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# Humanitarian Intervention by Regional Organizations Under the Charter of the United Nations

by Kiho Cha

## I. INTRODUCTION

The use of collective force originally envisioned that threats to peace and security would be manifested in a conventional military context, generally involving armed conflict across recognized state borders. In recent years, the Security Council has authorized hitherto non-traditional, "humanitarian interventions" in Somalia, Haiti, Rwanda, and the former Yugoslavia under Articles 41 and 42 of the UN Charter. These interventions, and the corresponding resolutions, form the foundation for enlarging the scope for defining what constitutes a credible threat or breach to international peace.

The steady erosion of traditional powers to expend their resources for any intervention, humanitarian or otherwise, has compelled regional actors to play a more robust role in implementing Council resolutions. In many cases, regional arrangements or agencies possess a potential that should be used in humanitarian interventions, particularly when the consequences of these violations cross international borders. Regional action as a matter of decentralization, delegation, and cooperation with complementary UN efforts would not only lessen the burden of the United Nations, but could potentially offer more effective means of conflict management.

The legal foundation for regional organizations to undertake enforcement actions is found in Article 53, Chapter VIII of the UN Charter, wherein the Security Council is granted the power to employ a regional agency under its authority for the implementation of coercive measures. This paper will examine the scope of Article 53 as posited by jurisprudential interpretation of the UN Charter, customary international law, and a newly evolving body of legal pronouncements on the ethical and moral dimensions of humanitarian intervention. It will also address practical considerations in the actual implementation of Article 53, introducing a set of guidelines for employing and adopting coercive measures by regional organizations in situations of grave humanitarian crises.

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## II. THE SCOPE OF ARTICLE 53

Article 53 empowers regional organizations to develop enforcement measures as contemplated in the Charter. Paragraph 1 reads, in part:

*The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.*

The drafters of the UN Charter acknowledged the utility of regional actors in international conflict management. Article 53 of the United Nations Charter under Chapter VIII could be invoked to authorize regional arrangements for enforcement action although the Article further provides its limitation, that is, “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.”

### A. Enforcement Action

In its broadest formulation, “enforcement action” refers to all coercive action other than valid defensive action,<sup>1</sup> intending to cover any and all military measures as contemplated under Article 42 as well as nonmilitary measures under Article 41.<sup>2</sup> The regional system of collective security is generally co-extensive with the enforcement actions authorized and enumerated under Chapter VII. Although peacekeeping activities could be performed under various guises, if their mandate includes the authority to use coercive force, either against the sovereign power or against an insurgent group, it would constitute the use of “enforcement action” and thus come under the rubric of Article 53.

### B. Regional Organizations

For purposes of this paper, regional organizations will be defined as a union of states closely linked in territorial terms or an international organization based upon a collective treaty, whose primary focus is the maintenance of international peace and security within the framework of the United Nations.<sup>3</sup> There is general agreement that the Organization of American States (OAS),<sup>4</sup> the Organization of African Unity (OAU) and the League of Arab States<sup>5</sup> all possess the necessary attributes to be conferred the status of regional organization.

It is widely recognized that the Security Council has primary subject matter jurisdiction on issues related to the maintenance of international peace and security, in accordance with the powers conferred on it under Article 24, while regional organizations exercise subsidiary jurisdiction:

*There is overwhelming support for a Charter interpretation that the United Nations has jurisdiction over all matters affecting international peace and security and that deference to regional jurisdiction is a matter of pragmatic judgment rather than Charter requirement.<sup>6</sup>*

As such, the Security Council would seem to have authority under Articles 24, 25, 39, 51, 52 and 53 taken together, to revoke regional jurisdiction by adopting a resolution condemning its action in the handling of any issue affecting international peace and security,<sup>7</sup> thereby terminating its authority. Both Articles 51 and 54 create a comprehensive obligation for regional arrangements to report their activities to the Security Council.

