

## THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES AND THE REGIONAL USE OF FORCE

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### I. INTRODUCTION

The legality of the use of force by regional organizations for humanitarian reasons, otherwise known as humanitarian intervention, is a hotly contested issue. The United Nations Charter specifically prohibits the use of force except in limited circumstances, which do not literally include humanitarian intervention.<sup>1</sup> However, regional organizations have consistently cited humanitarian intervention as the basis for using force within sovereign states without the consent of the United Nations Security Council or, sometimes, the consent of the government of the state within which force is used.<sup>2</sup> The consistent practice of these organizations has resulted in a variety of legal justifications for the use of force, ranging from creative interpretations of the Charter to notions of implied consent from the Security Council.<sup>3</sup>

The Economic Community of West African States (“ECOWAS” or “the Community”), a passive economic conglomerate of African nation states, and the Economic Community of West African States Cease-Fire Monitoring Group (“ECOMOG”), the paramilitary peacekeeping wing of ECOWAS, maintain a significant role in the development of legal justifications for regional use of force. Although the policy and actions of African nations has not typically been given much deference in the international legal arena, ECOWAS’s actions in Liberia and Sierra Leone at a minimum establish consistent practice which can be used as precedent for other regional organizations. However, ECOWAS’s actions have

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1. U.N. Charter art. 2, para. 4; U.N. Charter art. 51.

2. See, for example, the NATO intervention within the former Yugoslavia; OAS intervention; ECOWAS intervention within Liberia.

3. See THOMAS M. FRANCK, RECOURSE TO FORCE 139 (2002) (describing the “law of mitigation” as well as the alternative of reinterpretation).

arguably begun the process of creating a sufficient legal basis for reinterpreting the Charter to include implicit authorization under Article 53 of the U.N. Charter.<sup>4</sup>

The purpose of this paper is to analyze the validity of the legal justifications, both official and theoretical, for ECOWAS's actions in Liberia and Sierra Leone, as well as to assess the practical impact of these justifications for future use of force, and to establish criteria for justification of humanitarian intervention with regional action particularly in mind.

Human rights are an area of increasing concern to the international community, and the repeated violation of human rights in incidents such as Liberia, Somalia, Kosovo, and Darfur requires that the legal criteria for forceful humanitarian intervention be substantially established. However, the criteria should not only be aimed at protecting human rights, but also avoiding possible misuse of the doctrine by states with alternative motives.<sup>5</sup>

## II. BACKGROUND

An adequate understanding of the legal issues involved requires a proper context of both the history and original intentions of ECOWAS as well as the development of the use of force within the international law over time, in particular the role of the U.N. Charter and various theoretical bases for force. Furthermore, although not necessary, a moral understanding of humanitarian intervention allows for greater perspective in analyzing the issues and may provide a greater insight into the need for sound international law regarding humanitarian intervention.

### A. *Definition of Humanitarian Intervention*

For this analysis, humanitarian intervention will be defined as an individual state or collection of states interfering in the affairs of a foreign state through use or presence of armed forces to prevent the violation of human rights. This definition incorporates actions for the purposes of protecting a state's own citizens abroad and protecting a foreign state's citizens from violations. Furthermore, the term "human rights" includes any of the provisions of the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the Genocide Convention.<sup>6</sup>

### B. *History of ECOWAS*

On May 28, 1975, fifteen West African countries signed the Treaty of Lagos establishing ECOWAS.<sup>7</sup> The original agreement was signed by Benin (formerly

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4. *Id.*

5. For example, the Ugandan intervention in Angola was possibly motivated by long-standing hostilities towards one another.

6. See International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm); Universal Declaration of Human Rights, G.A. Res. 217A(III) (1948), available at <http://www.unhchr.ch/udhr/lang/eng.htm>; Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260(III) (1948), 78 U.N.T.S. 277, available at <http://www.hrweb.org/legal/genocide.html>.

7. Treaty of the Economic Community of West African States (ECOWAS), May 28, 1975, 1010 U.N.T.S. 17 [hereinafter Treaty of Lagos] (founding treaty establishing ECOWAS).

known as Dahomey), Burkina Faso (formerly known as Upper Volta), Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.<sup>8</sup> Cape Verde joined the community in 1976 as the 16<sup>th</sup> member and Mauritania left it at the end of 1999, although at the time of the interventions all 16 members were still part of ECOWAS.<sup>9</sup>

The original intention of the Community comes from Article 2 of the Treaty of Lagos. The stated purposes are “promot[ing] co-operation and development in all fields of economic activity” as well as increasing the standard of living, maintaining economic stability, and fostering closer relations between its member states.<sup>10</sup> The Treaty established four main institutions including the Authority of Heads of State and Government (“Authority”), which controls the executive functions of the Community, and the Executive Secretariat, which controls the daily operations.<sup>11</sup> The bulk of the Treaty at Lagos deals with trade, tax, customs, and monetary regulation in addition to future requirements of “harmonization” and co-operation between member states.<sup>12</sup> Enforcement of the provisions of the Treaty of Lagos is handled by the Tribunal of the Community, which can only settle disputes between treaty parties,<sup>13</sup> The Authority, which can suspend members from the Community,<sup>14</sup> and the Council of Ministers, which can impose unspecified measures to remedy disparity between member states.<sup>15</sup> Notably, a military wing was not originally incorporated into the Treaty of Lagos, although Article 4 does allow for creation of special commissions in the future.<sup>16</sup>

ECOWAS soon realized the importance of military peace within the Community. Three years after its inception, the Community issued the Protocol on Non-Aggression which stated that it “cannot attain its objectives save in an atmosphere of peace and harmonious understanding among the Member States.”<sup>17</sup> The protocol reaffirms the prohibition on force in the U.N. Charter and extends the prohibition to acts of “subversion, hostility, or aggression” against the territory or political structure of member states.<sup>18</sup> The primary intentions of the protocol were

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8. *Id.*

9. S.K.B. ASANTE, *THE POLITICAL ECONOMY OF REGIONALISM IN AFRICA 1* (Praeger Publishers 1986).

10. Treaty of Lagos, *supra* note 7, at art. 2.

11. *Id.* at art. 4.

12. *Id.* at arts. 30, 34-36.

13. *Id.* at art. 11 (Article 11 also allows the Tribunal to “ensure the observance of law and justice in the interpretation of the provisions”).

14. *Id.* at art. 54 (Article 54 mentions suspension from participation in ECOWAS activities in response to non-payment of required contributions).

