especially in this historic year 1989—acquired the force of historic necessity . . . . Democracy today is synonymous with legitimacy the world over; it is, in short, the universal value of our time.\textsuperscript{357}

President Bush expressly justified United States action on the ground of restoring democracy to Panama.\textsuperscript{358}

The intervention was overwhelmingly condemned as a clear violation of international law by the international community\textsuperscript{359} and by in-

\begin{flushright}
\end{flushright}

\textsuperscript{354} See id. at 112-13.

\textsuperscript{355} See id. at 112.

\textsuperscript{356} See id. at 118.

\textsuperscript{357} Statement of Luigi R. Einaudi, U.S. Permanent Representative to the OAS, on 21 December 1989, reprinted in Scheffer, supra note 353, at 119.

\textsuperscript{358} See Address to the Nation Announcing United States Military Action in Panama, 25 WEEKLY COMP. PRES. DOC. 1974-75 (Dec. 20, 1989).

\textsuperscript{359} For an overview of the reactions of the international community, see ALEXANDROV, supra note 262, at 201. See also David W. Alberts, The United States Invasion of Panama: Unilateral Military Intervention to Effectuate a Change in Government—A Continuum of Lawfulness, 1 TRANSNAT'L L. & CONTEMP. PROB. 261, 286 (1991) (stating the international community condemned "Operation Just Cause" as a violation of international law).
ternational legal scholars.\textsuperscript{360} The United Nations General Assembly and the OAS strongly condemned the invasion as a violation of international law and demanded the withdrawal of all invasion forces.\textsuperscript{361} The attempt to justify the military action as an attempt to restore the democratic process in Panama was widely criticized as incompatible with existing international rules governing the use of force.\textsuperscript{362}

State practice concerning the right of pro-democratic interventions before the 1990s is far from conclusive and does not provide strong support for the existence of such a right under international law.\textsuperscript{363} The international community reacted with hostility against the interventions in the Dominican Republic, Grenada and Panama.\textsuperscript{364} This in itself limits their potential precedential value.\textsuperscript{365} There are, however, also

\begin{itemize}
\item \textsuperscript{360} See, e.g., Henkin, \textit{supra} note 263, at 312; Schachter, \textit{supra} note 112, at 428; Brownlie, \textit{supra} note 117, at 207; Franck, \textit{supra} note 102, at 84; Nanda, \textit{supra} note 339, at 502; Scheffer, \textit{supra} note 353, at 119; Rumage, \textit{supra} note 112, at 74.
\item \textsuperscript{362} See Henkin, \textit{supra} note 263, at 297; Nanda, \textit{supra} note 334, at 498; Rumage, \textit{supra} note 112, at 57; Scheffer, \textit{supra} note 353, at 119; Tuomala, \textit{supra} note 263, at 27; also Francis A. Boyle, \textit{The U.S. Invasion of Panama: Implications for International Law and Politics}, 1 \textit{EAST AFR. J. PEACE & HUM. RTS.} 80, 83 (1993); Plouffe, \textit{supra} note 351, at 71.
\item \textsuperscript{363} See Nanda, \textit{supra} note 334, at 489 (noting state practice does not support an expansive reading of the United Nations Charter advocating use of force to restore freedom and democracy).
\item \textsuperscript{364} See Alberts, \textit{supra} 359, at 277, 287 (condemning invasions as violations of international law).
\item \textsuperscript{365} For a discussion concerning the legal effect of protests by states in inhibiting the formation of new norms of customary international law, see \textit{Charles G. Fenwick, International Law} 88 (4th ed. 1965); Michael Akehurst, \textit{Custom as a Source of International Law}, 47 \textit{BRIT. Y.B. INT'L L.} 1, 38 (1974-75) (emphasizing that rules originating in the voluntary practice of a small group of states and gradually adopted by others until becoming accepted law are inherently uncertain). \textit{But see Anthony D'Amato, The Concept of Custom in International Law} 98 (1971) (stating that states cannot block the formation of customary law merely by protesting against them); Fidler, \textit{supra} note 160, at 202 (contrasting the differences between generality and uniformity in state practices). \end{itemize}
other reasons why these cases cannot serve as a basis for a right to restore democracy through military intervention.

First, although the above mentioned interventions were arguably designed, at least in part, to establish a democratic government, the concept of pro-democratic intervention has never been used as the primary legal justification for the use of force. The prominent justifications in all cases, with some slight modifications, have been, inter alia, the right to protect nationals abroad, self-defense, invitation by the lawful authorities, and, in the case of Panama, a treaty right of intervention, based on the Panama Canal treaties. Thus, there has never been a claim, other than the case of Sierra Leone, that the right to restore democracy alone, or at least as used as the primary basis, justified armed intervention by a foreign state.

Second, the interventions in the Dominican Republic and Grenada, following the communist revolution in Cuba and the Cuban missile crisis in 1962, must be viewed as advancing American foreign policy goals. These interventions are consistent with U.S. supported interventions in Guatemala in 1954, Cuba in 1960, and the support of the “Contras” in Nicaragua in the early 1980s. The motivation for all of these interventions included the policy goal “to prevent interference in Western Hemisphere affairs by the international communist movement.” Thus, the value of these interventions as state practices sup-


367. See Schachter, supra note 149, at 143 (labeling this justification as “oratorical flourishes”); cf. Roth, supra note 349, at 487 (comparing the incident in Panama to the situation in Grenada).

368. See Rumage, supra note 112, at 43.

369. Cf. Franck, supra note 102, at 71 (illustrating the United States rationales of humanitarian concerns along with restoration of democracy as reasons for the intervention).

370. See generally, Roth, supra note 349, at 513 (justifying American intervention in foreign states).

371. See S. CON. REs. 91, 83d Cong., 68 Stat. 1351 (1954) (citing the congressional resolution following the invasion of Guatemala by a United States-supported army for the purpose of ousting the leftist government of President Jacobo Arbenz Guzman); see generally Isaak I. Dore, The United States, Self-Defense and the U.N. Charter: A Comment on Principles and Expediency in Legal Reasoning, 24
porting the right to pro-democratic intervention must be judged in light of the special circumstances governing the bipolar power struggle during the Cold War and the "backyard" security interests of the United States.