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Article 53 postulates that the constitution of the regional organization should be in conformity with the enforcement measure contemplated. Hence, the activity of the regional organization under Security Council authorization may not be *ultra vires*, i.e., it cannot exceed the scope of powers defined by its own charter. It is understood that the provisions in a regional charter could not, under any circumstances, contravene the UN Charter; if so, Article 103 would make UN rights and obligations preeminent should they come into conflict with the provisions of a regional charter.

*C. Humanitarian Intervention as Enforcement Action*

“Humanitarian intervention” has been defined as the threat or use of armed force without the agreement of the target state to address a humanitarian disaster, in particular caused by grave and large-scale violations of fundamental human rights.<sup>8</sup> These infringements may manifest themselves in the form of crimes against humanity, genocide and war crimes, including enslavement, arbitrary and summary executions, torture, cruel, inhuman or degrading punishment, rape, mass deportations, involuntary disappearances, and “ethnic cleansing.”<sup>9</sup>

Recent UN resolutions have authorized humanitarian interventions under Chapter VII in response to large-scale violations of human rights, thus giving a broad interpretation of Article 39 of the Charter. The Security Council in resolution 755 (1992) charged NATO with the task to create “the necessary conditions for the unimpeded delivery of humanitarian supplies,” in particular with supplying food, supporting the besieged city of Sarajevo and establishing a security zone encompassing Sarajevo and its airport. In UN Doc. S/24540 (1992), the Security Council called upon states to take the above measures “nationally or through regional agencies or arrangements.” This example was later followed by the adoption of resolutions authorizing Chapter VII operations in Rwanda<sup>10</sup> and Haiti,<sup>11</sup> both of which noted the humanitarian character of the authorized operation. In Somalia, the Security Council authorized intervention in an essentially internal conflict under the terms of Chapter VII without invoking possible international dimensions of the conflict.<sup>12</sup>

There is thus an emerging body of law, with numerous Security Council resolutions as its underpinning, to treat humanitarian interventions as valid enforcement measures contemplated under Chapter VII.

*D. Humanitarian Intervention Absent Explicit Prior Security Council Authorization*

It has been argued that it is reasonable to interpret Article 53 to mean that Security Council authorization of "enforcement action" need not be prior authorization.<sup>13</sup> Meeker relies on the 1960 "Dominican Republic" case in which the Soviet Union proposed Security Council authorization of the OAS sanctions after these sanctions had already been imposed.<sup>14</sup> Moore also argues that "there seems to be no policy reason why the Security Council cannot authorize regional enforcement action at any stage, whether before or after such action has been taken."<sup>15</sup>

Members have also contended in the past that regional players are permitted to take "not-unauthorized" enforcement action. For instance during the Cuban Missile Crisis of 1962, the United States argued that the failure of the Council to disapprove regional action, and allow the quarantine to continue, amounted to authorization within the meaning of Article 53. Similar arguments could be advanced for the recent military campaign in Kosovo. NATO did not obtain the required Security Council authorization *before or after* its intervention, and the Security Council did not take action to either condemn or disavow NATO's unauthorized action.<sup>16</sup> Also, the United States and the United Kingdom have maintained no-fly zones in Iraqi airspace to prevent large-scale repression of Kurds in the north and Shi'ites in the south without authorization by the Security Council resolutions that ended Operation Desert Storm. In Liberia, Economic Community of West African States (ECOWAS) undertook an enforcement action in an essentially civil conflict without the proper authorization of the Security Council, and later justified by invoking "collective self-defense" under Article 51<sup>17</sup> and based on the tacit approval of the Council inferred from its silence.<sup>18</sup> Such independent recourse to the use of force, usually in the exclusive domain of the Security Council, may signal a shifting paradigm in the normative legal status of humanitarian interventions.

