

PRO - DEMOCRATIC INTERVENTION

BY

Maggie Banda

(98335286)

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P.O BOX 32379

LUSAKA

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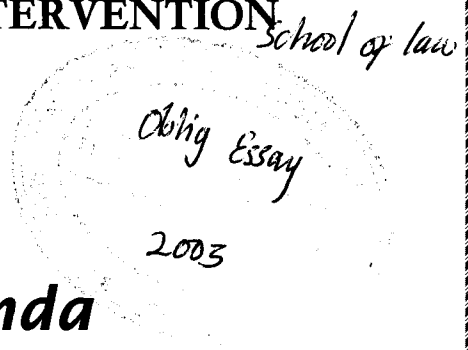


TABLE OF CONTENT

Topic	Page
Dedication	iv
Acknowledgement.....	v
Abstract	1
Introduction	2
Chapter I	
Democracy.....	5
Definition.....	5
Development	10
Application.....	13
Chapter II	
Sovereignty	19
Recognition.....	21
Chapter III	
Intervention	
.....	23
Unilateral intervention	25
Collective intervention.....	28

Intervention by invitation.....30

The use of force.....33

Chapter IV

Brief Studies of Intervention in Sierra Leone and Iraq.....38

Intervention in Sierra Leone.....38

Intervention in Iraq.....45

Chapter V

Recommendations.....53

Conclusions56

The University of Zambia

School of Law

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supervision by:**

Maggie Banda

Entitled

PRO-DEMOCRATIC INTERVENTION

**Be accepted for examination. Having checked it carefully, I am
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Supervisor

Mr. Sydney Watae

***Dedicated to: An extraordinary woman, my
mentor, my friend, my mother
Christina Banda.***

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ABSTRACT

Classical as well as contemporary schools of thought have sought to define international relations in various ways and according to Pfaltzgraff Jr.,¹ "...it is a field of study having as its broad purpose the analysis and understanding of relations among the major groups in which the world is divided, especially those capable of acting independently of each other."

An attempt has also been made by scholars to understand and explain phenomena such as conflict among peoples and the conditions necessary for fostering greater cooperation and political integration. Furthermore, the impact of municipal policies and political structures on foreign policies and international-domestic linkages has been studied. In an attempt to shape the foreign policies of nations, factors such as ideology and nationalism have been studied and various theories have emerged as a result. Models have also been developed within which nations have been directed to work, both at domestic and international levels. Pfaltzgraff Jr.², puts it succinctly when he states that; " A world model based on balance of power or a particular form of world government provides the analyst with a general understanding of major patterns of interaction among the principle units." Among the models that have been developed and viewed as essential in the running of affairs of nations is that of democracy.

¹ R.L. Pfaltzgraff, The Study of International Relations, at 1 (1977)

INTRODUCTION

As stated in the abstract, scholars have had a continuing interest in the effects of forces such as ideology, nationalism and technology upon relations among nations as well as the structure of the international system. The rise of nationalism for example, transformed the international system of the nineteenth century to the global system of the late twentieth century and the growth of ideologies has been viewed as having a profound effect upon the conduct of international relations in the twentieth century.³

It is from a background such as this, that the study of **Pro-democratic** intervention stems in the sense that democracy; a political ideology has played a major role in molding international relations. For this reason the ideology has been studied and attempts made to introduce it to states. In some cases it has even been imposed upon states as a world model under which they are expected to run their governments. This means that in cases where a single state has displayed activities that are contrary to democratic principles, external interference either by another single state, a collection of states or even international organisations in an attempt to 'direct' the single state, have ensued. These acts have in certain instances been viewed as a violation of a countries' territorial integrity where as the alleged violators have advanced justifications for their actions.

² Ibid, at 27

³ Ibid, at 29

This dissertation sets out to espouse **Pro-democratic intervention** with a view to creating a greater understanding of the subject as well as establishing whether democracy as it is variously understood provides justification for such intervention. Does the need to democratise all parts of the world give pro-democratic nations cart blanche to intervene in the internal affairs and sovereignty of other states with a view to exporting democracy?

The first chapter briefly outlines the salient aspects of the concept of 'democracy'. It then proceeds to give a general picture of the democratic model, which model is promoted by pro-democratic states as the solution to many countries' political, social as well as economic problems. This is in an attempt to create a foundation upon which the discussion on **Pro-democratic intervention** will be established.

The second chapter will analyse the concepts of sovereignty and recognition, which are the stronghold upon which relations between states are to be established and justified, as a prelude to the ensuing discussion.

The third chapter will tackle in detail the concept of **Pro-democratic intervention** and identify the forms that it takes, with a view to establishing a clearer understating of what the concept means after which types of intervention will be dealt with singularly. In this chapter, justifications given for Pro-democratic intervention will also be outlined.

The fourth chapter will delve into the aspect of International law as it relates to **Pro-democratic intervention**. In this regard, the chapter will outline some provisions of international conventions with regard to intervention. Illustrations will be given based on the experiences of Sierra Leone and Iraq and their encounters with the concept in question.

The fifth and final chapter will comprise conclusions on the issues discussed. It then goes on to suggest recommendations as to how best the concept of **Pro-democratic** intervention may be utilised to mold nations which genuinely require democratisation, in such a manner that it remains within the ambit of the overriding principles of international law.

CHAPTER I

DEMOCRACY

1.1 DEFINITION

Democracy has been defined and redefined by various schools of thought. The most classic definition however is that given by Abraham Lincoln.⁴ He defined it to be, “a government of the people, for the people and by the people”. It is viewed as an ideology constructed around various liberal values including those of individual freedom, human dignity and brotherhood, limited government, the rule of law, and the democratic political process.⁵

The ideology of democracy, despite often being rejected after trial by societies as well as its principles having been misunderstood, has nevertheless remained an attractive “ideal” for both intellectuals and the general masses. It has over the years been nurtured and refined through what has been termed by Plano and Olton⁶ as, “centuries of speculative theorising and pragmatic trial and error.” The ideology has been seen to flourish particularly in the English speaking commonwealth countries as well as the western European environment. Its particular effectiveness in these regions is said to relate to the conditions that encourage its development such as considerable degrees of

⁴ A republican and was the 16th President of The United States of America, elected in 1860

⁵ J. Plano and R. Olton, The International Relations Dictionary, at 96

⁶ Ibid, at 97

social cohesion and consensus of basic values, a stable economic base, and an educated and responsible people".⁷

Democratic theory has various tenets and these include; accountability, civil liberties, constitutionalism, individualism, the rule of Law and, popular Sovereignty.