15. *Id.* at art. 32 (Article 32 does not specify the types of measures to be used, only that the measures should be “designed to promote the industrial development of Member States”).

16. *Id.* at art. 4(1)(e) (enabling the Authority to create new commissions “as it deems necessary”).

17. Protocol on Non-Aggression pmb., Apr. 22, 1978, 1690 U.N.T.S. 39, available at [http://www.iss.co.za/af/regorg/unity\\_to\\_union/pdfs/ecowas/14ProtNonAggre.pdf](http://www.iss.co.za/af/regorg/unity_to_union/pdfs/ecowas/14ProtNonAggre.pdf).

18. *Id.* at art. 2 (Article 2 augments the reaffirmation of the U.N. Charter located in the preamble).

to require the use of peaceful means of dispute resolution<sup>19</sup> and to prevent foreigners from using a member state as a base for subverting other states.<sup>20</sup>

The Protocol on Non-Aggression was supplemented in 1981 by the Protocol Relating to Mutual Assistance of Defence (“Mutual Defence Protocol”). The Mutual Defence Protocol “firmly resolve[d]” to safeguard the sovereignty of member states from foreign intervention.<sup>21</sup> Also, an element of collective defense was added to ECOWAS by requiring mutual assistance against any armed threat and defining that a threat against one member state constituted a threat against the whole Community.<sup>22</sup> Furthermore, the protocol established the framework for collective intervention by creating the Allied Armed Forces of the Community (“AAFC”), a military force comprised of national units contributed by member states,<sup>23</sup> and requiring action in two circumstances: failure of peaceful means of settlement required by the Protocol on Non-Aggression; or “[i]n case of internal armed conflict within any Member State engineered and supported actively from outside likely to endanger the security and peace in the entire Community.”<sup>24</sup> Although the plain language of the protocol appears to authorize intervention in internal conflicts such as civil wars that are externally supported, this type of intervention is tempered by the need for a legitimate territorial defense of a member state as well as the extension of the conflict outside of “purely internal” bounds.<sup>25</sup>

The final step towards the use of military force by ECOWAS was the creation of the Community Standing Mediation Committee (“SMC”) in May of 1990 in reaction to the crisis in Liberia. The SMC was comprised of the Chairman of the Authority (represented by Captain Blaise Compaore of Gambia) with Ghana, Mali, Nigeria, and Togo as elected representatives.<sup>26</sup> The Authority formed the SMC to initiate mediation procedures for countries in conflict, but by the inception of the intervention in Liberia the SMC acted on behalf of the Authority in initiating intervention under the Mutual Defence Protocol.<sup>27</sup>

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19. *Id.* at art. 5.

20. *Id.* at art. 4.

21. Protocol Relating to Mutual Assistance on Defence pmb., May 29, 1981, 1690 U.N.T.S. 51, available at [http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/ecowas/13ProtMutualDefAss.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/ecowas/13ProtMutualDefAss.pdf) [hereinafter Mutual Defence Protocol].

22. *Id.* at arts. 2-3.

23. *Id.* at art. 13 (limited by the occurrence of “any armed intervention” in Article 13).

24. *Id.* at art. 4 (subject to a prior decision by the Authority of Heads of State and Government after collaborating with the member state involved).

25. *Id.* at arts. 15, 18 (Article 15 requires the territorial defense while Article 18 prohibits intervention into internal conflicts).

26. ECOWAS, Authority Decision A/DEC. 9/5/90, 21 O.J. ECOWAS Spec. Supp. 5 (1992), [hereinafter Founding SMC Decision], reprinted in UNIVERSITY OF CAMBRIDGE RESEARCH CENTRE FOR INTERNATIONAL LAW, REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS 38-39 (M. Weller ed., 1994) [hereinafter REGIONAL PEACE-KEEPING RESEARCH]; ADEKEYE ADEBAJO, BUILDING PEACE IN WEST AFRICA 51 (2002).

27. See ECOWAS, SMC Decision A/DEC. 1/8/90, On the Cease-Fire and Establishment of an ECOWAS Cease-Fire Monitoring Group for Liberia, , 21 O.J. ECOWAS Spec. Supp. 6 (1992) [hereinafter Founding ECOMOG Decision], reprinted in REGIONAL PEACE-KEEPING RESEARCH, *supra*

*C. Brief History of the Use of Force***1. Force Prior to the U.N. Charter**

The justifications for the use of force were relatively static up until the First World War, but the extent of that conflict and its impact on world opinion regarding force acted as a catalyst for change which resulted in initial yet unsuccessful measures that were solidified by the reaction to the Second World War. Historically, the main use of force was war and the primary justification was the Just or Holy War, which utilized divine will as the objective measurement for the validity of war.<sup>28</sup> The main flaw with this doctrine was the fact that both states to a conflict could invoke divine will as justification for their own position.<sup>29</sup>

Gradually, the doctrine of positivism displaced the Just War with the notion of sovereignty, which was later “codified” by the Treaty of Westphalia.<sup>30</sup> Sovereignty is the current fundamental basis for international law which entails three significant rights: the government of a state maintains sole authority over the state, every state is juridically equivalent, and no higher law binds states without their consent.<sup>31</sup> Furthermore, sovereignty included a *competence de guerre*, a right to war, which was wholly separate from any valid justification. Consequently, the fact that states could go to war became the justification for actually going to war, regardless of the moral or ethical bases.<sup>32</sup>

Two other doctrines that accompanied the right to war were reprisals and self-defense. Both doctrines are forms of force on a lesser scale than war, and both doctrines are limited by necessity and proportionality.<sup>33</sup> Reprisals are reactions to violations of international law after a demand for redress has gone unmet, and is embodied within the *Naulilaa* decision against Germany.<sup>34</sup> Self-defense was classically described in the *Caroline* case by then Secretary of State Daniel Webster as the acceptable use of force in the absence of a prior violation of law as long as the “necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment of deliberation.”<sup>35</sup>

The mass casualties and the broad geographic scope of the First World War altered the common perceptions on force and led to initial measures to prevent its use. The League of Nations was formed and implemented a form of dispute resolution designed to impose a “cooling off” period on states in order to prevent

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note 26, at 67-69; Mutual Defence Protocol, *supra* note 21, at arts. 2-3.