Neither current international law norms nor state practice provide a sufficient basis for unauthorized humanitarian intervention,<sup>19</sup> and thus regional authority to initiate coercive action without Security Council approval is severely circumscribed, unless it could be justified under Article 51.<sup>20</sup> Permitting retroactive decisions and allowing regional actors to infer authorization would be tantamount to usurping the prerogative and the vested rights of the Security Council, even with *prima facie* evidence justifying intervention under the banner of humanitarian concern:

Control is only guaranteed by clear and prior authorization, since the mechanism of control consists of the possibility of preventing enforcement actions. To hold otherwise would be to encourage illegal acts, because regional agencies would be tempted to initiate enforcement actions in the hope that the SC would give its authorization afterwards.<sup>21</sup>

Inasmuch as the UN Charter is a legislative text, such *ex post facto* application of Article 53 would be problematic and untenable.<sup>22</sup> The exercise of such a unilaterally posited right – by any state or group of states – to engage in humanitarian intervention would undermine the basic integrity of the UN Charter.<sup>23</sup> The requirement that regional organizations obtain clear Security Council authorizations prior to conducting enforcement actions also acts as an institutional and procedural safeguard against “pretextual interventions.”

#### *E. Humanitarian Assistance in Lieu of Humanitarian Intervention*

Humanitarian “intervention” should be distinguished from humanitarian “action” or “assistance”, which typically involve the use of non-coercive measures (and therefore outside the scope of Article 53). In the event the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security, regional organizations could submit the matter to the General Assembly under the Uniting for Peace resolution, which could then adopt a resolution *recommending Chapter VI* action. Such a resolution, however, not only falls outside the purview of Article 53 (thus not empowered to call for humanitarian intervention), but is also non-binding on Member States. Also, many members of the General Assembly, most notably the G-77 and others in the developing world, do not endorse measures putatively violating their sovereignty, making Resolution 377 an ineffective secondary tool for even humanitarian assistance.

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Regional organizations do have a right of action independent of the Security Council, as long as the doctrine of unilateral humanitarian assistance does not come into conflict with Article 53. Regional organizations could rely on other Articles of the UN Charter to initiate humanitarian assistance not constituting enforcement actions. Article 56 of the Charter calls for members to take “*joint and separate action* in co-operation with the Organization” to promote “higher standard of living, full employment, solutions of international economic, social, health and related problems and universal respect for, and observance of, human rights and fundamental freedoms for all”. Article 56 could be used as a legal underpinning for at least some form of unilateral humanitarian assistance not requiring Security Council mandate (it could also be used as a foundation for advancing the view that protection of fundamental rights should override the “domestic jurisdiction” clause in Article 2(7)). Also, regional organizations could take non-coercive Chapter VI measures under Article 52, an independent legal basis for regional action that carries its own authorization.

Humanitarian assistance should encompass peace-building as well as traditional peacekeeping mandates, and envisages forming the building blocks for institutions of “liberal constitutionalism,”<sup>24</sup> e.g. provide electoral assistance, strengthen democratic structures, stress the importance of the rule of law and good governance in general.

These peacemaking and peace-building functions,<sup>25</sup> however, are undertaken outside the scope of Article 53.

*F. Humanitarian Intervention vs. Sovereignty*

Because Article 53 powers could only be exercised within the confines of Chapter VII, the ever-mutating principle of humanitarian intervention must reconcile the conflict between two norms – the respect for territorial integrity and sovereign authority of states and the respect for human rights and humanitarian concerns. Respect for state sovereignty, with its corollary of non-interference, is enshrined in Articles 2(4) and 2(7) of the UN Charter. Despotism is likely to resist perceived threats to sovereignty or hide behind the talisman of sovereignty and invoke Article 2(7) of the Charter as a buffer against the predatory designs of stronger states, real or imagined.

However, the practical reality of global events has led to the relaxation of the rigors of international norms preventing states from using the principle of non-interference as a protective barrier; the self-serving affirmation to sovereignty has lost much of its resonance in a world no longer defined by the nation-state. A recent example of the erosion of national sovereignty in the interest of human rights could be extrapolated from the British Law Lords' decision in March 1999 concerning the extradition of the former Chilean President Augusto Pinochet. The Law Lords ruled that the defendant would not be able to invoke the doctrine of state immunity as a legal shield against prosecution for "international crimes", thus making state sovereignty more permeable in the face of broad violations of human rights.