Finally, all three interventions took place in a limited regional area, namely Central America and the Caribbean. In effect, all were undertaken by a single power, the United States, with the exception of Grenada, which involved limited participation by a regional organization. Thus, even assuming the legality of pro-democratic interventions based on these cases, the recognition of such a right would be limited to Central America and would carry no substantial implications for the validity of pro-democratic interventions in other parts of the world.

b. Consent of the Legitimate Government as the Decisive Factor

The analyzed state practice does not provide substantive support for a general right of pro-democratic intervention in the absence of an authorization by the Security Council. Accordingly, it is still necessary to find a legal construction capable of explaining the changed reactions of the international community from condemnation in the earlier cases to acceptance in the 1990s, following the military interventions to restore democracy in Haiti and Sierra Leone. In searching for a legal basis, the legal significance of the fact that immediately following the coup d'etat, President Kabbah appealed to ECOWAS Chairman, General Sani Abacha of Nigeria, for immediate assistance to restore civilian rule in Sierra Leone, must be evaluated.

372. See Joyner, supra note 344, at 149 (characterizing United States activity as an affirmative response to appeals from the OECS and Governor-General of Grenada).


374. See Jonah, May 27 Press Conference, supra note 164; see also Goldman, supra note 34, at 3 (describing a situation where a nation's government seeks foreign military intervention to restore order); Tran & McElroy, supra note 24, at 4 (citing U.N failure to act as one of the causes of unrest in Sierra Leone).
The concept of "intervention by invitation of the government" is widely recognized, though disputed, in state practice and the literature as an exception to the prohibition on the use of force and the principle of non-intervention. Although the United Nations Charter does not expressly mention intervention with the consent or upon the request of the government as an exception to the prohibition on the use of force, international law recognizes that a state can consent to activities of other states on its territory. The principle of consent may be regarded as operating as an independent principle under international law, compatible with the provisions of the United Nations Charter. Thus, a military intervention by a state based on the request or consent of the government does not amount to a violation of Article 2(4) of the United Nations Charter, while aid to rebel groups by third states is generally regarded as illegal under international law. The International Court of Justice expressed this view in the Nicaraguan case when it stated that "intervention is allowable at the request of the gov-

375. See U.N. SCOR, 31st Sess., 1906th mtg. at 1, U.N. Doc. S/RES/387 (1976) (stating that it is "the inherent and lawful right of every State, in the exercise of its sovereignty, to request assistance from any other state or group of states"); see also JENNINGS & WATTS, supra note 88, at 435 (acknowledging the use of requests for assistance); BROWNLIE, supra note 135, at 317; Schachter, supra note 108, at 1645; Joyner, supra note 344, at 137-38; ANTONIO CASSESE, INTERNATIONAL LAW IN A DIVIDED WORLD 241 (1986); SHAW, supra note 88, at 801; Skubiszewski, supra note 126, at 749.


377. See Joyner, supra note 344, at 138 (arguing that the legality of intervention based on invitation for assistance is "well grounded in international law").

378. See Brownlie, supra note 117, at 208-09. But see Henkin, supra note 263, at 299 n.25 (condemning state invasion of another even where the target state approves).

379. See Stephen M. Schwebel, Aggression, Intervention and Self-Defense in Modern International Law, 136 RECUEIL DES COURS 411, 483-86 (1972 II); SHAW, supra note 88, at 795-97; Randelzhofer, supra note 92, at 121 (citing possible exception to the general rule in connection with "wars of national liberation").
Consequently, an armed intervention that is consistent with the will of the government of the state concerned does not constitute an enforcement action under Article 53(2) of the United Nations Charter and does not require an authorization by the Security Council. Although the doctrine of intervention by invitation is generally regarded as part of international law, the question remains whether President Kabbah's request for foreign military assistance constituted a valid "invitation" by the lawful government.

c. Did President Kabbah Remain the Legitimate Government of Sierra Leone After the Coup d'État?

The legality of a military intervention, under the doctrine of intervention by invitation, turns on the existence of a valid consent by a legitimate government. As Louise Doswald-Beck points out, the primary task in this inquiry is the "identification of the 'government' of a State as the State's valid representative in international law." There are serious doubts as to whether to consider President Kabbah the head of the government of Sierra Leone with authority to invite foreign intervention because Kabbah was already in exile in Guinea when he appealed to ECOWAS for assistance.

Under the traditional and prevailing international legal doctrine, the government of a state is determined according to who maintains effective control of the state territory and the people therein. Effectiveness as the sole criterion in recognizing a government of a state has


382. See generally HALL, supra note 376, at 286; Doswald-Beck, supra note 341, at 190 (discussing the importance of state representation in legitimizing intervention).

383. Doswald-Beck, supra note 341, at 192; see Schachter, supra note 238, at 114.

384. See generally Goldman, supra note 34, at 3 (describing President Kabbah's appeal for help while in exile).

385. See JENNINGS & WATTS, supra note 88, at 150; Schachter, supra note 112, at 424; SHAW, supra note 88, at 800.
been widely recognized in state practice, as well as the judgments of international tribunals and among international legal scholars. Whether a group of nationals obtained power by overthrowing the former government in a *coup d'état* is legally irrelevant and does not affect the legitimacy of the government in representing the state and acting on its behalf.

Reliance on de facto control rather than constitutionality is based on practical considerations. To cooperate effectively in the international system, states cannot ignore the existence of an effective government or deny its capacity to represent the state in the international realm.

According to traditional international law, an effective government may legitimately request foreign military assistance only to suppress limited civil strife. As soon as an internal conflict becomes widespread and rebel forces control parts of the state territory, it is doubtful that a third state may still come to the aid of the challenged incumbent government without violating the principle of non-intervention. This restriction is grounded in the belief that increased internal challenges lead to the decline of the government’s ability to effectively control the territory and to speak for the state. In these situations, the effec-

---

386. See, e.g., Tinoco Concession Case (U.K. v. Costa Rica), 1 R.I.A.A. 369, 381-82 (1923); SATYAVRATA RAMDAS PATEL, RECOGNITION IN THE LAW OF NATIONS 83 (1959); GERHARD VON GLAHN, LAW AMONG NATIONS 75 (7th ed. 1996); SHAW, supra note 88, at 304.


388. See id. (stating that “effective control serves as a rough proxy for the existence of some degree of congruity between the government and the larger political community of the state, which supports the government’s claim to represent the state as a whole”).