28. See ANTHONY CLARK AREND & ROBERT J. BECK, INTERNATIONAL LAW AND THE USE OF FORCE 11-12 (1993).

29. See MALCOLM N. SHAW, INTERNATIONAL LAW 778-79 (4th ed. 1997) (referring to the drawback as the “paradox of wars between Christian states”).

30. AREND, *supra* note 28, at 15-16.

31. *Id.* at 16.

32. *See id.* at 17.

33. *See id.* at 17-18.

34. *Id.* at 17. *See also* Naulilaa (Germany v. Port.), 2 R.I.A.A. 1012, 1019 (1928), reprinted in L. C. GREEN, INTERNATIONAL LAW THROUGH THE CASES 679, 680 (4th ed. 1978).

35. AREND, *supra* note 28, at 18. *See also* JOHN BASSETT MOORE, 2 DIGEST OF INTERNATIONAL LAW 412 (1906) (discussing the *Caroline* incident between Canada and the United States).

emotional reactions.<sup>36</sup> However, the League only imposed two procedural restrictions on the use of force, namely that states must wait three months before acting and that force was prohibited if a state complied with all arbitral decisions.<sup>37</sup>

The other major advance after the First World War was the Kellogg-Briand Pact which took the significant steps of condemning the recourse to war and renouncing war as an “instrument of national policy,” which refuted the longstanding notion of *competence de guerre*.<sup>38</sup> The Pact gained broad acceptance as binding customary law, but it also failed to realize any significant enforcement applications and only addressed the use of war, which left open the option for measures short of war.<sup>39</sup> However, the Pact had a significant impact on *jus ad bellum* and other reasons for force used in future incidents.<sup>40</sup> Ultimately, neither the League of Nations nor the Kellogg-Briand Pact yielded the desired result, as the Second World War broke out within a decade of these advances.

## 2. Legal Justifications for Intervention under the U.N. Charter

At the conclusion of the Second World War, a delegation of forty-nine states met in San Francisco to draft the Charter of the United Nations. The primary purposes of the Charter were to establish international norms regulating state behavior and create an organization to ensure compliance with the Charter as well as maintain peace among the states.<sup>41</sup> The legally binding nature of the Charter results both from treaty law and customary law,<sup>42</sup> and although the application of the latter is a matter of debate, the practical significance is inconsequential to this analysis because every member of ECOWAS is a member of the United Nations.<sup>43</sup>

The imposed norm regarding the use of force, however, was emphatic – any “threat or use of force” against the territorial or political integrity of a state was prohibited except in self-defense or in reaction to a “threat to the peace, breach of the peace, or act of aggression.”<sup>44</sup> Essentially, the Charter established a two-tier system on the use of force: the upper being a structure for an ideal world in which no state would initiate conflict; and the lower allowing for individual or collective response by states in the event the U.N. is unable or unwilling to act.<sup>45</sup> The latter scenario significantly affects the justifications for humanitarian intervention when combined with the express authorization of regional organizations to act “consistent[ly] with the Purposes” of the Charter.<sup>46</sup>

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36. See AREND, *supra* note 28, at 19-20; League of Nations Covenant art. 12.

37. League of Nations Covenant arts. 12, 15.

38. Kellogg-Briand Pact art. 1, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57.

39. See AREND, *supra* note 28, at 23-24.

40. *Id.* at 24.

41. U.N. Charter pmbl.

42. See AREND, *supra* note 28, at 30 (describing the broad acceptance of the U.N. Charter as imposing customary law subject to state practice and *opinio juris*, the intention to be legally bound).

43. U.N. List of Member States, <http://www.un.org/Overview/unmember.html>.

44. U.N. Charter arts. 2, 39, 51.

45. FRANCK, *supra* note 3, at 3.

46. U.N. Charter art. 52(1).

The lower tier is comprised of the Article 51 and Article 106 exceptions to the prohibition on force and it gives rise to problems of interpretation.<sup>47</sup> Initial ambiguity resulted from the Article 2(4) phrase “against the territorial integrity or political independence of any state”<sup>48</sup> as to whether it was a simple rephrasing of “all use of force is prohibited” or whether there are acceptable uses of force which do not affect the territorial integrity of the state. A rather larger and more significant ambiguity, however, lies in the meaning of “armed attack,” which is the essential criteria for invocation of the Article 51 self-defense exception to the prohibition on force.<sup>49</sup> The ambiguity in “armed attack” has given rise to a variety of legal justifications for force based on creative interpretations of Article 51, including protection of citizens abroad and humanitarian intervention.<sup>50</sup>

Protection of citizens abroad has a sound legal foundation but is subject to substantial criticism.<sup>51</sup> The principle is based upon an obligation of each state to protect its own citizens and the theory that state sovereignty is trumped by the obligation in certain circumstances, such as proportionately controlled action by a state with genuinely protective motives responding to a serious threat to its citizens.<sup>52</sup> However, use of the principle is tempered by the criticism that it allows strong states to disrupt the affairs of weaker states with relative impunity.<sup>53</sup> Consequently, states are hesitant to use the protection principle as a justification for humanitarian use of force.

Humanitarian intervention, on the other hand, is absent a historical legal basis but enjoys the benefit of rising popularity among states and regional organizations as enforcement of justice. Two typical rationales put forth as bases for humanitarian intervention are: specific violations of human rights are also violations of international treaty agreements which warrant “self-help” by other parties to the agreement;<sup>54</sup> or that circumstances that accompany gross human rights violations, particularly the mass flow of refugees across state borders,

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47. See FRANCK, *supra* note 3, at 3 (identifying the composition of the “lower tier”); see also AREND, *supra* note 28, at 35 (pointing out the interpretation problems). Article 106 analysis is not considered in this analysis because it relates specifically to U.N. Security Council members, none of which are parties to ECOWAS.

48. U.N. Charter art. 2(4); see also AREND, *supra* note 28, at 36 (theorizing that it is possible to use force within another state without affecting its territorial integrity).

49. See AREND, *supra* note 28, at 36; U.N. Charter art. 51.

50. FRANCK, *supra* note 3, at 52 (including additional justifications of terrorism, ideological subversion, and anticipatory defense, which are not considered in this analysis). For the purposes of this analysis the term “humanitarian intervention” refers solely to saving another state’s citizens, as it can be confusing to refer to action on behalf of a state’s own citizens as humanitarian intervention, although both are intended to rescue people.