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Also, the language of Article 2(7) contains a qualifying clause where the promotion and protection of human rights under Article 1(3) is given primacy over the respect for state sovereignty. Article 2(7) reads, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state. . . . This principle shall not prejudice the application of enforcement measures under Chapter VII." Article 2(7) does not, therefore, prejudice the right of the Security Council to adopt an intrusive, coercive approach in order to safeguard international peace and security. International legal norms have emerged to neutralize the principle of absolute and unbounded sovereignty, thus ending its use as a protective barrier behind which humanitarian crises is allowed to fester unattended.

The ethical foundation for humanitarian intervention, as articulated by scholars such as Fernando R. Tesun, is also based on the "natural rights" of individual citizens:

*Because the ultimate justification of the existence of states is the protection and enforcement of the natural rights of the citizens, a government that engages in substantial violations of human rights betrays the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well. Consequently, foreign armies are morally entitled to help victims of oppression in overthrowing dictators, provided that the intervention is proportionate to the evil which it is designed to suppress.<sup>26</sup>*

The basis for humanitarian intervention should therefore rest with the centrality of individual human rights. Priority should shift from the self-interest and self-preservation of states and the state as a prime structural component of international action as envisioned in the 1648 Treaty of Westphalia to the protection of individual citizens as the prime object of international affairs.

Many transnational idealists, such as Tesün, have advocated humanitarian intervention on the grounds that it is consistent with the principle of sovereignty as the purpose of intervention is to enable the state to resume responsibility for itself and resuscitate the state entity. Humanitarian intervention, in short, furthers the underlying justification for state sovereignty in the long run.

### III. IMPLEMENTATION OF ARTICLE 53

#### A. Guidelines for Humanitarian Intervention

It is important to establish a set of guidelines for humanitarian intervention to ensure that the principles of non-intervention and the sanctity of sovereign authority are not superceded by arbitrary or self-serving reasons. Gerard Elfstrom has developed a useful working set of criteria for humanitarian intervention:

- (1) The violation of rights of these citizens must be extreme and obviously serious, involving the systematic violations of the most basic rights such as the right to life, to human dignity, to freedom of expression, or to political activity;
- (2) The citizens being abused must no longer be capable of remedying the abuse by themselves;
- (3) The abused individuals must be clearly desirous of outside aid or may reasonably be presumed to be desirous of assistance;
- (4) Normal authorities charged with dealing with such cases must be either unable to respond or unwilling to respond, assuming that authorities who have responsibility to oversee the abuses in question exist.<sup>27</sup>

The Security Council could use and incorporate such guidelines to determine whether the minimum conditions necessary for intervention are present in any given situation. Notwithstanding the above guidelines, humanitarian intervention could only be administered unevenly because the capability and the willingness to act depend largely on the strength and the strategic value of the target nations. Investing the entire normative legal framework for humanitarian intervention on the Security Council also presents its own set of problems and difficulties, including the question



of double standards and the Council's history of inconsistent exercise of its unfettered discretion.

As a practical matter, this confines humanitarian intervention to acting against relatively weak and peripheral countries because neither the UN nor regional organizations are fully empowered to launch a global crusade to moderate every state behavior. It will thus not be feasible for regional organizations to undertake humanitarian intervention to save every state from the perils of volatile movements spawned by resurgent ethnic, national and religious passions. Other imperatives will compel regional organizations to consider issues other than the immediate need for humanitarian intervention to assess the wisdom of intervening.

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*B. Practical Advantages of Subcontracting Regional Organizations*

Beyond espousing shared principles on conflict prevention and management, there are practical advantages (and perceived disadvantages) to using a decentralized model for enforcement of international law under Article 53. Policies favoring regional authority include the principle that those with greater values at stake ought to have greater participation in the decision-making process, the advantages of maximizing the use of local expertise and deference to consensual arrangements submitting local disputes to regional authority.<sup>28</sup> In terms of collective action, regional organizations are "inclined to respond with far greater speed and vigor to a security threat in their own area than to a distant danger whose focal point is far from their own frontiers."<sup>29</sup> The regional organization's greater local expertise and interest could presumably enable it to treat the sources, rather than just the symptoms, of conflict – this may very well be accompanied by a more sustained peacemaking efforts to alleviate the humanitarian crisis.