389. See TI-CHIANG CHEN, THE INTERNATIONAL LAW OF RECOGNITION 129 (1951) (recognizing the general acceptance that state can maintain international relations even with a decentralized system). Furthermore, as David Wippman notes, the criterion of effective control offers a “reasonably objective and externally verifiable basis for determining governmental authority, thus ‘inhibiting intervention’ by outside states.” Wippman, supra note 387, at 212.

390. See JENNINGS & WATTS, supra note 88, at 437.

391. See Doswald-Beck, supra note 341, at 251; JENNINGS & WATTS, supra note 88, at 437-38; Skubiszewski, supra note 126, at 750.

392. See Wippman, supra note 366, at 440; see also Joseph H. Weiler, *Armed
tive control doctrine undermines the ability of the individual, or group of nationals, to remain the lawful government of the state. The former government may merely be one contender, among many, for power and thus lose its right to request help from outside in the name of the state.

State practice appears to support a broader principle regarding the violent overthrow of a de jure government. Foreign states may intervene in support of the de jure government, as long as there is only a brief discontinuity in the de jure government’s effective control of the state territory and the restoration is realizable with very limited military action. The United Kingdom and France have frequently assisted governments in their former colonies threatened by mutinous troops without condemnation from the international community. These actions, however, involved limited military measures and little resistance from the mutineers.

The situation in Sierra Leone following the coup d'etat, however, does not fall into this category. President Kabbah was already in exile in Guinea when he made his plea to ECOWAS for assistance. Kabbah’s government had lost complete control over the territory of Sierra Leone at the time of his request for assistance. Furthermore, the early attempts to oust the junta from power, undertaken primarily by Nigeria in the week following the coup, completely failed despite the use of

---


393. See TANCA, supra note 392, at 23 (doubting whether a government plagued by internal strife has the authority to ask for foreign assistance).

394. See Nolte, supra note 74, at 622.

395. See Wippman, supra note 387, at 216-17 (finding most state treat the disruptions as limited and not indicative of the de jure government’s ability to represent the state).

396. See, e.g., Reisman, supra note 106, at 796; Wippman, supra note 387, at 216.

397. For a description of the British suppression of the army mutiny in Tanganyika in January 1964, see Reisman, supra note 106, at 796. "Julius Nyerere, the President, turned to Britain for aid and a small contingent of Royal Marines flew in and suppressed the mutiny in one day. The death toll amounted to three mutinous soldiers killed. There were no civilian injuries and no marine casualties." Id.
considerable military power.\textsuperscript{398} The military junta had effective control over large parts of Sierra Leone's territory, including the state capital, despite the continued presence of Nigerian troops in the country. Under traditional international law, the military junta must therefore be considered the government of Sierra Leone, at least from the time it successfully resisted its overthrow by Nigerian troops. Consequently, any request for assistance by President Kabbah is invalid and any military aid, particularly foreign military interventions, is illegal under traditional international law.\textsuperscript{398}

The traditional doctrine of "effective control" faces new challenges and is open to critical reexamination in light of current developments in the practice of states since the beginning of the 1990s.\textsuperscript{399} The overthrow and restoration of the Haitian President, Aristide, marks the first example in what may cautiously be viewed as a turning point in the determination of the legitimate government of a state under international law.\textsuperscript{400} Aristide became President of Haiti in 1990 after winning internationally monitored and supervised elections.\textsuperscript{401} Months later, a military coup d'etat overthrew Aristide and forcing him to flee the country. Although the junta effectively controlled the territory of Haiti and thus fulfilled the traditional criteria of a government, the international community did not recognize the junta as the government of Haiti.\textsuperscript{402}

\begin{itemize}
\item \textbf{398.} See Goldman, supra note 34, at 3.
\item \textbf{399.} See Wippman, supra note 387, at 212-13 (confirming general state policy that aiding rebel forces or the government violates the non-intervention principle).
\item \textbf{400.} See Roth, supra note 349, at 483 (highlighting the strengthening of international human rights norms and the spirit of cooperation as reasons for the changing climate).
\item \textbf{402.} See Collins & Cole, supra note 401, at 219 (citing President Aristide's failure to disavow mob violence as one of the reasons for his eventual overthrow).
\item \textbf{403.} See, e.g., Domingo E. Acevedo, The Haitian Crisis and the OAS Response: A Test of Effectiveness in Protecting Democracy, in ENFORCING RESTRAINT—COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS 119, 132 (Lori Fisler Damrosch ed., 1993) (discussing the reactions of the international community); SEAN D. MURPHY, HUMANITARIAN INTERVENTION—THE UNITED NATIONS IN AN
\end{itemize}
The United Nations and the OAS continued to regard Aristide as the legitimate head of state, labeled the military junta as an "illegal de facto regime,"\textsuperscript{404} and repeatedly demanded the democratically elected President's return to power.\textsuperscript{405}

Burundi represents the next notable case in what may be the beginning of a paradigmatic shift in the concept of government legitimacy.\textsuperscript{406} The Secretary-General and the Security Council strongly condemned the violent overthrow of the democratically elected government by a military coup d'etat in July 1996.\textsuperscript{407} Furthermore, Burundi's neighbors in the Lake region of East Africa immediately announced a total trade embargo against the country.\textsuperscript{408} Under the pressure of the embargo and the Security Council, the military junta was eventually forced to restore the Parliament.\textsuperscript{409}

In Sierra Leone, the military junta faced the same hostile reaction from the international community. No state recognized the junta as

---


\textsuperscript{405} See id. For discussion concerning the reaction of the OAS, see Support for the Democratic Government of Haiti, MRE/RES. 1, Ad Hoc Meeting of Ministers of Foreign Affairs, OEA/ser.F/V.1 (1991).

\textsuperscript{406} See generally James C. McKinsley, Jr., As the West Hesitates on Burundi, Leaders in Africa Make a Stand, N.Y. TIMES, Aug. 24, 1996, at A1 (providing an overview of the situation in Africa).


\textsuperscript{408} See James C. McKinsley, Jr., As the West Hesitates on Burundi, Leaders in Africa Make a Stand, N.Y. TIMES, Aug. 24, 1996, at A1. The countries in question were Tanzania, Kenya, Uganda, Rwanda, and Zaire. See Reyhan, supra note 407, at 772.

the legitimate government of Sierra Leone. Furthermore, the United Nations, as well as regional organizations, strongly condemned the coup d'état as illegal under international law and demanded the return of the democratically elected government.