51. See *id.* at 76-77 (terming the use of the doctrine “problematic”).

52. *Id.* at 96 (classifying the protection of citizens as ranging from “technically illegal” but mitigated by circumstances to an adaptive concept of self-defense depending upon the breadth of interpretation).

53. *Id.* at 76-77.

54. See *id.* at 135 (pointing out the limitation that the violations of human rights must be specifically expressed in agreements such as the Genocide Convention or the International Covenant on Civil and Political Rights).

constitute a threat to the peace which warrants unilateral or collective response in the absence of U.N. action.<sup>55</sup> Furthermore, renowned legal scholar Professor Ved P. Nanda has developed five criteria for establishing the validity of humanitarian intervention:

- (1) [T]he necessity criterion, whether there was genocide or gross, persistent, and systematic violations of basic human rights;
- (2) the proportionality criterion, the duration and propriety of the force applied;
- (3) the purpose criterion, whether the intervention was motivated by humanitarian consideration, self-interest, or mixed motivations;
- (4) whether the action was collective or unilateral; and
- (5) whether the intervention maximized the best outcome.<sup>56</sup>

The principles of citizen protection and humanitarian intervention compose the primary legal justifications traditionally cited for use of force involving humanitarian goals. However, there is a significant obstacle to intervention located in Article 2(7), which prohibits intervention into “matters which are essentially within the domestic jurisdiction of any state.”<sup>57</sup> The loophole in this principle is that it “shall not prejudice the application of enforcement measures under Chapter VII.”<sup>58</sup> Consequently, states wishing to act can put forth two arguments to counter Article 2(7). A state may concede that 2(7) does apply and then invoke Article 51 or some other Chapter VII article. Alternatively, a state may argue that 2(7) does not apply because the violations of human rights are on a scale which precludes the situation from being “essentially within” the failing state.<sup>59</sup>

Another limitation on regional humanitarian intervention is the need for Security Council consent before using force in an “enforcement action.”<sup>60</sup> At least one legal scholar, Professor John Moore, has argued that regional intervention into internal conflicts at the request of the prevailing government does not rise to the level of an enforcement action because the force is not directed against any particular government.<sup>61</sup> However, this notion is contrary to the well-founded principle of self-determination, which mandates that the people of a state should be allowed to determine their own government, even forcefully if necessary.<sup>62</sup> A

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55. See S.C. Res. 688, U.N. Doc. S/RES/688 (Apr. 5, 1991) (stating the flow of refugees across borders “threaten[s] international peace and security in the region”).

56. Ved P. Nanda, *Tragedies In Somalia, Yugoslavia, Haiti, Rwanda and Liberia - Revisiting the Validity of Humanitarian Intervention Under International Law- Part II*, 26 DENV. J. INT'L L. & POL'Y 827, 827-28 (1998).

57. U.N. Charter art. 2(7).

58. *Id.*

59. See FRANCK, *supra* note 3, at 41 (textually the action is still prohibited, but practically force is acceptable when civil conflict “exceeds certain levels of virulence”).

60. U.N. Charter art. 53(1).

61. AREND, *supra* note 28, at 63.

62. *Id.* at 40 (noting that aiding self-determination is sometimes used as a justification for force,

second, albeit tenuous, method of satisfying Article 53 would be through the General Assembly and the powers granted by the Uniting for Peace Resolution, which allowed the General Assembly to make recommendations on the presence of a threat or breach of the peace in the event the Security Council is unable to act due to political veto constraints.<sup>63</sup> Arguably, if the Security Council is deadlocked, the General Assembly could be used as a substitute authority to grant consent for regional action based on the Uniting for Peace Resolution.<sup>64</sup>

In conclusion, the optimal method to approaching humanitarian intervention is by treating the principle as textually illegal but increasingly acceptable as a compromise between peace and justice, whose validity depends upon the circumstances.<sup>65</sup> The moral justifications for humanitarian intervention also bolster the “justice” argument, which was a concern for the original drafters of the Charter.

#### *D. Moral Justification for Humanitarian Intervention*

The strongest argument establishing a connection between morality and law, particularly in the areas of human rights and use of force, is that the law regarding these areas cannot be invoked until a sufficient moral argument has been established.<sup>66</sup> Accordingly, a variety of approaches have arisen to establish the moral basis, including policy and natural rights arguments. The policy argument is best described by the New Haven approach as written by Professor Myres S. McDougal.<sup>67</sup> This approach includes clarification of general community goals and description of past trends to or away from realization of those goals.<sup>68</sup> The New Haven approach is quite applicable to the area of human rights, because the documents described *supra* in note 6 clearly evidence the “community goal” of preservation of human rights.<sup>69</sup> Conversely, the regard for this goal is somewhat diminished when juxtaposed with the fact that the U.N. Charter favors peace over justice in its actual text.

However, an analysis of past trends restores the argument. At the time of drafting, the international community was recovering from an extended period of violent unrest. Logically, the states’ primary concern was peace, but as peace has

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i.e. helping the rebels).

63. See G.A. Res. 377 (V), U.N. GAOR, 5th Sess., 302nd Plen. Mtg., , A/RES/377(V) (Nov. 3, 1950).

64. See FRANCK, *supra* note 3, at 35 (describing the understanding that the resolution could “empower the Assembly to deploy military force”).

65. *Id.* at 138-139.

66. FERNANDO R. TESÓN, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 12-13 (2d ed. 1997) (stating that “no ‘purposive’ interpretation of article 2(4) . . . will be convincing or indeed possible” without the existence of a moral right).

67. MYRES S. MCDUGAL ET AL., HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AND INTERNATIONAL LAW OF HUMAN DIGNITY 367-68 (1980).

68. *Id.* at 423-24 (additional criteria include assessment of past conditions, projection of future developments, and evaluation of alternatives).

69. Compare to terrorism and the old saying, “One man’s terrorist is another man’s freedom fighter.” Adam Brown, *It’s Not Power That Corrupts But Fear*, SKY NEWS (Sept. 25, 2007), <http://news.sky.com/skynews/article/0,,30000-1285561,00.html>).

become a sustained norm in the international community, a trend towards recognition of human rights justice over peace has emerged. The interpretation of the law should adjust accordingly.

### III. INTERVENTIONS

#### A. Liberia (1990)

ECOWAS's actions in Liberia are the most important to the legal discussion of regional humanitarian intervention. Not only was the use of force in Liberia the first of its kind by sub-regional "economic community," but also the lack of initial U.N. authorization and the subsequent U.N. response provide significant precedent for future interventions by humanitarian-motivated regional organizations.