Accountability is a fundamental tenet of democratic theory and it establishes the ultimate responsibility of public officials in a democratic set up, with no exceptions. An accountable government therefore is one that at every stage reports back to the people in order to obtain their stamp of approval. Democracy is after all based on the consent of the governed. This tenet is maintained through activities such as elections, plebiscites and public opinion surveys and polls. All democratic systems embrace this tenet though variations in the procedure for implementation may differ from country to country. The main course of this tenet in practice is a flow from the lowest bureaucratic levels up to the ministerial or cabinet levels to the chief executive and through elections to the voters. A working system of this tenet clearly highlights the distinction between the democratic systems of government from those that are based on some form of absolutism on the one hand and those systems that are a mere 'façade' on the other. The latter forms may be adorned in the apparel of democracy but in fact exercise authoritarian powers over the people. The British system may be taken as an actual example of a democratic system as it is viewed as having a political system that incorporates the highest levels of accountability and responsibility to the people of Britain.

⁷ Ibid, at 100

Civil liberties on the other hand are also a tenet of democracy as they entail that the government in a democratic system does not arbitrarily curtail the individuals' freedom. These liberties are in most cases incorporated in a justiciable bill of rights enshrined in a country's Constitution whereby specific limitations are placed on the authority of public officials so that individual rights and freedoms are beyond the ambit of political vicissitude. Examples of such rights include; freedoms of assembly, association, press, religion, speech and property. As a case in point these freedoms are provided for in Part III of the Zambian Constitution⁸. It should be noted however that these rights are not absolute as instances arise when it is necessary to limit such rights for the protection and advancement of the legitimate interests of the whole society. In order to be justified, such interference must be reasonable and just as opposed to arbitrary.

Constitutionalism as a tenet of democracy realises that government is a necessity in any particular society but that of equal necessity is the need to curtail the arbitrariness inherent in all forms of governmental power. It advocates for the confinement of such power to the extent provided under law. This principle also helps to distinguish a democratic system from one that is based on absolutism. The most effective technique for establishing constitutional government is through a constitution. For instance, a written Constitution such as that of the United States, serves as a contract between the people and the government. The government is obliged to respect the rights of the people as enshrined, and perform its obligations there under. On the other hand in countries that do not have a written constitution such as Britain, the government is limited by custom, tradition and what the people are willing to accept in the way of

⁸ Chapter 1 of the Laws of Zambia and is the supreme law of the land

political innovation and policy development through the many facets of the political process.

Individualism is also a tenet of democracy and it holds that the chief purpose of government is to foster the well being of the individual and to permit each person to realise his or her full capabilities. The government in this regard, is under an obligation not only to respect the individual, but also to safeguard each person from deprivation by other individuals or groups. The doctrine of individualism as stated by Plano and Olton⁹ is, "...based on the ideas that the people exercise supreme political power, that government authority is limited and that each individual possess certain inalienable natural rights."

The Rule of Law is a fundamental principle of democratic governments and it proclaims the supremacy of law. David M.Walker¹⁰ asserts that it is, "a concept of the utmost importance but having no defined, nor definable, content. It implies the subordination of all authorities, legislative, executive, adjudicative and others to principles which would generally be accepted as characteristic of the law...it implies respect for the supreme value and dignity of the individual." The concept is indispensable if a government is to be truly democratic and its most basic meaning perhaps is that it connotes rule premised on the principles of the law, rather than men, which rule (of men) is by its nature, arbitrary and prone to momentary whim and caprice. This tenet therefore limits the public officials in their exercise of power. It is said to buttress the doctrine of limited

⁹Supra see note 5, at 101

government as it seeks to protect the rights of individuals from arbitrary interference by officials. All individuals under the rule of law are equal before the law and in cases where an individual violates the law and is convicted, there are procedures that are to be followed and are guaranteed to ensure due process, fair trial and punishment provided by law.

Popular sovereignty is that principle which recognises the people as the ultimate source of all legitimate political authority in a democratic state. This doctrine as stated by Plano and Olton,¹¹ "...holds that, the people of a political unit or society possess supreme authority, that they establish government and delegate powers to public officials through a social contract or constitution, and that the government so created remains accountable to the people, who retain the supreme authority." This means that although the people ordinarily exercise political power indirectly, they still retain the power and right to alter, abolish as well as create new forms of government.

Having defined democracy and established its fundamental tenets, it is imperative to discuss its development in order to trace its background as well as the form that it has taken in its development through the centuries. Ensuing paragraphs will venture to give a brief account of its historical development and the application of the democratic process will briefly be conferred. It is also important to note that the term democratisation will be used in this discussion and is taken to mean the process by which the ideology of democracy is introduced to a state.

¹⁰ The Oxford Companion to Law, at 1093

2.2. DEVELOPMENT

Despite having been in existence for centuries, democracy may be termed 'a relatively new' phenomenon due to the haphazard development process that it has taken. The problem with establishing a universal definition may be traced back to 500BC when the Romans embraced democracy in the form of a republic and considered the republic loosely as a thing that belonged to the people. As new lands and peoples were conquered, Roman citizenship was conferred. This meant that all Roman citizens were allowed to speak out on issues as well as to vote on them. However, they had to travel to the city of Rome itself in order to actively participate in issues and since they lived in far-flung territories they were unable to travel and were consequently denied these rights on account of distance. The proclaimed democratic process was therefore a utopian ideal.¹²

Numerous political philosophers have contributed to the ideology of democracy and the foundations of the modern democratic doctrines may be attributed to the eighteenth and nineteenth century liberals who transformed it from a mere theoretical formulation as seen from the Roman times, into a working system of government. As listed by Plano and Olton¹³, some of the major contributors to democratic theory during this period include; James Harrington, John Locke, Jean Jacques Rousseau, Thomas Jefferson, Thomas Paine, Jeremy Bentham and John Stuart Mill..."

¹¹ Opcit, at 102

¹² Journal of Democracy, volume 12 , Number 3, at 1

¹³ Opcit, at 97

The twentieth century has also seen a further transformation of democratic doctrines from their earlier forms and principles to what may be termed a “full-blown” ideology that postulates the concept for the ‘best’ society that is rooted in individual freedom, social concern and human dignity.

Despite these developments the democratic theory has remained a loose-knit congeries of theories, concepts as well as practices. The concept presupposes that the individual can make social policy judgments and that a free society provides the best environment for constructing social institutions and ordering human relations. What remains as the core of political democracy are its tenets.