The international community's reaction following the coup in Sierra Leone thus demonstrates that Haiti can no longer be considered an exceptional case under unique circumstances, but rather it is considered the beginning of a change in the international legal doctrine of governmental legitimacy. State practice in Sierra Leone, Haiti, and other cases of states and international organizations condemning military coups against democratic governments, suggests a tentative rejection of the "effective control" doctrine. This is further evidenced by the fact that since the end of the Cold War states have adopted declarations obliging them to intervene on behalf of democratic governments which are in danger of being overthrown by coup d'états. Examples of such documents are the Santiago Commitment to Democracy, adopted by the General Assembly of the OAS in June 1991 and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-


411. See Acevedo, supra note 403, at 141. But see Wippman, supra note 366, at 219 (noting that the United Nations has only authorized military intervention against a sitting government in Haiti). Haiti was a unique case because the U.N. authorized intervention was directed against a government that had overthrown a democratically elected government, and was supported by both the United States and the de jure government itself. See id. Neither of these circumstances are likely to be repeated in any other nation in the near future. See id.


operation in Europe ("CSCE" recently renamed "OSCE") in June 1990. An argument can be made, albeit cautiously, that at least in the case of the violent overthrow of a sitting, democratically elected government, the criterion of "effective control" no longer serves as the decisive factor in determining the legitimacy of a government.

The doctrine of legitimacy in determining the lawfulness of a government is not new in the history of international law. It is found in the writings of early international legal scholars such as Hugo Grotius, and only with Vattel did the contrary doctrine of de facto control take hold in legal literature. The doctrine of legitimacy holds that the legality of every government rests not upon mere de facto control of the state, but upon compliance with the established legal order of that country. Historically, however, the doctrine is not connected with democratic governance, but rather stressed the notion of dynastic legitimation. Not surprisingly, the doctrine was most popular in the end of the eighteenth and into the nineteenth centuries as a reaction of the principle European Monarchs, later united in the Holy Alliance, towards the French Revolution of 1789. The doctrine of legitimacy in the form of democratic constitutionalism only applied to state practice at the beginning of the twentieth century in the foreign policy of the United States and the states of Central America. During this time the doctrine was embodied in the Tobar doctrine as well as the policies of President Wilson. These developments, although noteworthy, had limited global impact and remained restricted to the area of the above mentioned states. Even within that limited geographical area, some states rejected the doctrine, favoring de facto considerations when rec-

415. See Collins & Cole, supra note 401, at 238.
416. For a historical overview on this subject, see JULIUS GOEBEL, THE RECOGNITION POLICY OF THE UNITED STATES 15 (1915).
417. See CHEN, supra note 389, at 105.
418. See ROLAND HALL SHARP, NONRECOGNITION AS A LEGAL OBLIGATION 13 (1934); Stephen D. Krasner, Sovereignty and Intervention, in BEYOND WESTPHALIA? STATE SOVEREIGNTY AND INTERNATIONAL INTERVENTION 228, 243 (Gene M. Lyons & Michael Mastanduno eds., 1995); CHEN, supra note 389, at 105.
419. See JENNINGS & WATTS, supra note 88, at 152; TESÓN, supra note 9, at 82; SHARP, supra note 418, at 34.
ognizing new governments. Particularly during the Cold War period, the criterion of effective control was generally applied for the reasons outlined above. The ideological confrontation between the United States and the Soviet Union, accompanied by contradictory understandings of the legitimacy of a government in general and the meaning of democracy in particular, would have rendered attempts to determine the lawfulness of a government by general normative criteria based on popular sovereignty impossible. Despite the frequency of foreign interventions during this period, based on a variety of justifications, the criterion of effective control must be seen as a legal means to prevent the internationalization of internal conflicts through interventions, which always entailed the danger of a large scale confrontation between the two main antagonists.

Even during the Cold War, however, the doctrine of effective control was not consistently applied. In South Africa, for example, the apartheid government clearly possessed effective control over the territory, but was denied credentials in the United Nations General Assembly because “the South African regime has no right to represent the people of South Africa.”

Haiti and Sierra Leone demonstrate that in the post-Cold War era, practical considerations that supported a reliance on the effective control doctrine have lost most of their factual basis. Although considerable ideological differences obstruct a universal understanding and uniform application of the concept of democracy and other international legal norms, the international community’s reaction to the


421. For an overview of the justifications for numerous foreign interventions in Africa, see Wippman, supra note 366, at 444.


423. See Perez, supra note 154, at 440.


425. For an overview of the recent discussion concerning the relativity of human
coup in Haiti and Sierra Leone indicate there are now "clear cases" where the lawfulness of a government is measured by its democratic legitimatization rather than its effective control in the form of brutal oppression.\textsuperscript{426}

In view of these recent changes in the concept of government legitimacy, one may conclude that, despite his loss of control over the state territory, but in accordance with the reaction of the international community, President Kabbah remained the legitimate and thus lawful government of Sierra Leone after the coup. His request for outside military assistance was therefore a legitimate request for assistance from a head of state.

d. Was President Kabbah Entitled to Ask for Foreign Military Assistance?

Because President Kabbah remained the lawful government of Sierra Leone in exile, it would seem obvious that he maintained the right to ask for military assistance from other states to restore government. His request was not void under international law simply because he was in exile and no longer the head of an "effective government." Restrictions on asking for outside assistance, in cases of widespread conflict, placed on governments by the "effective control" doctrine do not apply to democratically elected governments overthrown by an illegal coup d'état.\textsuperscript{427} Rather they are a logical consequence of the traditional doctrine measuring the "legitimacy" or lawfulness of a government in accordance with its ability to control effectively the country on its own. In contrast to that view, a democratically elected government is legitimized on a normative basis and neither gains nor loses this legitimacy through effective territorial control or lack thereof.

This consequence seems logically derived from the concept of intervention by invitation as viewed together with the new doctrine of governmental legitimacy, which admittedly does not necessarily make

\textsuperscript{426} See Roth, \textit{supra} note 349, at 513 (discussing the conditions in Haiti).