Legitimate concerns and apprehensions have been expressed that humanitarian intervention could be used as a mere ruse for a power play to advance regional hegemony in which self-interest is employed in the guise of humanitarianism, or the initial intervention subsequently deviates from the putative humanitarian mandate. Also, notwithstanding the requirement that enforcement measures should be commensurate with the objective, duration and level of force necessary (the doctrine of proportionality) to carry out humanitarian interventions, there is a lurking danger that a major regional power could exceed established parameters for such enforcement measures.

The likelihood of such abuse, however, is minimized under Article 53 because the decision to intervene and the action itself will be multilateral in nature – regional actions are thus less likely to be swayed by special interests than unilateral action. For example the OAS operates on consensus and unanimity, and all actions falling outside of OAS resolutions are voluntary.<sup>30</sup> Furthermore, the language of Article 53 provides

that regional arrangements or agencies should not be able to use force on their own initiative, thereby substantially reducing the danger that local arrangements might degenerate into simple aggressive alliances incompatible with the aims and policies of the United Nations.<sup>31</sup> The drafters of the Charter clearly stipulated that regional enforcement action should not be undertaken without the approval of the Security Council, and that it should be kept informed of regional action relating to peace and security.<sup>32</sup> In cases where the peril of bias and abuse by a predatory power outweighs the benefits of humanitarian intervention, the Security Council could withhold authorization to the regional organization to intervene. There are thus procedural safeguards and institutionalized checks and balances under Article 53 against parochial and myopic state interests, and any divergent political aspirations are restrained by the need to reach a commonality of purpose amongst the sovereign members of the regional organization.

In practice, however, the concern should be focussed on whether regional organizations will display enough concern to act and whether they could mobilize the necessary political will and resources at a time where cold disinterest to people in distress appears to be the norm. Such international indifference, coupled with the attendant danger and cost of intervening, could circumscribe the effective use of Article 53. In general, regional organizations will be motivated to act in response to humanitarian crises only if they have wider geopolitical or symbolic impact beyond sovereign borders.<sup>33</sup> The unwillingness of Member States to provide the necessary military and financial resources in sufficient quantities will seriously hamper the regional organizations' capacity to underwrite enforcement measures.

Recognizing the enumerated advantages, many regional multilateral organizations have created mechanisms to support preventive diplomacy in countries threatened by incipient or escalating crises. Members of what is now the Organization of Security and Cooperation in Europe (OSCE) committed in their Charter of Paris for a New Europe to "seek effective ways of preventing, through political means, conflicts which may yet emerge."<sup>34</sup> The OSCE has since dispatched missions to several areas in Central Europe and states of the former Soviet Union. The Organization of African Unity (OAU) in 1993 established a new mechanism that has "as a primary objective, the anticipation and prevention of conflicts," and activated it in Congo (Brazzaville) in 1993 and Rwanda in 1993-94.<sup>35</sup>

### *C. The Role of the United Nations and the International Community*

In order for regional organizations to play a more active role in executing coercive Chapter VIII measures, the relevant organs of the United Nations and individual Member States must be fully engaged in augmenting the regional organizations' capacity for humanitarian intervention. The United Nations should intensify its efforts to promote cooperation with regional organizations in developing modalities for pre-conflict and post-conflict peace-building activities. Under Article 53, the United Nations could devolve responsibility to regional organizations for the logistical and financial aspects of peace and security operations.<sup>36</sup>

There have been a few instances where the “sub-contracting” or “outsourcing” model had been applied. The United Nations has, for instance, established a liaison office at the OAU headquarters in Addis Ababa with a view towards enhancing its capacity to prevent, contain and resolve conflicts. The United Nations has also lent political and financial support to several regional and sub-regional initiatives, e.g., a small UN observer group to the ECOWAS-led ECOMOG (ECOWAS monitoring group) mission in Liberia and Sierra Leone. Beyond these links, the Australian foreign minister Gareth Evans proposed that the UN Secretariat deploy staff members in the same cities as the headquarters of regional organizations for collecting and assessing early warning information.<sup>37</sup> Developed countries could also be pressed into assisting, either directly or indirectly by channeling aid through the United Nations fledgling regional organizations to enhance their collective security enforcement capacity.