From the foregoing, democracy can be termed as an “elusive” concept as it is an ideal that may appear to exist when in actual fact it does not. Examples are cases where a state is declared democratic on the one hand while on the other totalitarian principles are followed. The problem of defining democracy has gone as far as the international community seeking to reach agreement on the minimum content of, or at least an agreed minimum standard of democracy.

There have been many instances in its development that external parties have introduced the ideology of democracy to states. The concept of intervention in the quest to ensure that states are generally adhering to the ideology may have developed at the same time as the concept of democracy itself.

It is true also to state that in as much as there are states that may intervene with the intention of ensuring democracy in other states, there are also others that may overthrow democratic regimes or even prevent countries that might otherwise become democratic from so doing. An example of such an occurrence is the Soviet Union's intervention preventing the creation of democratic institutions in a number of countries including East Germany, Czechoslovakia, Hungary and Poland.¹⁴ The former stance however is what is of utmost importance to this discussion. It can be noted in this light therefore that external factors significantly helped in the democratisation of states around the world and those that aggressively promoted liberalisation and democratisation included the United States and the European Community.

It should be understood however that in as much as there is external influence in the introduction as well as establishment of democracy, there are also other means by which individual states adopt the ideology and one such example is what is termed by Samuel Huntington,¹⁵ as the "snowballing effect", whereby the process of democratisation occurs successfully in one country in classic chain reaction style.

¹⁴ Ibid, at 4

¹⁵ Samuel P. Huntington, The Third Wave: Democratisation In the late Twentieth Century, at 86

1.3 APPLICATION

Democratisation in a country may occur either of a country's own volition or through the actions of governments and institutions that are external to it. Obviously pro-democratic intervention envisages the latter scenario as the means by which it occurs.

Prior to the Cold War, international lawyers rarely used the word 'democracy' and very few international organisations supported democratic governance. The criteria for recognition of a government took little account of whether regimes enjoyed popular mandate. All these assumptions were however profoundly shaken by the events of the late 80's and early 90's. Global and regional organisations are now seen to take keen interest in fostering democracy in countries that are involved in the transition to democracy as well as previously authoritarian regimes.

Strange as it may seem, the word 'democracy' does not appear in the Charter of the United Nations and was not mentioned in the League of Nations Charter. These are treaties that have received the most international recognition. If viewed from the perspectives of these instruments, democracy may be regarded as an irrelevant consideration in international law.

However, the Vienna Declaration and Programme of Action adopted by the 1993 world's conference on Human Rights asserted in paragraph 8 of section 1 that democracy; development and respect for human rights and fundamental freedoms are

interdependent and mutually reinforcing.¹⁶ The international community should therefore support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the world. This clearly highlights its centrality in international relations.

The international community toyed twice in the twentieth century with the notion of making democracy a norm of international law. The first time was when Woodrow Wilson described America's entry into World War I as a crusade to make the world "safe for democracy".¹⁷ At the end of World War II the defeat of fascism created another opportunity for the international community to make it a norm of international law. This formative period may be seen to a certain extent as the period when the idea of democracy was planted as an essential element of human rights. Its further development in this regard was dealt a fatal blow by 'the rise of the Iron Curtain'. The notion then could not take root due to the cold war, which intruded too quickly to give room for its establishment.

The third chance to establish democracy has been created with the conclusion of the Cold War. International Law has in recent years even incorporated democracy in instruments as earlier discussed and this has been and still is being developed through a process of international consensus and / or widespread agreement.

Over and above being articulated in various instruments, democracy has been established and is being practiced and demonstrated in policies such as promoting

¹⁶ Roland Rich, Journal of Democracy, Volume 12, at 20

democracy abroad and making democracy a qualification for membership to certain regional organisations. Furthermore, democratic conditionality for development by countries is considered in certain instances, as a condition precedent to grants of bilateral and multilateral aid. Organisations have even gone as far as defending democracy through collective security mechanisms.

The last ten years have been seen as witnessing the emergence of a new form of international engagement and cooperation in promoting democracy and the involvement of the United Nations as well as other international organisations such as Transparency International and the European Union have clearly placed democracy promotion on the multilateral agenda. These organisations' efforts in promoting democracy have come in many fields but the most pronounced area of interest has been most intense in electoral assistance.

Pro-democratic nations in international institutions contend that democracy is the ideal form of governance. This is on account of the fact that it is singularly lacking in dogma as it is without absolutes; its basic principles and essential features lie on majority rule which exists so long as the public at large are free to choose the government and minority rights which exist while those in the minority may openly attempt to win majority support for their leaders and policies without a loss of the individual rights enjoyed by the majority and without incurring detriment themselves.

¹⁷ Ibid, at 7

As earlier discussed, criteria have been laid down for the effective application of the ideal through what may be termed “the democratic process”. The application therefore of the ideology by a country will range from the holding of free and fair elections and adherence to democratic principles, to ratification of international instruments that advocate for democratic principles of governance and generally the adoption of those practices by countries that have ratified the documents.

The present chapter having laid the foundation on which a discussion of **Pro-democratic intervention** can follow, has clearly paved the way to a better understanding of the subject at hand and ensuing paragraphs will endeavour to discuss the concept and its justifications.

CHAPTER II

As has been noted, external players influence the democratisation process. Robert Dahl¹⁸ states:

“...Democratic regimes were instituted either during periods of foreign rule or as the country became independent from foreign rule.”

The above quotation explains that there are many cases in which the ideology of democracy is actually introduced to a country not by its own government but by external governments and institutions. The manner in which a state is democratised by external parties is the gist of the argument in this paper. Pro-democratic intervention true to its name involves the intrusion of one state directly into the running of public affairs of another. It involves then of necessity, recognition by the intruding state that the state whose affairs are intended to be interfered with is a state within the meaning of international law. Every state however, is, in international law sovereign within its borders. The principle of pro-democratic intervention then would seem to fly in the face of this latter principle of international law. These principles are indispensable in any discussion of the subject matter of this essay.

¹⁸ Supra see not 15, at 84

Pro-democratic intervention shall for the purposes of this discussion be defined as the process by which parties external to a state may interfere in the affairs of that state in a quest to introduce or reinforce democracy to it. It is also known as uninvited intervention that may involve the use of force and may be justified on the basis of supporting and restoring democracy.¹⁹

There are General Assembly resolutions that deal directly with the principle of non-intervention the most relevant being the Declaration of the Inadmissibility of Intervention in the Domestic Affairs of States and the protection of their Independence and sovereignty of 1965. As stated by Professor Brownlie²⁰:

“ No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal and external affairs of any state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are condemned.”