\textsuperscript{427} \textit{Cf. id.} at 511 (stating that before the intervention in Haiti occurred, "in all likelihood, fulfillment of request for armed assistance would not in this case be deemed a violation of international law").
Military Intervention in Sierra Leone

it a rule of international law. There are suggestions, however, that the Haitian precedent indicates that in the absence of authorization by the Security Council, consent of the legitimate government alone does not give a right of pro-democratic intervention. Although the Security Council took note of President Aristide’s consent expressed in two letters, the Council relied mainly on its authority to maintain international peace and security under Chapter VII of the United Nations Charter in authorizing military intervention in Haiti. It has been stated that the Security Council was “evidently unwilling to treat that consent as sufficient in and of itself to permit military action.”

Merely because the Security Council considered the situation in Haiti a threat to international peace and security under Article 39 of the United Nations Charter and relied on its powers under Chapter VII of the Charter to authorize the use of force, however, does not mean that Haiti serves as a precedent against the existence of a right of pro-democratic intervention based on the consent of the legitimate government. When authorizing military intervention by Member States involving the use of force, Article 24(2) requires the Security Council to act in accordance with the specific powers granted to this organ under the Charter. The Security Council may only authorize coercive military sanctions under Article 42 in connection with Article 48.

428. This is demonstrated by the fact that although under international law, “any breach of an engagement involves an obligation to make reparations...” See Case Concerning the Factory at Chorzów (Germ. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17, at 29 (Sept. 13). It is highly disputed and, in the light of the practice of states, doubtful whether this is also true for state obligations under international environmental law. See Oscar Schachter, The Greening of International Law. in Melanges Rene-Jean Dupuy 272 (1991).

429. See Wippman, supra note 366, at 473.


431. Wippman, supra note 387, at 218.

432. “In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, XII.” U.N. CHARTER art. 24, para. 2.

433. There is some debate among international legal scholars concerning the specific legal basis for the authorization of military enforcement actions by member states in the absence of special agreements under Article 43 of the United Nations Charter. However, the apparently prevailing view considers authorizations of
Or, in the case of enforcement actions by regional arrangements, the Security Council may authorize military sanctions under Article 53 of the Charter.\(^4\) Both methods require a determination by the Council under Article 39 that a threat to international peace and security exists.\(^3\) Thus, the Security Council cannot authorize an enforcement action based solely on the consent of a state.\(^4\) The Security Council must act in accordance with the powers conferred under the United Nations Charter. It follows that the Security Council, by basing its authorization on Chapter VII of the Charter, did not demonstrate re-

---

434. See Ress, supra note 204, at 733.

435. For a discussion concerning the requirement of a determination under Article 39 prior to the adoption of measures under Article 42 United Nations Charter, see Frowein, supra note 216, at 631; Shaw, supra note 88, at 855. For a discussion of measures under Article 53, see Ress, supra note 204, at 733.

436. This is the difference between enforcement actions, also called "peace-making" operations, under Chapter VII or VIII of the United Nations Charter and the traditional peace-keeping, or "Blue Helmet" operations, which are based primarily on the consent of all the parties to the conflict. See, e.g., Michael Bothe, Peace-Keeping, in The Charter of the United Nations—A Commentary 565, 573 (Bruno Simma et al. eds., 1994); Perez, supra note 154, at 413. In the situation of Haiti, the deployment of "Blue Helmets" would not have been possible due to the lack of consent on the side of the military junta. Thus, the possible necessity to use military means to restore democracy in Haiti, which distinguished this situation from classical peace-keeping operations, was also the reason why the Secretary General in his report on the United Nations mission in Haiti advised the Security Council to act under Chapter VII of the Charter. See Report of the Secretary-General on the United Nations Mission in Haiti, U.N. SCOR, 49th Sess. at 6, U.N. Doc. S/1994/828.
luctance to treat Aristide's consent as sufficient to permit military action, but acted in accordance with its Charter powers.

Furthermore, President Aristide's appeal for assistance was not addressed to individual states or a regional organization as in the case of Sierra Leone, but was exclusively directed to the United Nations. In response, the United Nations activated the mechanisms for authorizing military interventions as prescribed in the Charter. The argument that Aristide's consent was not a necessary prerequisite for the adoption of Resolution 940 does not contradict the foregoing argument. This merely supports the fact that under Chapter VII, the Security Council has the power to adopt economic and military sanctions without the consent of the parties to the dispute in order to maintain or restore international peace and security. This does not, however, foreclose on the possibility that a foreign military intervention can be independently based on two legal justifications, namely, an authorization by the Security Council and the consent of the legitimate government of a state.

Because the Security Council authorized intervention in Haiti, the Haitian intervention does not represent a strong precedent for the existence of a right of pro-democratic intervention by regional organizations or individual states based solely on the consent of the legitimate government. It does, however, lead to the conclusion that Haiti cannot be invoked as evidence of the unlawfulness of such interventions to restore democracy.


439. See TESÓN, supra note 9, at 256.

440. See id.
Furthermore, the fact that invitation by a democratically elected government was invoked as a justification in previous interventions such as Panama, but was overwhelmingly rejected by the international community, does not necessarily speak against the validity of President Kabbah's request as a legal basis for ECOMOG intervention. First, in contrast to the situation of Panama, the present case of Sierra Leone, like Haiti, concerns a sitting, democratically elected government that was recognized by virtually all other states before the coup d'état. The international community's unanimous condemnation of coups against sitting democratic governments in the recent post-Cold War cases and the welcoming of their restoration to power through military interventions clearly demonstrate that a democratically elected government, even if temporarily forced into exile, has the right to request foreign military assistance.

Second, the fact that the ECOMOG action in Sierra Leone was undertaken under the authority of ECOWAS as a regional organization and with the approval of other regional actors like the OAU further strengthens the legitimacy of the military intervention. The collective character, at least on a regional level, of the intervention provides a higher degree of impartiality and prevents, at least to a certain degree, abuses of the right to intervene.

Although Nigeria, the most powerful country in West Africa, played the dominant role this action, as did the United States in Haiti, this does not deprive the action of its collective and thus more acceptable character. This demonstrates that in

441. See Letter to the Speaker of the House and the President Pro Tempore of Senate on United States Military Action in Panama, 25 WEEKLY COMP. PRES. DOC. 1985 (Dec. 25, 1989) (claiming the United States action is welcomed by the democratically elected government of Panama); see also Henkin, supra note 263, at 299.

442. See Shaw, supra note 88, at 800 (arguing that the democratically elected government of Panama never exercised any authority over the country).