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#### IV. CONCLUSION

Although the Security Council maintains its preeminent role as the primary actor in peace and security issues and remains the locus of decision-making on those matters, regional organizations could take authorized unilateral or collaborative enforcement measures in areas where they could optimize their comparative advantage in managing conflict. By building into a regional organization’s collective force structure numerous conflict prevention and resolution methods appropriate to the region, a regional organization could help to reduce the onus placed on the UN and the major powers with regard to implementing resolutions in response to humanitarian crises.<sup>38</sup>

Regional organizations exercise subsidiary jurisdiction over matters pertaining to international peace and security, and as such, cannot supplant the universal authority of the Security Council in dispute settlement formulations where enforcement measures are contemplated. The powers of the Security Council under the UN Charter remain unencumbered and unimpaired by the imperatives of any regional organization or agency, and as such the carefully calibrated use of Article 53 in undertaking humanitarian intervention will ultimately rest with the decision-making process initiated at the Security Council. Any abdication of responsibility by the Security Council will create a parallel diminution in the capacity for regional organizations to respond to humanitarian crises predicated on the available legal mechanism. A dormant or paralyzed Security Council may intensify the debate on whether a set of criteria for humanitarian intervention should be codified, potentially reducing or even

circumventing the role of the Security Council in defining the contours of what constitute threats to peace and security.

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## **The Security Council and the regional organizations must thus work in tandem to ensure effective and timely humanitarian intervention.**

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The Security Council and the regional organizations must thus work in tandem to ensure effective and timely humanitarian intervention: the former to provide the requisite “green light” so that the latter could execute the adopted resolution using Chapter VIII enforcement actions rooted on international legitimacy. While the application of Article 53 could optimize the comparative advantages of the UN and the regional organizations in undertaking humanitarian interventions, more should also be done in terms of early and preventive actions before the situation ripens into a humanitarian crisis. The United Nations, together with the regional agencies, should enhance its early warning system that can detect and recognize the threat or risk of a conflict (with humanitarian dimensions), thus preventing the outbreak of such crises and obviating the need to invoke Article 53.

### **Notes**

The views and opinions expressed in this article are those of the author and do not represent the views of the United Nations or its affiliated organizations.

<sup>1</sup> Moore, J. N., “The Role of Regional Arrangements in the Maintenance of World Order”, in *The Future of the International Legal Order* (Falk, R.A./Black, 1971): 153.

<sup>2</sup> Hambro, E., *Charter of the United Nations: Commentary and Documents* (3d ed. 1969): 365. Some have argued that the application of economic sanctions under Article 41 has not been traditionally considered an “enforcement action” within the realm of Chapter VIII jurisprudence. Borgen, C. J., “The Theory and Practice of Regional Organization Intervention in Civil Wars”, *NYU JILP* (Summer 1994): 803. In 1960, when the Organization of American States voted for collective economic measures against the Dominican Republic, the Security Council concluded that “article 53 does not apply to nonmilitary measures of the kind indicated in Article 41”. U.N. Docs S/PV.874 and S/PV.875.

<sup>3</sup> Simma, B., *The Charter of the United Nations: A Commentary* (Munich: Beck, 1994): 699.

<sup>4</sup> The OAS is one of the few organizations that explicitly stated in its Charter that it intended to be a UN Chapter VIII regional organization. *Charter of the Organization of American States*, Apr. 30, 1948, 2 U.S.T. 2394, as amended by the 1967 Protocol of Amendment, 21 U.S.T. 607 (effective Feb. 27, 1970).

<sup>5</sup> Although the League of Arab States claimed at one point that it should not be considered a Chapter VIII regional organization, it has taken part in peacekeeping activities in Lebanon, thus bringing it closer to Chapter VIII oversight.

<sup>6</sup> Moore, *Supra.*, p. 144.