¹⁹ G.H.Fox and B.R.Roth, Democratic Governance and International law, at 46

2.1. SOVEREIGNTY

Sovereignty has been said to have a long and varied history during which various meanings have been attributed to it. The original meaning of the term is said to be simply 'superiority' without any connotation of absolute or illimitability.²¹ For present purposes, 'sovereignty' will be taken to mean the superiority that one state has in the affairs of its territory in relation to other states. The United Nations acknowledges through its Charter that superiority of states is to be respected and Article 2(1) of the charter states that:

*" The organisation is based on the principle of the sovereign equality of all its members."*²²

This principle is however somewhat limited in extent, due to the affiliation of states to international organisations such as the United Nations and the International Labour Organisation. Despite being termed as the independence of a state in the affairs of its territory, states have accepted restrictions of their liberty of action. Stark²³ states that:

"... It is probably more accurate today to say that the sovereignty of a state means the residuum of power which it possesses within the confines laid down by international policy."

²⁰ Professor Ian Brownlie et al (ed), The British Year Book of International Law, at 208

²¹ Ibid, at 211

²² M.D.Evans, Blackstone's International Law Documents, at 9

²³ J.G.Stark, Introduction to International Law, at 106

It should be noted however that the “playing field” is not level in the sense that some states enjoy more power and independence than others. This is because in some practical sense, sovereignty is largely a matter of degree. Examples that are associated with the sovereignty of states include; the powers that a state possess to exclusively control its own domestic affairs; the power to admit and expel aliens; the privilege that its diplomatic envoys enjoy in other states and; the sole jurisdiction possessed over crimes committed within its territory.²⁴

The above - mentioned rights possessed by states have correlative duties or obligations that bind other states in their mutual relations. These include; the duty not to perform acts of sovereignty on the territory of another state and the duty not to intervene in the affairs of another state. It is the latter obligation that is of utmost importance to this discussion. Stark²⁵ has suggested that to qualify as intervention, an act must fall within the ambit of the opposition to the will of the particular state affected and further states that this must serve by design or implication to impair the political independence of that state.²⁶

²⁴ Ibid, at 107

²⁵ Ibid, at 110

²⁶ Opcit, As quoted by Stark from Hyde on International Law, at 214

2.2. RECOGNITION

Recognition as stated by Stark²⁷ is as the practice of most states shows mostly a question of policy than that of law. This means that the policy of the recognising state is principally conditioned by the necessity of protecting its own interests. These interests lie in maintaining proper relations with any new state or new government that is likely to be stable and permanent. The two main forms that recognition takes are the recognition of states and recognition of governments and for the purposes of this discussion; both types of recognition are of utmost importance.

This principle is important because the identity and number of states are by no means fixed in the sense that there are cases where old states disappear and new ones are formed. In diplomatic intercourse and international relations including intervention, this principle is vital.

Under traditional legal theory, it was not a requirement that in order to be recognised an entity must have a democratic government but needed to meet requirements such as; having a defined territory; possessing a permanent population; having an effective government; and the capacity to enter into relations with other states. Even in present times, the above criteria are still used. In instances where a state's government lapses from being democratic to non-democratic, the international community has still been seen to respect the legal status of the state although certain sanctions may be imposed upon its government.

It has been argued that recognition is fundamental in the relations between states in the sense that a particular political community should be recognised as such in order to be eligible to engage in legal relations with other states. Even the political authorities that represent it in the conduct of its foreign affairs should be recognised as its legitimate government. It is actually through these legal relations that a state can lawfully request military support from other states and other rights that are accorded to sovereign states under international law.

In order for a state to intervene in the affairs of another therefore, in certain cases, the international community may grant permission but it is of utmost importance that the intervening state is identified as such. Furthermore, there are cases in which a regime may invite another state to intervene in its affairs but what must be established is whether the regime that is making the invitation is the legitimate government of the state seeking intervention. It is clear from the foregoing that the two principles discussed are of utmost importance and are relevant to any analysis of intervention.

It is evident from the above that state sovereignty is not absolute and that recognition is subjective. This provides sufficient leeway for intervention to occur legally in certain instances.

²⁷ Opcit

CHAPTER III

3.1. INTERVENTION

There are various types of intervention and the samples include; internal intervention, whereby one state interferes in the affairs of another state; external intervention, wherein a state interferes generally in the hostile relations between other states; and punitive intervention which is a case of reprisal and is short of war as it is a case where a state injured by the activities of another, retaliates by encroaching upon the borders of the erring state. The term 'intervention' as used by various writers in the expression "subversive intervention", is taken to denote propaganda or other activity by a state with the intention of fomenting for its own purposes, revolt or civil strife in another state.

For the purposes of this discussion, the definition adopted of intervention is that advanced by Hersch Lauterpacht,²⁸ as quoted by Fox and Roth²⁹. He asserted that it entails:

"Dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual condition of things."

²⁸ Oppenheim L.F., *International Law*, at 305

²⁹ Supra see note 19, at 260

Prima facie, intervention is an unacceptable act at international law as every state's sovereignty is to be respected. There are however in principle some exceptions in which a state at international law has a legitimate right of intervention. These include as stated by Stark³⁰; collective intervention pursuant to the Charter of the United Nations³¹; to protect the rights and interests, and the personal safety of its citizens abroad; self-defence, if intervention is necessary to meet a danger of an actual armed attack and this would include collective self-defence by the parties to a mutual security treaty; in the affairs of a protectorate under its dominion; and if the state subject of the intervention has been guilty of a gross breach of international law with referable to the intervening state. An example here can be where the erring state has unlawfully intervened.³²

In tackling the concept of **Pro-democratic intervention**, the following forms of intervention will be alluded to:

- I). Unilateral intervention;
- II). Collective intervention;
- III). Intervention by invitation;
- IV). and the use of force.

³⁰ See *supra* note 27, at 111

³¹ This would be by mandate of the Security Council pursuant to Chapter VII of the Charter or any action that has been sanctioned by the General Assembly otherwise the United Nations is also prevented from intervening in matters that are essentially within the domestic jurisdiction by Article 2 of the Charter.

³² *Opcit*

3.1.1 UNILATERAL INTERVENTION

This is a situation whereby one state interferes in the affairs of another and its actions to a great extent are justified. This type of interference is usually unauthorised by the interfering states' global or regional peers. Most unilateral actions are done in order to reinforce or reinstate democratic rule.

Unilateral intervention provides a quicker and more decisive recourse for supporting embattled democrats within nations and this is why a powerful and self-interested state may resort to interfere in another's affairs, as other forms of intervention may tend to be slower and less decisive.