#### 1. Action Taken

The stage was set for a civil war in Liberia when Samuel Doe, an ethnic Krahn, stole elections in 1985 and subsequently engaged in brutal repression of both political opposition and independent activity.<sup>70</sup> The inevitable civil war broke out on December 24, 1989, when the National Patriotic Front of Liberia ("NPFL"), led by a Liberian ex-patriot named Charles Taylor, invaded Liberia from the Ivory Coast. The Armed Forces of Liberia ("AFL") responded by conducting a bloody counterinsurgency campaign which included indiscriminate killing, raping, burning, and looting. The NPFL also engaged in egregious acts by targeting the Krahn and Mandingo ethnic groups as suspected supporters of Doe's government. The violence both forced refugees, numbering in the hundreds of thousands, to flee to neighboring states and trapped hundreds of foreign state citizens in the Liberian capital of Monrovia.<sup>71</sup> Mediation attempts by the Liberian Council of Churches failed and a second rebel fraction broke away from the NPFL to form the Independent National Patriotic Front of Liberia ("INPFL"), headed by Prince Yomie Johnson.<sup>72</sup> The NPFL had reached Monrovia by summer 1990 and the atrocities by both sides had reached substantial levels when President Doe requested aid from both the United States and ECOWAS.<sup>73</sup>

The United States refused broad intervention, despite its historical ties to Liberia, calling the civil war a "Liberian responsibility."<sup>74</sup> The Standing Mediation Committee of ECOWAS, on the other hand, invoked the Mutual Defence Protocol in passing a resolution calling for a cease-fire and establishing a military force monitoring group (ECOMOG) comprised of national troops from

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70. *Liberia Waging War to Keep the Peace: The ECOMOG Intervention and Human Rights*, AFRICA WATCH (Human Rts. Watch, ), June 1993, at 5-6.

71. *Id.* at 6-7 (160,000 refugees fled within a month of the attack, which escalated to over 700,000 constituting one third of Liberia's population).

72. ABIODUN ALAO, *THE BURDEN OF COLLECTIVE GOODWILL* 36 (1998).

73. REGIONAL PEACE-KEEPING RESEARCH, *supra* note 26, at xxi.

74. Hearing on U.S. Policy and the Crisis in Liberia before the Subcomm. on Africa of the H. Comm. on Foreign Affairs, 101st Cong. (1991) (statement of Herman J. Cohen, Assistant Secretary of State), *reprinted in* REGIONAL PEACE-KEEPING RESEARCH, *supra* note 26, at 43, 46. The U.S. did intervene in Monrovia to extract approximately 1,000 foreign nationals, but insisted it was not intervening in the Liberian conflict. AREND, *supra* note 28, at 102-103.

Gambia, Ghana, Guinea, Nigeria, and Sierra Leone (with the majority coming from Nigeria).<sup>75</sup> ECOMOG entered Liberia in August 1990 without any external authorization except a plea from Doe, whose legitimacy was questionable given that Taylor's NPFL controlled all of the territory outside of Monrovia at the time.<sup>76</sup> The mandate of the intervention was to install and protect an interim government until free elections could be held.<sup>77</sup>

The initial intervention was a success. The bloody conflict in Monrovia was stopped, the Interim Government of National Unity ("IGNU") was installed, and a cease-fire was agreed to by all factions by November 1990.<sup>78</sup> An uneasy peace was in place and diplomatic relations resulted in the Yamoussoukro IV agreement to disarm and encamp all soldiers, although Taylor remained openly hostile to ECOMOG and its Nigerian influence.<sup>79</sup> Significant steps towards peace were made in early 1992, including the formation of an ad hoc Supreme Court, the opening of the University of Liberia, and the selection of an Interim Elections Commission in preparation for elections.<sup>80</sup>

Unfortunately, the cease-fire was broken by a third group called the United Liberation Movement for Democracy in Liberia ("UNLIMO") which was composed mainly of former ALF members.<sup>81</sup> The attack resulted in renewed war as Taylor attacked ECOMOG positions around Monrovia on a consistent basis as part of "Operation Octopus."<sup>82</sup> ECOMOG was forced to ally itself with the AFL and ULIMO against Taylor's NPFL, which cast serious doubts on the intentions of ECOMOG as the AFL and ULIMO both held terrible records regarding humanitarian intervention.<sup>83</sup> The final significant use of force aspect of the ECOMOG intervention was the use of Nigeria's Alpha jets to strike targets in Taylor's territory, which gave rise to allegations of ECOMOG's intention to attack hospitals and a reaffirmance of the principle of "medical neutrality" by the U.N. General Assembly.<sup>84</sup>

Multiple peace agreements were reached between the warring factions as conflict continued for another decade after the failure of the initial cease-fire. On July 25, 1993, the three rebel factions signed the Cotonou Peace Accord establishing joint enforcement of the peace by ECOMOG and a U.N. Observer Mission ("UNOMIL") as well as a Council of State comprised of members of the factions to control the Liberian executive powers.<sup>85</sup> The inclusion of UNOMIL

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75. Founding ECOMOG Decision, *supra* note 27, at 67; *See also* AFRICA WATCH, *supra* note 70, at 7 (reporting that troops from Mali and Senegal joined the force after the initial intervention).

76. *See* AFRICA WATCH, *supra* note 70, at 7-9.

77. ALAO, *supra* note 72, at 53-54.

78. AFRICA WATCH, *supra* note 70, at 8.

79. *Id.* at 9.

80. *Id.* at 10.

81. *Id.* at 11.

82. *Id.*

83. *Id.* at 13.

84. *Id.* at 15-16.

85. Kofi Oteng Kufor, *Recent Development: Developments in the Resolution of the Liberian Conflict*, 10 AM. U.J. INT'L L. & POL'Y 373, 385 (1994).

was a significant departure from the Yamoussoukro IV Accord, which gave ECOMOG sole responsibility for regional enforcement.<sup>86</sup> Subsequently, in fall 1994 the factions agreed on yet another peace accord called the Akosombo Agreement, which primarily prohibited the formation of new rebel factions and restated ECOMOG's responsibilities in conformity with Security Council Resolutions 788 and 813.<sup>87</sup> Elections were subsequently held in 1997 in which Charles Taylor took 75% of the vote, ECOMOG finally withdrew from Liberia in October 1999, and the end of the conflict finally occurred in 2003 when Charles Taylor handed over the presidency to his vice president, Moses Blah.