444. See Tom Farer, A Paradigm of Legitimate Intervention, in ENFORCING RESTRAINT—COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS 316, 331 (Lore Fisler Damrosch ed., 1993); see also Edward Kwakwa, Internal Conflict in Africa: Is There A Right of Humanitarian Action?, 2 AFR. Y.B. INT'L L. 9, 42 (1994); Nolte, supra note 74, at 624.
the absence of a standing military force under the command of the United Nations. Military intervention usually requires the lead of a committed and powerful state, one that is willing to invest the necessary resources and to stay long enough to accomplish the goals of intervention.

In an international system still predominantly characterized by a decentralized enforcement of international law through individual states the most notable obstacle to successful interventions is the difficulty in generating necessary resources and political will. Military actions will often only take place if the interests of a major world or regional power are at stake. As a consequence, military interventions to restore democracy and to protect human rights will remain selective and depend on political considerations of the major powers.

This fact does not deprive foreign military interventions based on the consent of the democratically elected government-in-exile of their legality under international law. Thus, the ECOWAS intervention in Sierra Leone can be regarded as a lawful exercise of the use of force in


446. Wippman, supra note 191, at 682.

447. See JESSUP, supra note 95, at 17; see also Torsten Stein, Decentralized International Law Enforcement: The Changing Role of the State as Law Enforcement Agent, in ALLOCATION OF LAW ENFORCEMENT AUTHORITY IN THE INTERNATIONAL SYSTEM 107, 126 (Jost Delbrüe ed., 1995) (concluding that states enjoy a wide degree of freedom whether to engage in international law enforcement). In contemporary international law, however, there are developments towards a more centralized concept of enforcement. See Jost Delbrueck, A More Effective International Law or a New “World Law”?—Some Aspects of the Development of International Law in a Changing International System, 68 IND. L.J. 705, 720 et seq. (1993) (discussing the decentralization of law enforcement authority in international law); JENNINGS & WATTS, supra note 88, at 11 (labeling international law as an imperfect order).

448. See Wippman, supra note 191, at 681.

light of the changing concept of government legitimacy and the resulting modified doctrine of intervention by invitation under contemporary international law.

5. The Conakry Agreement

A final issue that must be addressed in evaluating the legality of the ECOWAS intervention in Sierra Leone is the effect of the Conakry Agreement, which set forth a peace plan for Sierra Leone. When Nigerian troops ousted the Koromah junta in February 1998, the Conakry Agreement of October 1997 was still in force. The Agreement set out a six-month timetable for a return to democracy in Sierra Leone. The reinstatement of Kabbah’s government by April 1998 would mark the culmination of the transition back to democracy. The Nigerian military intervention cut short the timetable agreed to by the parties to the Conakry Agreement. Although the Nigerian actions facilitated Kabbah’s reinstatement and are thus consistent with the broadest goals of the Conakry Agreement, the means employed to achieve this end are clearly at odds with the Agreement’s vision of a cooperative, negotiated transition. Nigeria’s disregard for the express provisions of the Conakry Agreement, to which ECOWAS was a party, again calls into question the legality of its actions.

In reality, if not on paper, the Conakry Agreement was breached long before the Nigerian intervention. The Agreement rested on the achievement of six goals within six months: the reinstatement of the legitimate government of President Tejan Kabbah; the immediate cessation of hostilities; cooperation of the junta with ECOMOG to peacefully impose sanctions; disarmament, demobilization, and reintegration of combatants; provisions of humanitarian assistance; return of refugees and displaced persons; immunities and guarantees to the leaders of the May 25, 1997 coup; and modalities for broadening the power base in Sierra Leone. The immediate cessation of hostilities and the disarmament of troops never materialized, thus

crippling the Agreement almost from birth.451 Within six weeks of the signing of the Conakry Agreement, the United Nations Secretary-General reported renewed military activity around the country.452 The junta forces, primarily the RUF, continued to engage in heavy fighting against the Kamajors in the southeast of the country, particularly around diamond-producing areas.453 Junta forces were reported recruiting, training, and arming new combatants.454 In February 1998, five days before the Nigerians ousted Koromah, the United Nations Secretary-General reported on the situation in Sierra Leone, again recording the continued warring throughout the country.455 The report notes that Koromah acknowledged to the United Nations Special Envoy that the Conakry Agreement was not being implemented.456

Although the Conakry Agreement on its face bound the parties, including ECOWAS, to an agreed timeline for the transition back to Kabbah’s government, the junta breached the agreement from the beginning. The Conakry Agreement was treated as little more than a formality to be ignored by the all the factions, including the junta, RUF forces, the Kamajors, and the Civil Defense Unit (“CDU”). If the Agreement was not stillborn, it certainly died before it ever left the nursery. The Conakry Agreement in and of itself did not represent a prohibition against the Nigerian intervention.

IV. THE USE OF REGIONAL ARRANGEMENTS IN AFRICA

The ECOWAS action in Sierra Leone is illustrative of the organization’s increasingly powerful position in West Africa. As noted

452. See id. para. 16 (describing fighting in Sierra Leone despite the supposed ceasefire between ECOMOG and junta troops).
453. See id. (noting the failure of junta forces to adhere to the ceasefire).
454. See id. (explaining junta efforts to strengthen its forces).
455. See Third Report of the Secretary-General on the Situation on Sierra Leone, supra note 46, para. 10 (describing the security situation in the countryside as highly volatile).
456. See id. Koromah listed the “dominant role played by the Nigerian contingent in ECOMOG” as one of the primary reasons why the junta failed to fully adhere to the terms of the Conakry Agreement. See id.
above, ECOWAS played a crucial role in the Liberian civil war, from the early days of the war through the monitoring of the post-war elections in July 1997.\textsuperscript{457} Although ECOWAS was originally created by the community of West African states as an economic organization,\textsuperscript{458} the interventions in Liberia and Sierra Leone suggest that ECOWAS's self-assigned function is evolving not only toward regional peacekeeping, but to regional peace-creator.\textsuperscript{459} A review of the ECOWAS actions in Liberia and Sierra Leone forces one to ask whether the development of regional organizations such as ECOWAS is something that the international community should embrace and encourage, or whether these developments should be treated with caution and skepticism. To answer this question it is important to understand how regional organizations function within in the United Nations.