The United States of America is one such powerful state that has tended to interfere in the affairs of other states in an attempt to introduce or restore democracy to such states. An example is the United States' intervention in Panama. It claimed that the action was taken "in support of the democratic process". Fox and Roth³³ aver that, it was justified since it was directed against a regime that had been voted out of office and had refused to give up power. The holding of free and fair elections, which immediately preceded the evacuation of American forces, was advanced as further justification for the intervention. It is noteworthy that the principle of recognition of governments is at play in that the justification of the United States' intervention is based on the illegitimacy of the regime that was ousted.

³³ Ibid, at 106

Another example is that of Tanzania's intervention against the Idi Amin government in Uganda.

It is however clear that the United Nations is not in support of such action. It argued that it is evident from the reasons advanced by the United States for the intervention that it used the democratic argument merely as a farce and that the intervention was clearly inspired more by other considerations such as the protection of its nationals. The United Nations reluctance is understandable on account of the need to curtail nations trying to advance Pro-democratic intervention as a guise for achieving personal self-interest. This waters down the argument that Pro-democratic intervention is a justifiable reason for encroaching upon a states' sovereignty. Bowett³⁴ has stated in this regard that:

*"Nations of the world will not accept international rules that yield a different answer to the question of whether an action is legal depending on the identity of the actor."*³⁵

The idea of unilateral intervention has been rejected by the International Court of Justice and so has the claim that one state has any "special responsibility" to enforce any democratic commitments. The International Court of Justice has further refused to contemplate the creation of a new rule opening up a right of intervention by a particular state against another on the ground that the latter has opted for some particular ideology or political system. It has argued even further that a state cannot claim to restore democracy in another because democracy is not 'something', which can be installed by foreign force in a matter of days.

³⁴ D.W. Bowett, "International Incidents: New Genre or New Delusion?" at 388

3.1.2. COLLECTIVE INTERVENTION

Part VIII of the United Nations Charter provides for situations in which regional arrangements may be made in an attempt to deal with matters relating to the maintenance of international peace and security. This is the point of departure on any analysis of collective intervention.

Not unlike unilateral intervention, collective intervention depends mainly on a restrictive interpretation of the prohibition of the use of force in Article 2(4) of the United Nations Charter. It may also be referred to as multilateral intervention. It is the action by a number of states that come together with a view to reinforce or reinstate democratic rule in accordance with legitimate collective decision-making procedures laid down in international law. As stated earlier, unilateral intervention may be seen as a better means of intervention despite being unpopular because it provides a more decisive and quicker recourse for supporting embattled democrats as opposed to collective intervention, which is slower and less decisive.

An example of collective intervention is the situation that arose when the representatives of states to the United Nations Human Rights Commission voted unanimously in condemnation of the military government of Myanmar for failing to carry out its promise to return the country to democratic civilian rule, as reported in the New York Times.³⁸ Another instance that was perceived as warranting collective judgment as

³⁸ New York Times, at A14 (March 7, 1991)

well as response from those empowered by the international community to make such judgments, was the Junta's refusal in Haiti to allow the elected legislature to meet and its subsequent arrest of many parliamentary leaders.

Both the United Nations and the then Organisation of African Unity issued statements shortly after a military coup orchestrated by Major Johnny Paul Koromah, deposed Sierra Leone's first elected president, Ahemed Tejan Kabbah. The two organisations condemned the coup and called for the reinstatement of the democratically elected government, demanding the restoration of constitutional order.³⁹

Collective intervention is viewed as being justified to the extent that the risks of exploitation of a state's people or resources by a self-interested intervener can be minimised if a number of states collectively intervene in the affairs of a state as this provides for checks and balances.

Fox and Roth⁴⁰ have observed that unilateral intervention is strongly objected to as a means of enforcement to install or reinstate elected governments though collective action at the United Nations or regional level is acceptable even in extreme cases where there is extreme use of force. As further observed by Fox and Roth⁴¹ most scholars and authors do not accept unilateral intervention as legitimate means of enforcing the norm of democracy but most appear to accept collective action by regional organisations as well as the United Nations.

³⁹ *Op cit*, at 253

⁴⁰ *Ibid*, at 549

⁴¹ *Ibid*, at 563

3.1.3. INTERVENTION BY INVITATION

There have been numerous instances, since the Second World War where troops have been sent by one state to another state upon invitation. Such intervention is *prima facie* seen as legal or justified. This means that where one state is invited by another to carry out certain limited operations, the invited state can legally send troops. The validity of this form of action is acknowledged, albeit negatively, in the General Assembly Resolution 3314 (XXIX) where one instance of aggression is stated to be:

“ The use of armed forces which are within the territory of another state with the agreement of the receiving state, in contravention of the conditions provided for in the agreement.”⁴²

The common sense interpretation of this provision is that the resolution envisages the existence in certain instances, of agreements pursuant to which one state may invite another to send armed forces.

An example of the foregoing would include the use of peacekeeping forces, which are involved in limited operations, and do not necessarily involve themselves in the internal affairs. A further example of such intervention is that where it occurs on account of rescue operations, and to provide assistance in instances of minor internal disturbance in the inviting country. An instance is the help given by the British government to Tanganyika, Ugandan and Kenyan governments in January 1964 to quell disturbances

and disorder amongst the armed forces that were demanding better conditions and pay.⁴³

So then even in instances where there is political instability in a country, without its governments permission, or request for intervention, another state has no right to intervene in its affairs as each state retains its sovereignty, which other states are to respect. This is because there is a sound distinction between rights and duties of states vis-à-vis the recognised legitimate government of other states and rebel forces that may engage in the effort of overthrowing a legitimate government. This does not however mean that assistance is forbidden at international law because if the intention of intervention is suppression of insurrection against its authority, it may be justified.

This means therefore, that if assistance is rendered to the legitimate government, it cannot be termed an unlawful case of intervention, as may be the case of assisting rebels who are arrayed against its authority. In this regard, intervention, which is in principle forbidden, is dictatorial interference as opposed to interference pure and simple.⁴⁴

The essential test to establish the legality of an intervention is the valid consent of a legitimate government; and the concept of recognition at this point is also at play. It is important in this regard to identify a state's government as its valid representative, before it is established whether or not the consent in question is valid. A number of

⁴² Professor J. Brownlie et al (editors). The British Year Book of International Law, at 189

⁴³ Ibid

decisions by international arbitration as well as state practice have applied the above criteria to a great extent and a few examples are given below.