## 2. Justification and Response

The intervention in Liberia clearly rose to the level of an enforcement action, and ECOWAS lacked any sort of U.N. authorization when it intervened in Liberia, making its intervention technically illegal under Charter Articles 53(1) and 2(4). However, the President of the Security Council "commend[ed] the efforts made by the [ECOWAS] head of State and Government to promote peace and normalcy in Liberia" in January 1991,<sup>88</sup> and the Security Council again praised ECOWAS for addressing this "threat to international peace and security" after the cease fire was broken in 1992.<sup>89</sup> Furthermore, the Security Council requested all other states to "respect the measures established by ECOWAS."<sup>90</sup> Consequently, it is possible to view the U.N.'s lack of condemnation for ECOWAS's actions as subsequent ratification or possibly even as implied consent which satisfies the Article 53(1) requirement. A more narrow interpretation of the U.N. praise is that while the actions were technically illegal, the negative response was mitigated by the positive intentions and outcome.<sup>91</sup>

ECOWAS justified its intervention through Article 18 of the Protocol Relating to Mutual Assistance on Defence, which allowed intervention into internal affairs which are substantially supported externally.<sup>92</sup> Possible conflicts with U.N. Charter Article 2(7) and OAU charter Article 3(2) seriously undermine the validity of this argument,<sup>93</sup> but the OAU gave ECOWAS its unwavering

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86. *Id.*

87. *Id.* at 391.

88. *Statement by the President of the Security Council*, U.N. SCOR, 46th Sess., 2974th mtg. at 2, U.N. Doc. S/22133 (1991).

89. *See* S.C. Res. 788, pmbl., U.N. SCOR, U.N. Doc. S/RES/788 (Nov. 19, 1992).

90. *Id.* ¶ 10.

91. *See* FRANCK, *supra* note 3, at 139 (describing the "law of mitigation" as well as the alternative of reinterpretation).

92. ALAO, *supra* note 72, at 59; *see also* Mutual Defense Protocol, *supra* note 21, at art. 4. The NPFL was supported by both Burkina Faso and the Ivory Coast.

93. *Compare* U.N. Charter art. 2(7) (prohibiting force when conflicts are "essentially within" a state), *and* Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, 146 (June 27) (holding that armed assistance of rebels, while constituting interference with another state's affairs, does not constitute an "armed attack" for which force is appropriate), *and* Charter of the Organization of African Unity art. 3(2), May 25, 1963, 479 U.N.T.S. 39 (requiring non-interference with internal affairs), *with* Mutual Defense Protocol, *supra* note 21, at art. 18(2).

support during the initial stages of intervention<sup>94</sup> and the Security Council did not bother to even discuss the conflict in Liberia until the statement by the Security Council President endorsing the efforts of ECOWAS.<sup>95</sup> However, a more significant criticism of the ECOMOG intervention was that it interfered with the Liberian peoples' right to self-determination when it forcibly prevented the successful takeover by Taylor's NPFL.<sup>96</sup> Unfortunately, no satisfactory response was given to this criticism, the previous assertions of authority under Article 18 of the Mutual Defence Protocol notwithstanding.

The most notable aspect of ECOMOG's use of force was the fact that despite the mass atrocities being perpetrated by both the AFL and the NPFL, human rights concerns were never cited as the primary justification for intervention,<sup>97</sup> although the Nigerian delegate to the U.N. emphasized the purpose of intervention as "to stop the senseless killing of innocent civilian nationals and foreigners."<sup>98</sup> Instead, the primary concern was peace in the region.<sup>99</sup> This choice of justification sets up the ironic situation where the intention was more in line with the original purposes of the U.N. Charter than humanitarian concerns, but the intention also made the action increasingly illegal because maintenance of peace and security falls squarely with the Security Council, the intervention for peace is clearly controlled by the provisions of the Charter, and authorization by the Security Council was required. Comparatively, humanitarian intervention is possibly not always governed by the Charter because the considerations for justice outweigh the prohibitions on force, which persuades legal scholars to apply the loopholes discussed in Part II(C)(ii) of this analysis because it is the "right" thing to do.

The U.N. response to the Liberian crisis and the subsequent intervention was limited for a number of reasons. The most probable reason for U.N. inaction was the common perception of the Liberian crisis as an internal civil war conflict,<sup>100</sup> which is supported by the U.S. response to Doe's request for aid.<sup>101</sup> Preoccupation with the situation occurring in the Middle East (the Coalition was defending Kuwait in the first Gulf War) is another plausible reason. Despite these reasons for inaction, the Security Council became active in November 1992, albeit almost three years after the inception of the conflict, by passing Resolution 788.<sup>102</sup> The resolution imposed an embargo of all military equipment to Liberia except for ECOWAS and condemned all attacks on the ECOWAS peace force. The Security

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94. See REGIONAL PEACE-KEEPING RESEARCH, *supra* note 26, at xxii.

95. AREND, *supra* note 28, at 65.

96. See *ECOMOG: Peacekeeper or Participant?*, BBC NEWS, Feb. 11, 1998, at <http://news.bbc.co.uk/2/hi/africa/55719.stm>.

97. See AFRICA WATCH, *supra* note 70, at 26 (only one ECOWAS communiqué "even mentioned human rights concerns").

98. Letter from the Permanent Representative of Nigeria to the United Nations addressed to the Secretary-General, U.N. SCOR Doc. S/21485 (1990), *reprinted in* REGIONAL PEACE-KEEPING RESEARCH, *supra* note 26, at 75-76.

99. AFRICA WATCH, *supra* note 70, at 26.

100. AREND, *supra* note 28, at 65.

101. See *supra* notes 73-74 and accompanying text.

102. S.C. Res. 788, *supra* note 89.

Council acted again in March 1993 in passing Resolution 813.<sup>103</sup> Some interesting additions to Resolution 813 included U.N. contribution to the Liberian situation through observers and the first incorporation of humanitarian language.<sup>104</sup> Ultimately, however, the crucial aspects of the U.N. response to the ECOWAS intervention lie in the initial praise given to ECOWAS despite the apparent illegal nature of the action.

*B. Sierra Leone (1997)*

The intervention in Sierra Leone had a distinctly different flavor from the intervention in Liberia. The token role of ECOWAS as compared to Nigeria significantly diminished the "regional" aspect of the enforcement, although ultimately the intervention was well received by the international community.