<sup>7</sup> *Ibid.*, p. 150.

<sup>8</sup> Advisory Council on International Affairs/Advisory Committee on Issues of International Law: “Humanitarian Intervention” (The Hague, AIV/CAVV, 2000): 2.

<sup>9</sup> International Peace Academy Conference Report: “Humanitarian Action: A Symposium Summary” (New York, 2000): 3.

<sup>10</sup> S/RES/929 (1994).

<sup>11</sup> S/RES/940 (1994).

<sup>12</sup> S/RES/794 (1992).

<sup>13</sup> Meeker, L.C., "Defensive Quarantine and the Law", *AJIL* 57 (1963): 521.

<sup>14</sup> *Ibid.*, p. 520.

<sup>15</sup> Moore, *Supra.*, p. 159.

<sup>16</sup> Bruno Simma justified NATO action on the grounds that it made every effort to remain "close to the law" by following and linking its efforts to the resolutions of the Security Council and by stating that the action taken was an urgent measure to prevent a larger humanitarian crisis. Simma, B., "NATO, the UN and the Use of Force: Legal Aspects", *EJIL* 10 (1999): 22.

<sup>17</sup> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security".

<sup>18</sup> Borgen, *Supra.*, p. 829.

<sup>19</sup> AIV/CAVV, *Supra.*, p. 20.

<sup>20</sup> Article 51 was written "to allow a measure of autonomy for regional and other groupings in case of an armed attack," but it was placed in Article VII as opposed to Article VIII to make clear that it was a right that was not only held by regional arrangements, but by all states. Hambro, *Supra.*, p. 364.

<sup>21</sup> Simma, *Supra.*, p. 734.

<sup>22</sup> *Ibid.*, p. 734.

<sup>23</sup> AIV/CAVV, *Supra.*, p. 23.

<sup>24</sup> Zakaria, F., "The Rise of Illiberal Democracy", *Foreign Affairs*, Vol. 76 No. 6 (November/December 1997).

<sup>25</sup> "Peacemaking" addresses conflicts in progress, attempting to bring them to a halt using the tools of diplomacy and mediation. "Peace-building" defines activities undertaken to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war (A/55/305-S/2000/809).

<sup>26</sup> Adelman, H., "The Ethics of Humanitarian Intervention: The Case of the Kurdish Refugees," *Public Affairs Quarterly* 6 (January, 1992): 64-5.

<sup>27</sup> *Ibid.*, p. 67.

<sup>28</sup> Moore, *Supra.*, p. 137.

<sup>29</sup> *Ibid.*, p. 138.

<sup>30</sup> McDougall, B., "Haiti: Canada's Role in the OAS", *Herding Cats: Multiparty Mediation in a Complex World* (United States Institute of Peace Process: Washington, D.C. 1999): 393.

<sup>31</sup> Simma, *Supra.*, p. 732.

<sup>32</sup> Article 54 states that "[t]he Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security."

<sup>33</sup> Lund, M.S., *Preventing Violent Conflicts: A Strategy for Preventive Diplomacy* (United States Institute of Peace Process, Washington, D.C., 1996): 81.

<sup>34</sup> Conference on Security and Cooperation in Europe, Charter of Paris for a New Europe, Meeting of the Heads of States and Governments of the Participating States, Paris, November 19-21, 1990: 6.<sup>35</sup> OAU Assembly, Declaration of the Assembly of Heads of State and Government on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management, and Resolution, 29th Ordinary Session, June 28-30, 1993, Cairo, Egypt. Document AHG/Decl.3 (XXXIX) Rev.1: 7.

<sup>36</sup> O'Brien, D., "Regional Burden-Sharing for Humanitarian Action", New York University Center on International Cooperation (April 1999): 20.

<sup>37</sup> Lunde, *Supra.*, p. 173.

<sup>38</sup> Jividen, D. D., "It Takes a Region: A Proposal for an Alternative Regional Approach to UN Collective Force Humanitarian Intervention", 10 *USAFA J. Leg. Stud.* 109 (1999/2000): 133.