A. Overview of the Role of Regional Organizations Under the United Nations Charter

Chapter VIII of the United Nations Charter addresses the issue of regional organizations. Article 52(1) provides that "[n]othing in the present Charter precludes the existence of regional arrangements for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purpose and Principles of the United Nations."\textsuperscript{460} Article 53(1) supports the right of these regional organizations to exist with the United Nations framework by allowing the Security Council, to use such arrangements or agencies for its enforcement actions.\textsuperscript{461} Ar-

\textsuperscript{457} See Howe, supra note 69, at 146; see also Statement by the President of the Security Council, UN Doc. S/PRST/1997/41 (1997) (commending ECOMOG for its contribution to the holding of elections in Liberia).

\textsuperscript{458} See Kannyo, supra note 207, at 60; Ofodile, supra note 168, at 410.

\textsuperscript{459} See Tran & McElroy, supra note 24.

\textsuperscript{460} U.N. CHARTER art. 52, para.1.

\textsuperscript{461} See U.N. CHARTER art. 53, para 1. The text reads:

The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement actions under its authority. But no enforcement action shall be taken under regional arrangements without the authorization of the Security Council, with the exception of measures against an enemy state, as defined in paragraph 2
article 53, however, clearly prohibits regional actions without the consent of the Security Council. Regional organizations are thus recognized and accepted as legitimate actors in the Charter, but are denied any right of action independent of Security Council authorizations.

Some commentators note that the United Nations Charter fails to define the relationship between regional organizations and the United Nations. This ambiguity is likely the result of disagreement between states during the initial negotiations and deliberations leading up to the 1945 United Nations Conference on International Organization ("San Francisco Conference"), which resulted in the final United Nations Charter. The disagreement among states at the San Francisco Conference is best illustrated in the conflicting vision of British Prime Minister Winston Churchill and United States Secretary of State Cordell Hull. While Churchill believed that primary responsibility for maintenance of the post-war order should rest with regional councils under the leadership of regional powers, Hull advocated the maintenance of peace by strong centralized global organization. The result is the disagreement found in the United Nations Charter, which both recognizes regional organizations and provides for the supremacy of the Security Council.

of the Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

Id. Paragraph 2 defines enemy state as a state that during was an enemy of the signatory state in question during World War II. See U.N. CHARTER art. 53, para. 2.


463. See Arend, supra note 462, at 5; Christopher J. Borgen, Note, The Theory and Practice of Regional Organizations Intervention in Civil Wars, 26 N.Y.U. J. INT'L L. & POL. 797, 798 (1994) (stating that there were debates concerning the relationship between global and regional arrangements at the San Francisco conference).

464. For a detailed analysis of this debate, see Inis L. Claude, The OAS, the U.N., and the United States, 547 INT'L COUNCILIATION 3 (1964).
The tension between regionalism and globalism embodied in Chapter VIII has led, on occasion, to jurisdictional tensions between the United Nations and regional organizations. Following the Iraqi invasion of Kuwait in August 1990, for example, the Security Council issued a series of resolutions condemning the invasions and imposing harsh economic sanctions. The Arab League’s representative to the United Nations, Clovis Maksoud, criticized the international community for failing to first take the issue to the Arab League, the relevant regional organization. Although the United Nations Charter did not require that the Arab League consider the problem before it reached United Nations consideration, the Arab League’s criticism indicates the degree of confusion surrounding the issue of regional organizations within the United Nations. A variation of the jurisdictional problem also arose in the Balkans, where the possible jurisdiction of the United Nations, NATO, the European Community, and the West European Union led the various organizations to inaction while each deferred to another. Thus there may be no clear consensus between Member States of the United Nations and regional organizations concerning the appropriate forum to address regional disputes.

B. THE CONTRIBUTION OF REGIONAL ORGANIZATIONS TO PEACE AND SECURITY IN AFRICA

In a recent report entitled “The Causes of Conflict and Promotion of Durable Peace and Sustainable Development in Africa,” United Nation Secretary-General Kofi Annan highlighted the contributions that regional and sub-regional organizations can make to peace in


467. See Arend, supra note 462, at 19 (stating that Clovis Maksoud believed the Arab League should have attempted to resolve the dispute between Kuwait and Iraq before the United Nations took action).

468. See id. at 20.
Africa. 469 Highlighting the need for regional and subregional initiatives to operate within the context of the United Nations, Annan noted that support to regional organizations is necessary and desirable for matters of international peace and security. 470 In particular, he notes the United Nations' overall lack of "capacity, resources, and expertise" to deal with the sundry problems arising on the African continent. 471 The report finds that strengthening Africa's capacity for peacekeeping must be a key priority for United Nations and supports a proposal for training and material assistance for regional peacekeeping in Africa. 472 Annan concludes his discussion of regional initiatives with a call for increased cooperation between the United Nations and the OAU, as well as strongly encouraging all Member States to contribute to United Nations and OAU trust funds established to improve preparedness for conflict prevention and peacekeeping in Africa. 473 The position of the Secretary-General is clear: the future of peace and security in Africa is at least partially dependent on the operation of regional organizations with the capacity and expertise to resolve conflict and maintain peace in their region.

Many international legal scholars agree that the growth in regional organizations represents a net gain to the international community, particularly when intervening in internal conflicts or civil wars. 474


470. See id. para. 41 (stating that the international community should "strive to complement rather supplant African efforts to solve Africa's problems").

471. Id.

472. See id. para. 45 (suggesting these peacekeeping missions can take place in the framework of a United Nations peacekeeping mission or one conducted by a regional organization).

473. See id. (emphasizing that these efforts are not in any way intended to relieve the international community of its obligations under the Charter of the United Nations).