**1. Action Taken**

Sierra Leone struggled with a history of authoritative regimes and civil disputes prior to and throughout the 1990's until the democratically-elected government of Ahmed Tejan Kabbah was able to secure a temporary peace through the Abidjan Accord.<sup>105</sup> The Accord provided for the end of a five year civil war instigated by the Revolutionary United Front ("RUF"), as well as the transformation of the RUF from a military operation to a political party in opposition to the Sierra Leone People's Party ("SLPP") and the deployment of international observers and peacekeepers within Sierra Leone.<sup>106</sup> U.N. Secretary General Kofi Annan responded to an indication by Kabbah's government that Sierra Leone lacked sufficient forces to ensure peace by proposing a \$47 million peacekeeping operation spanning eight months.<sup>107</sup>

Problems arose when the Security Council failed to adopt the Secretary General's report due to concerns of U.S. approval.<sup>108</sup> The Abidjan Accord fell apart because the RUF rebels refused to disarm and Sierra Leone's national army lacked the capacity to enforce compliance with the Accord.<sup>109</sup> Consequently, on May 25, 1997, rebel soldiers took over government buildings and prisons in the capital of Freetown and released Major Johnny Paul Koromah, the leader of the RUF who was imprisoned for prior attempted coup.<sup>110</sup> Koromah declared himself

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103. S.C. Res. 813, U.N. Doc. S/RES/813 (Mar. 26, 1993).

104. *Id.* ¶ 14-15, 18.

105. Karsten Nowrot & Emily W. Schabacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, 14 AM. U. INT'L L. REV. 321, 325-26 (1998); *see also* Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, Nov. 30, 1996, R.U.F.-Sierra Leone, <http://www.sierra-leone.org/abidjanaccord.html> [hereinafter Abidjan Accord].

106. Abidjan Accord, *supra* note 105, at arts. 1, 12-13.

107. *See* The Secretary-General, Report of the Secretary-General on Sierra Leone, delivered to the Security Council, U.N. Doc. S/1997/80 (Jan. 26, 1997).

108. Nowrot & Schabacker, *supra* note 105, at 326 (noting that the Clinton Administration was engaged in sensitive budget negotiations with Congress at the time, which acted as a substantial deterrent for any notion of engaging in any African peacekeeping process).

109. *See id.* at 326-27 (noting the inability of the national army was exacerbated by soldiers defecting to the RUF due to lack of wages and racism).

110. *Id.* at 327.

as the head of government and suspended the constitution.<sup>111</sup> President Kabbah had only been in power for fourteen months before being forced into exile in neighboring Guinea.<sup>112</sup>

The Nigerian government responded immediately under the auspices of ECOWAS. Nigeria already had peacekeeping troops positioned within Sierra Leone during the civil war period, and Nigeria responded to the military coup d'état with the consent of President Kabbah. Nigeria engaged in all out combat against RUF, using additional troops and shelling rebel targets in Freetown with warships.<sup>113</sup> The RUF withstood these initial uses of force, and West African nations resorted to mediation to restore the democratic government.

An apparent breakthrough occurred in October 1997 when both President Kabbah and Major Koromah signed the Conakry peace agreement.<sup>114</sup> The agreement called for the immediate disarmament of the RUF and restoration of Kabbah as head of state within six months. Unfortunately, during this period the human rights situation deteriorated substantially. The Kamajors, a rural militia fighting against the RUF, initiated several attacks which caused a vicious response by the RUF including some of the worst state-sponsored atrocities ever in Sierra Leone.<sup>115</sup> With two months remaining on the Conakry agreement timeline, Nigeria ousted Major Koromah's military junta. The release of Freetown resulted from a nine-day offensive under the auspices of ECOMOG, which was well received by both the Sierra Leone population and the international community.<sup>116</sup>

## 2. Justification and Response

The main justifications put forth by ECOWAS and the Nigerian government for the use of force were: 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 Sierra Leonean refugees to neighboring countries, and the prevention of the execution of "atrocities" by the junta.<sup>117</sup> These reasons are a substantial departure from the justifications used in the Liberian intervention in that incorporation of the humanitarian aspects of the conflict is primary, while the need for peace and restoration of order is not. Furthermore, the final justification hints of a preemptive defense of human rights, which has certainly not gained acceptance in the international community. Additional criticisms of the legality of this intervention include the fact that Kabbah had already been expelled from the country, making the legitimacy of his request for outside intervention more uncertain than Doe's Liberian government, and the fact that the Security Council

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111. *Id.*

112. *Id.* at 325.

113. *Id.* at 327.

114. *Id.* at 328-29.

115. *See id.* at 329 (noting most the atrocities were concentrated around the southern town of Bo).

116. *Id.* at 330.

117. *Id.* at 349-50.

had passed a resolution which did not authorize force while addressing the issue, essentially removing implied consent as a justification.<sup>118</sup>

The U.N. sent conflicting messages in its reaction to the intervention. The U.N. passed Resolution 1132 in October 1997, which condemned the human rights violations in Sierra Leone and declared the conflict was a threat to the peace.<sup>119</sup> The resolution also imposed oil and arms embargos on Sierra Leone as well as invited intervention by ECOWAS.<sup>120</sup> However, ECOWAS was limited to "strict implementation" of the embargo and full enforcement powers were absent from the resolution, which could imply the Security Council did not want force used to restore democracy.<sup>121</sup> Ironically, Nigerian forces acting under ECOWAS had already used substantial force in the absence of Security Council authorization, and those forces initiated armed conflict again after the resolution.<sup>122</sup> The conflicted aspect of the U.N. reaction came in the form of a statement issued after the restoration of Kabbah's government that welcomed "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.<sup>123</sup> Similar to Liberia, the U.N. *post facto* ratified the seemingly illegal use of force by ECOWAS despite the subtle mandate against force in Resolution 1132.

However, the answer to the enigma may lie with the fact that the political basis for intervention was quite sound. The displacement of a peaceful, legitimate, and democratic government through a military coup that utilizes mass human rights violations as a combat technique<sup>124</sup> is the epitome of why the U.N. prohibits the use of force and such a coup certainly holds no logical connection to self-determination.