In the Garrison case⁴⁵ of 1885 for instance, the tribunal stated that 'every government properly so called is a government de facto ' and a de facto government was defined as that government that commands the habitual respect and obedience of the bulk of the people. Furthermore, the commission in the Hopkins case⁴⁶ of 1926 asserted in its considerations of the validity of certain postal orders issued under the revolutionary government of Huerta that:

*" The binding force of such acts of the Huerta administration as partook of personal character... will depend upon its real control and paramountcy... over a major portion of the territory and a majority of the people...once it had lost this control, it would not be more than one among two or more factions wrestling for power as between themselves."*⁴⁷

It has been stated further that with the consent of the state in which intervention is being carried, the intervening state may use force legally, for example in cases where a local disturbance is to be suppressed, provided the intervening state acts with the consent or at least the acquiescence of the other state. To a great extent, the consent of the other state acts as a form of bilateral agreement between the consenting and intervening

⁴⁴ Ibid, at 191

⁴⁵ United States Moore International Arbitrations, volume 4, at 3553

⁴⁶ United States – Mexico General claims commission 1926

⁴⁷ Supra see not 44, at 192

state. This is said to suspend the normal operation of the legal rules that would in normal circumstances govern their relationship.⁴⁸

Based on the above argument, many states have sought to justify even intervention in other states on the basis of consent and in certain cases, the justification was relatively persuasive and the interventions were even met with general acquiescence. For example, both Britain and France are said to have, albeit to a lesser extent, relied on consent to justify periodic interventions in former colonies during the cold war. Even in cases where the invitations came after inviting officials had already lost power, the interventions were accepted as being justified.

3.1.4. THE USE OF FORCE

The use of force by states is allowed only to the extent that the state that is using it is acting in self-defence against an armed attack and this is provided for in the Charter of the United Nations under Article 51⁴⁹, which states that:

"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..."

⁴⁸ Opcit, at 295

⁴⁹ Opcit, at 16

The United Nations advocates for peaceful means of settling disputes and strongly discourages the use of force at all costs. It should be noted that the use of force does not necessarily mean war.

It has sometimes been argued that a state may justifiably intervene in the affairs of another state by using armed force to overthrow despotic governments. The United States is an example of a state that engages in such actions and has advanced many justifications for the use of such force. Most examples therefore will stem from actions taken by the United States in an attempt to give a clearer understanding of the concept.

Fox and Roth⁵⁰ have stated that, there were overtones on the justifiability of the use of armed force in what was termed the 'Regan doctrine' by the United States in Grenada and Panama. It has been further argued that essential justification for the above action was that it was taken," in support of the democratic process". It has not generally been accepted however, that such actions are justified. The main problem, as viewed by international law, is that the vast majority of governments do not accept the preferred justification on account of the fact that in most cases, even if the intervening state claims that its actions were 'carried out in the name of democracy' there is usually an ulterior motive. An example of the above case is where the United States was not in truth motivated by the democratisation argument in its use of force in Grenada and Panama.

⁵⁰ Ibid, at 106

The United States despite being the chief culprit in using armed force has been an ardent critic of other states that have sought to do the same. A case in point is the Vietnam- Cambodia situation where the former intervened in the latter's' internal affairs. Vietnam received what Roth and Fox ⁵¹ have termed, "vigorous and sustained criticism." Other states therefore, including the United States, have argued that despite the justification made for intervention by most states, the intervention has actually been exercised in an arbitrary way.

The Nicaraguan government claimed that the assistance rendered to it by the United States' in 1986,involved the use of force, where as the United States defended itself by claiming that its actions were justified because its ultimate goal was to install what it called a "truly democratic government that guarantees peace, freedom and justice."⁵²

The International Court of Justice has rejected the idea that the United States has a special responsibility to enforce any democratic commitments on any state. The contemplation of the creation of a new rule that will open up a right of intervention by one state against another on the ground that the latter has opted for some particular ideology or political system has equally been rejected.⁵³

The use of force by governments in intervention has in certain cases been endorsed, where as it has been rejected in others. The concept therefore is not one on which the international body has reached consensus. An example can be given of the

⁵¹ Ibid, at 106

⁵² Ibid, at 99

⁵³ Ibid

international community's vigorous response through the use of force in a bid to restore deposed governments in Haiti in 1994 and Sierra Leone in 1997. The Security Council of the United Nations was seen in the above cases to give authorisation to the use of force.

Ian Brownlie⁵⁴ has stated that:

"In the contemporary world the major sources of barbaric behaviour-the killing of civilians, the destruction and expulsion of whole communities-result from the use of force and a reluctance to use available means of peaceful settlement of disputes."

In many instances involving the use of force at international law, there are cases in which this use of force is considered justified and as listed by Brownlie,⁵⁵ these include:

- a). Instances of non-recognition.
- b). Cases where weapons are supplied on condition that they are used strictly for defensive purposes.
- c). Where treaties have been drafted concerning arms control. There have been for instance, specific proposals prohibiting the use of nuclear weapons 'except in defence against aggression'.

⁵⁴ William.E.Butler, The Non-Use of Force in International Law, at 17

d). Where major issues of state responsibility may relate to the legality of the use of force.

The UN Charter⁵⁶ in Article 6 has provided that:

“A member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council.”

In conclusion, Roth and Foxs’⁵⁷ statement will suffice and it asserts that:

“Cross-border military actions should certainly never be extolled, for they are necessarily brutal and destructive to life and property. They may well be unlawful for a variety of reasons. But if they displace the usurper and emplace the people who were freely elected, they can be characterised, in this particular regard, as a violation of sovereignty...”

It is clear from the above discussions on the forms that **Pro-democratic intervention** takes that states in most cases tend to engage in acts of intervention which may include force and the international institutions and international community in general can do very little in providing redress to the aggrieved states.

⁵⁵ Ibid

⁵⁶ Opcit, at 8

⁵⁷ Ibid, at 248

CHAPTER IV

BRIEF STUDIES OF INTERVENTION IN SIERRA LEONE AND IRAQ

Having discussed pro-democratic intervention and the various forms that it takes, it is imperative to delve into the practical aspect of the subject by giving brief accounts on countries that have experienced such intervention. This is with a view to giving an understanding of how the concept has affected the world and how 'close to home' it really is. This segment will focus on two countries these being the African Country of Sierra Leone and the Middle East country of Iraq.

5.1. INTERVENTION IN SIERRA LEONE

In the 1960s and 1970s, a weak post-independence democracy was said to have been subverted by despotism and state-sponsored corruption, which led to Sierra Leone's suffering nearly a decade of war.⁵⁸ The Revolutionary United Front (RUF) rebels were alleged to have been getting stronger and forceful under their incarcerated leader Foday Sankor with the support of the Liberian president Charles Taylor. Foday Sankoh's replacement Issa Sesay was talking peace but very few Sierra Leoneans trusted his promises because recent fighting was seen as undercutting his offers. The RUF continued to have skirmishes with the government militia as well as repeated forays with neighboring Guinea bolstered by Liberian soldiers.