474. See Richard Falk, Regionalism and World Order after the Cold War, St. Louis-Warsaw Transatlantic L.J. 71, 73 (1995); see also Captain Davis Brown, The Role of Regional Organizations in Stopping Civil Wars, 41 A.F.L. REV. 235, 236 (1997) (observing that regional organizations have begun to assert a new role in collective security by stopping civil wars and enabling combatants to achieve peace); Hettne, supra note 462, at 647; GARETH EVANS, COOPERATING FOR PEACE: THE GLOBAL AGENDA FOR THE 1990S AND BEYOND 41 (1993) (noting
Potential benefits of regional organizations include military and political advantages, including familiarity with the conflict and a strong commitment to and interest in regional peace. Furthermore, as the Secretary-General of the United Nations notes in his report, the use of regional organization in military conflicts may strengthen the institutional capacity of the regional actors to mediate regional crises.475

The use of regional forces may also, however, create problems in Africa. Although Annan points to the ECOMOG intervention in Liberia as illustrative of the potential for successful regional operations, it may be disputed whether that initiative was indeed a success. Regional forces tend to reflect existing political tensions in the region. In Africa, a continent of fifty-two countries and hundreds of ethnic groups that cross boarders, regional organizations may reflect the divisions in the countries from which they draw their membership. Some observers note that the ECOMOG action in Liberia may have aggravated tensions in the civil war for this reason.476 Serious Anglophone-Francophone divisions occurring within ECOMOG were reported during the Liberia action.477 For example, as Anglophone countries pushed a major offensive against a rebel group in Liberia, Francophone countries resisted increased ECOMOG involvement.478

Furthermore, particular states may have a vested interest in capturing power in the regional organization. Since 1990, only Nigerians have commanded ECOMOG.479 This has lead to a situation in which ECOMOG is equated with Nigeria, and its credibility tied to Nigerian credibility.480

---

475. See The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa, supra note 1, para. 41.
476. See Howe, supra note 69, at 161; see also, Binaifer Nowrojee, Joining Forces: United Nations and Regional Peacekeeping—Lessons from Liberia, 8 HARV. HUM. RTS. J. 129, 137 (1995) (explaining that peacekeepers have helped prolong the conflict).
477. See Howe, supra note 69, at 161.
478. See id.
479. See id.
Finally, the existence of regional organizations within the framework of the United Nations carries with it the risk that the regional organization will ignore its place in the international system and act without the Security Council’s approval. It is precisely this dynamic that has occurred in West Africa, first in the case of Liberia and again in Sierra Leone. As noted above, ECOWAS may rightfully be regarded as a regional organization under Chapter VIII of the United Nations Charter. The Security Council itself confirmed this interpretation when it evoked Chapter VIII of the Charter to authorize ECOWAS to enforce sanctions against Sierra Leone. Under Chapter VIII of the United Nations Charter, ECOWAS action in Sierra Leone required authorization by the Security Council that was absent at the time of the action. Although the ultimate result of the ECOWAS action in Sierra Leone may be applauded, the long-term stability of the international legal system requires regional organizations to act within the framework set out in Chapter VIII of the United Nations Charter.

With the end of the Cold War, Africa no longer attracts the attention of superpowers seeking to influence regional politics. While the United States once rushed to the aid of pro-democratic movements in countries such as Angola and Mozambique, the end of a bipolar international system has led to a loss of urgency in the international community’s approach to Africa. When Burundi imploded in 1996 and the United Nations called upon sixty non-African countries to form a standby peacekeeping force, only one state, Bangladesh, agreed. As the failure of the international community to react to the genocide in Rwanda indicates, Africa can not rely on the international community to provide forces when necessary to support peace and political stability. For this reason it is necessary that African

---

481. See supra notes 203-11 and accompanying text (analyzing whether ECOWAS is a United Nations Article VIII organization).
482. See S.C. Res. 1132, supra note 37, para. 8.
484. See Howe, supra note 69, at 163.
states develop organizations with the capacity to intervene when authorized by the Security Council.

**CONCLUSION**

The international community’s increasing acceptance of the use of force to restore democratically elected governments overthrown by *coup d'etats* does not necessarily mean that such actions will prove successful in the long run. Even a democratically elected government cannot be successful if it is permanently dependent on a foreign military power to guarantee its security. Democracy must be the autochthonous expression of the political will of a country's populace to survive. In newly democratic states confronted with serious economic problems and the heritage of a long civil war, democracy will often prevail only if the international community—most critically the United Nations—supports the evolution from a fragile peace to stable and prosperous democracy. In Sierra Leone, the restoration of the democratically elected government may be regarded as a first step in this evolution process. To take root, this first step must be followed by the development of a civil society comprising democratic values. Sadly, recent outbreaks of renewed fighting in Sierra Leone suggest that the country will continue to struggle in its transformation to a full democracy. Ultimately this transformation may require the assistance of the international community of states.

---


It is ironic that in the case of Sierra Leone a democratically elected government was restored primarily through the efforts of one of Africa’s most notorious military regimes. Nigeria’s struggles with repressive governance have long occupied the United Nations. In November 1995, following the hanging of nine Nigerian human rights activists, the General Assembly adopted a resolution condemning the arbitrary executions and expressing deep concern about the human rights situation in the country. In 1996, the Commission on Human Rights noted the continuing deterioration of the human rights situation in Nigeria and called upon the military government of General Sani Abacha to ensure observance of human rights, specifically by restoring habeas corpus; by releasing all political prisoners, trade unionists, human rights advocates, and journalists in detention; by guaranteeing freedom of the press; and by insuring the respect for the rights of all people, particularly members of minorities. In 1997, the United Nations General Assembly again expressed concern about the on-going human rights violations in Nigeria. Clearly the military regime had everything to gain and nothing to lose by intervening in the affairs of its West African neighbors. The intervention in Sierra Leone provided Nigeria with the opportunity to redeem its own failings in the eyes of the international community, allowed it to gain a foothold in a country with significant diamond reserves, and provided an excuse to keep its own potentially menacing military engaged abroad.

Given the international community’s increasing acceptance of pro-democratic interventions and the promising role of regional organizations in carrying out those interventions, it cannot escape notice that the Nigerian government, ECOWAS’s greatest supporter, nullified the results of that country’s democratic elections in 1993.


490. See AMNESTY INT’L, NIGERIA: TIME TO END CONTEMPT FOR HUMAN RIGHTS, DOC. NO. AFR44/14/96, Nov. 6, 1996, at 1.
While the international community welcomes the ECOWAS action in restoring democracy to Sierra Leone, the ultimate challenge for ECOWAS may be to facilitate the peaceful transition to democracy in Nigeria. Recent developments in Nigeria signal tentative movement toward such a transition. Following the death of General Sani Abacha, Nigeria's new leader, General Abdulsalami Abubakar, began to release political prisoners in August of this year, and on December 5, 1998, Nigerians voted in democratic local elections. The elections, generally recognized as "credible," are the first in a series of scheduled elections designed to bring democracy to the highest and lowest levels of governance in Nigeria. Not until this process is complete will Nigeria's self-appointed role as regional defender of democracy be legitimized.