Additionally, the ECOWAS justification of self-defense appears to legitimate for two reasons. First, the intervention by ECOMOG was in reaction to an attack by RUF forces on an ECOMOG military camp at Lungi, and simply because the troops were stationed within Sierra Leone does not deprive ECOMOG of the right to defend its soldiers.<sup>125</sup> Second, the combination of the Security Council declaration of a threat to the peace in Resolution 1132 and the mass flow of refugees across state borders could satisfy the "armed attack" requirement of Article 51 for the individual neighboring states, which in turn would authorize collective self-defense by ECOWAS.<sup>126</sup> The significant criticism of this

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118. David Vesel, *The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World*, 18 *BYU J. PUB. L.* 1, 28-30 (2003).

119. S.C. Res. 1132, at pmb., U.N. Doc. S/Res/1132 (Oct. 8, 1997).

120. *Id.* ¶¶ 6, 8.

121. *See id.* ¶ 8.

122. *See supra*, notes 113-116 and accompanying text.

123. *See Statement by the President of the Security Council*, U.N. SCOR, 53rd Sess., 3857th mtg. at 1, U.N. Doc. S/PRST/1998/5 (Feb. 26, 1998).

124. *See* Nowrot & Schabacker, *supra* note 109, at 325, 332 (noting that RUF continued to amputate limbs in order to bring about subservience through terror).

125. *See id.* at 366.

126. *See* S.C. Res. 1132, *supra* note 119, at pmb.; *see also* Nowrot & Schabacker, *supra* note 109, at 349-50.

justification is the lack of proportionality. Any attack on ECOMOG troops most certainly was outmatched by the use of warships and a complete invasion Sierra Leone, although the attack was brief and may have been necessary to cease the continuing threat of attacks from the RUF.

### *C. Application of Humanitarian Intervention Factors*

The most significant analysis of the ECOWAS interventions is the applicability of the factors described by Professor Ved P. Nanda.<sup>127</sup> Although most criteria are quite relevant and applicable, the purpose criterion is not as important in the regional enforcement setting, and the collective / unilateral distinction is moot.

#### **1. Necessity**

Neither Liberia nor Sierra Leone involved systematic violations *before* force was considered and used, and the main source of necessity arose out of political unrest rather than genocide. However, severe violations did occur in both cases which probably warranted intervention on a humanitarian basis alone, regardless of the other factors. Thus, in my opinion, the necessity criterion was fulfilled.

#### **2. Proportionality**

As discussed above, there were certainly some issues in proportionality regarding the Sierra Leone intervention. But the main question here is what is being compared? If the initial actions are viewed as displacing a legitimate government, then the proportional response is restoration of that government. However, if the standard is simply a cessation of human rights violations, then offensive attacks against the perpetrators aren't warranted. The deciding factor for my own analysis is the notion that violations of human rights perpetrated by *aggressors* can typically only be stopped by offensive action in order to neutralize the threat. Consequently, purely defensive measures would, in a practical sense, never be effective and true proportionality could never be achieved. Thus the most legally viable option is assessing the force allowed as compared to the force imposed, which yields the result that proportionality was satisfied in both ECOWAS interventions because force was only used to restore the incumbent government.

#### **3. Purpose**

Despite the significance of intention in much of the law,<sup>128</sup> the purpose requirement is not necessary with regard to collective intervention. The reason for this is that the requirement of a purely humanitarian interest is used primarily as a safe-guard against abuse of the humanitarian intervention doctrine as a cover for other nefarious motives. However, in regional enforcement actions, the collective will of the organization acts to mitigate extreme views and allows an objective assessment of the conflict and the proper course of action. Consequently, the

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127. See *infra* p.12 and note 56.

128. For example, the doctrine of *mens rea* in the criminal law. Graeme Wood, *Getting to the Very Roots of Genocide*, N.Y. SUN, Oct. 3, 2007 (reviewing Ben Kiernan, *Blood and Soil* (2007)), available at <http://www.nysun.com/article/63837>.

purpose of the organization becomes somewhat irrelevant, which was subtly demonstrated by the fact that ECOWAS intervened both times specifically to restore peace and political stability, but the U.N. approved of the actions anyways. ECOWAS's collective interpretation of the rationale for intervention will be acceptable to the international community, absent extreme circumstances, because regional enforcement transfers the subjective standard of unilateral action into an objective standard of collective action.

#### **4. Collective**

Despite the prominence of Nigerian forces within ECOMOG, both interventions were sufficiently collective because of the need for group decision at the executive level of ECOWAS to employ force.

#### **5. Maximization of Outcome**

Both interventions clearly improved the situations in Liberia and Sierra Leone regarding violations of human rights. However, one significant factor affecting the outcome in Liberia is the doctrine of self-determination and the ability of the people of Liberia to take control of their country away from an oppressive government. Although Taylor's NPFL was not much of a beneficial alternative, the sheer extent of his control over the territory in Liberia and the significant portion of population that voted for him in the 1997 elections certainly support the argument that the NPFL deserved to take legitimate control of Liberia through civil unrest, which is not a violation of international law, but was precluded by unlawful intervention in internal state matters.

In conclusion, each of the factors for humanitarian intervention was met in the ECOWAS actions, and consequently those actions or other similar actions should not be considered illegal, although technically they are under Article 2(4).

#### **IV. RECOMMENDATIONS**

Upon reflection of all the issues involved, there are three recommendations that should be considered for future instances of regional intervention. First, regional organizations should emphasize the trans-boundary effects of the conflicts, such as border skirmishes or mass flows of refugees into foreign states. The reason for this is these types of incidences give rise to the broad justification of Article 51 self-defense as well as the traditional justifications for humanitarian intervention. Although not technically an "armed attack," most trans-boundary instances will be determined to be threats to the peace, which is usually sufficient to satisfy the armed attack criteria. Moreover, identifying particular acts directed or focused towards a member state of a regional organization provides more legitimacy to the action as one of collective self-defense.

Second, regional organizations should increase the number of countries involved militarily. Not only does it spread the cost and burden of intervention, but also the mere fact that a multitude of countries has consented to the action increases the legitimacy of the intervention as objectively reasonable. For example, although the political and humanitarian justifications were slightly stronger in the Sierra Leone intervention, the primary bordering on solitary role of

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the Nigerian government casts doubt on the action as unilateral rather than collective force.

Third, a majority of the problems with legal justification for humanitarian intervention would be alleviated by the formation of an objective U.N. committee which could assess situations for human rights violations and recommend action by the Security Council if possible or regional organizations if not. Thus, the fundamental prohibition of illegal force could be maintained by the U.N. while still accounting for the need for protection of human rights.