The history of Sierra Leone's conflicts can be traced back to 1991. The country however only became enmeshed in a violent civil war in 1999 when the duly constituted government of Sierra Leone faced violent opposition from the RUF rebel group. It should be noted that the country in issue is one of the key clandestine suppliers of high quality diamonds to the international market and the RUF is one of the main suppliers of these gems. It has been alleged that the cause of the war has been the gems in question.

Despite being a country endowed with rich agricultural soils, dense forests and abundant natural resources, Sierra Leone has been rated by the UN as the world's most unlivable country because since its independence in 1961, successive regimes have failed to deal with the collapse of a patrimonial system of wealth redistribution and inequitable exploitation of the country's natural resources.⁵⁹ This is what led to the social tensions that subsequently led to the formation of military governments and armed rebel groups whose architects were dissatisfied and unemployed youth from both the urban and rural areas.

In February 1996, parliamentary and presidential elections were held and the army relinquished power to the winner, Dr. Ahmed Tejan Kabbah. The conflict still continued as the RUF did not participate in the elections and refused to recognise the election results. A peace agreement, which was later derailed by another coup d'état in May 1997, was negotiated between the rebel movement and the government.

⁵⁸ Report on Sierra Leone: Diamonds and War by Partnership Africa Canada, P.2

Intervention in a country like Sierra Leone has been seen as inevitable. It has taken three particular forms. The first two instances occurred when the Liberian president Charles Taylor upon invitation by the Sierra Leone government, and the Nigerian governments in May 1997, also upon the request of president Kabbah, resorted to the use of armed force to restore peace in Sierra Leone. The third instance occurred at the hands of African states in the form of the economic community of West African States, led by Nigeria, which tried to bring the conflict to an end. Fourthly and finally by the international community who saw the collapse of the political and social structures in the country as a reason for intervention and the only humanitarian solution after failure by African states to bring peace to the country.

On October 22, 1999 the United Nations (UN Security Council) established the UN mission in Sierra Leone (UNAMSIL) and a multinational peacekeeping force was thus deployed. It was constituted of both military and civilian police personnel from about thirty countries from Africa, Asia and Europe under the command of Major General Vijay Jetley from India.

It is the events mentioned above that led to the international community's intervention and the UN started first by imposing sanctions and embargoes on the country but these did not assist in bringing peace. With the passage of time, the UN Security Council has changed its mandate and the strength of the peacekeeping force has been increased substantially.

⁵⁹ Shalini Chalwa. United Nations Mission in Sierra Leone: [A search for Peace](#), at 1

Having given a brief account of Sierra Leone's experience, it can be established that different forms of intervention have occurred in the state in question. These are unilateral intervention by Liberia under Charles Taylor and Nigeria, collective intervention by the West African States, and intervention by the international community. The intervention was in some cases invited where as in others, the international community saw the need to intervene and came to the country's assistance without being invited.

The action by the UN may be termed intervention by an international organisation coupled with intervention by invitation, because in November 1994, the Head of State of Sierra Leone addressed a letter to the UN Secretary General in which he formerly requested that the UN provide its good offices to facilitate negotiations between the government and the RUF.⁶⁰ This was during the aftermath of the rebel attack when West African States initiated a series of diplomatic efforts aimed at opening up dialogue with the rebels.

The Secretary General in response to this request on December 15 1994, sent a mission to Sierra Leone to initiate the consultations and the result was that the mission noted the deterioration of the country and the negative impact that the war had had on the country. Based upon these findings, the UN in February 1995 decided to appoint a special envoy, Mr. Berhahu Dinka who worked in collaboration with the Organisation of African Unity (OAU) and ECOWAS to try and negotiate a peace settlement and return

⁶⁰ United States Senator Bill Frist: "United States Policy in Sierra Leone "at 1

the country to democratic civilian rule. The events that ensued have already been outlined.

The international community's involvement in the war in Sierra Leone was, until 1996, largely confined to the provision of humanitarian assistance. Britain, the European Union and the United States had been involved in the facilitation of elections and guaranteed blanket immunity for human rights abuses before the breakout of the war.

A Peace Accord was entered into which called for deployment of neutral international observers, and a capable security presence to deter undisciplined elements from interrupting the peace process. Since the government lacked adequate security presence, it sought assistance from the UN in 1997.

On February 5, 1998, Nigerian troops attacked Freetown. The Junta was ousted and president Kabbah reinstated the following month. Both the chairpersons of the OAU and ECOWAS were the first to welcome the intervention, where as the UN Security Council followed with the statement commending the important role that was played by ECOWAS in the peaceful resolution of the crisis, and recognised the reinstated president. The UN later lifted the embargo that had been placed on the government but maintained it on the rebels. It is imperative to refer to the concepts of *de jure* and *de facto* governments that have been discussed in previous chapters as we note that the UN acknowledged the reinstated government of Kabbah which was the *de jure*

government as opposed to the rebel movement which may be referred to as the de facto government. Frank Kargbo⁶¹ states:

*“The overwhelming response of the International Community has been to support ‘democracy’. However, in Sierra Leone, this ‘support’ has acquired a highly personalised connotation and appears to have created an over-expectation of ready made solutions.”*⁶²

It has further been argued in a debate on whether the UN should evacuate their forces from Sierra Leone⁶³ that:

“ The Sierra Leone fiasco reinforces a lesson the UN should have learned years ago but is still shamelessly reluctant to accept: if there is not a peace, you cannot keep it – and the attempt to keep non-existent peace is not merely a waste of time, but carries a huge risk of exacerbating the very conflicts the peacekeepers were meant to help resolve.”

This argument is based on the premise that where the parties to a conflict have reached a genuine settlement, backed by their dispositions on the ground, which the intervening force can help guarantee, such force must do just that -guarantee it - no more.

The situation faced by Sierra Leone was seen as the responsibility of the UN member states, particularly those in the Security Council which should provide operations with

⁶¹ A Senior Member of the Sierra Leone Bar and former Attorney General And Minister of Justice, Sierra Leone

⁶² ‘ Seeking A Sustainable Peace: Policy Meeting on the Conflict in Sierra Leone.’ The International Human Rights Committee of the Law Society, at 3

sufficient resources to reduce the risks, including strengthening peace agreements. With regard to the subject, that is, intervention in Sierra Leone, it has been argued, on the one hand, that not many conflicts can be resolved through external intervention as it is an internal war that should be resolved locally either by one combatant securing supremacy, or through a compromise in which each party recognises a settlement. On the other hand it has been argued that external intervention is appropriate to internal wars as they do not remain internal for a long time but may spill over and therefore that it cannot be assumed that a lack of intervention will accelerate resolution.

It has also been observed that military victory does not necessarily guarantee peace but is costly both in human and financial terms, as well as ineffective. It is asserted further that some of the UN's best achievements have been through preventive action as opposed to the use of force. This does not mean however, that the use of force is unacceptable, as military intervention is in some instances necessary to protect life and promote stability.

Another issue that arose with regard to intervention in Sierra Leone is the United States Policy in the country. The United States was seen not only as a supporter but an architect of the UN operation that proved inadequate to address the harsh realities of the evil acts and desires which drove as well as fuelled the destruction of the country.⁶³ A conclusion upon the issues raised in this chapter will be deferred to the final chapter

⁶³ Christopher Clapham & Alex Ramsbotham, *Should the UN get out of Sierra Leone?*, at 1

⁶⁴ *Supra* see note 60, at 1

5.2 INTERVENTION IN IRAQ

It is imperative to give a brief factual background of the war that the United States declared and made against Iraq with the help of its ally United Kingdom (hereinafter referred to as the US and the UK respectively) with a view to arriving at a clearer understanding of intervention and the forms that it takes.

The crisis between the U.S. and Iraq continues more than a decade of antagonism between Washington and Baghdad, involving three U.S. administrations. To truly understand why the war actually took place, it is important to look closely at the goals of the current Bush administration, which is drawn to conflict by Iraq's massive oil reserves and the goal of expanding U.S. military power around the world.

Iraq has actually in the past decade defied 16 United Nations resolutions and changed their position depending on what they thought was tactically advantageous to them.

The international community and specifically in the United Nations, tried very hard to address the 'problem' in Iraq in an effective way. The issue of Iraqi noncompliance was viewed by the Bush administration as an important test of the United Nation's resolve."

As a starting point, it is important to note that the international community met the unilateral declaration of war on Iraq by the US with mixed feelings. In fact, even the US itself was divided over the issue. Congress did not approve of the president's

declaration of war on Iraq without its ratification and argued that the US War Powers Resolution⁶⁵ requires the president to report regularly as well as consult with Congress after unilaterally choosing to deploy US armed forces. It is only therefore with the ratification of Congress that the president can legally under the United States law declare and make war with another state unilaterally.⁶⁶

The US and UK publicly considered the use of force against Iraq which force had the aims of;

- (I). Destroying nuclear, chemical, biological and other weapons of mass destruction that Iraq purportedly had and which the US still alleges that it has; and
- (II). Bringing about a change of leadership, considering such action to be justified on the basis of the right to carry out a pre-emptive strike in self-defence, the right to respond in self-defence against an armed attack. This is in reference to September 11 attacks on the International Trade Centre in the US.

The above states relied strongly on the fact that Iraq had breached resolutions of the UN Security Council, which they considered to justify military action. Iraq was alleged to have persistently failed to cooperate with the UN weapons inspection programme and to

⁶⁵ R. Turner, *The War Powers Resolution: its Implementation in theory and Practice*, (1983), P.17. The War Powers Resolution seeks to prevent the President of the US from abusing both authority as Commander-in-Chief and his ability to respond more quickly than Congress, as the president may deploy troops and undertake a military action that does not constitute a response to a sudden or imminent attack before congress can act at all which would be dangerous.

⁶⁶ The Committee on International Security Affairs of the Association of the Bar of the City of New York .P.5

violate a large number of resolutions of the UN Security Council leading to the withdrawal of the weapons inspection team.

It should be noted that the attack on Iraq by the US was activated by self-interest. This is seen in the motives for intervention which apart from the ones mentioned included a design to replace the Iraqi leadership with one more amenable to the US' current international goals. Secretary of state Colin Powell was quoted as having stated that, "regime change is something the United States might have to do alone."⁶⁷

Defence Secretary Donald Rumsfeld was also quoted on the issue as having stated that, "the world 'would be a safer place if there were a regime change' in Iraq."⁶⁸

He further averred that the US would launch the first attack as soon as possible because further delay would give another opportunity for Iraqi weapons programs to mature further. Another Senior US official, National Security Advisor Condoleza Rice , making a moral case for the invasion of the need to oust Hussein made another strong statement. She asserted that:

" This is an evil man (Saddam Hussein) who, left to his own devices, will wreak havoc again on his population, his neighbors and, if he gets weapons of mass destruction and the means to deliver them, on all of us. It is a very powerful moral case for regime change...we certainly do not have the luxury of doing nothing...if Saddam Hussein is

⁶⁷ Ibid., at .3

⁶⁸ Ibid

*left in power, doing the things that he's doing now, this is a threat that will emerge, and emerge in a very big way.*⁶⁹

The US unilaterally intervened in the affairs of Iraq in defiance of UN provisions that advocate peaceful means of dispute settlement as opposed to use of force which may only be resorted to when a country is attacked and is retaliating or where a country foresees an imminent armed attack. Neither of these two exigencies can truthfully be said to have arisen.

The Bush Administrations' self-interests prevailed over the interests of the Iraq people who they alleged were being led by a tyrant who needed to be replaced by a more democratic regime. This administration actually made it clear that the attack on Iraq was based on long-term foreign policy, if not moral reasons and particularly not any concept of defending the US from an imminent military attack from Iraq.

Who determines what is best for a particular country? Is it the people of that state or the international community or even a single foreign state? The concept of pro-democratic intervention is to be firmly assessed in trying to find answers to a question such as this one.

The US was, arguably, justified in using force to the extent that it did, only if it can be shown that Iraq had funded or otherwise assisted Al-Qa'ida. According to the International Court of Justice in the Nicaragua case⁷⁰:

⁶⁹ Ibid., at .4

*" In the case of individual self-defence, the exercise of the right is subject to the State concerned having been the victim of an armed attack. Reliance on collective self-defence of course does not remove the need for this...[T]he court does not believe that the concept of 'armed attack' includes not only by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support."*⁷¹

The president of the US did not at any point, either before or after the war, determine with the certainty, that international law required him to prove that Iraq was part of the September 11 attacks on the US, and the country's Vice President explicitly acknowledged this.

The UN Charter as already discussed in previous chapters, provides the framework for the use of force in international law. In the present case, all the states including the countries that went to war are parties to it. The Charter places emphasis on the principle that peace is the fundamental aim of the UN and is to be preserved if at all possible. Chapter 1 of the Charter actually provides the purposes of the UN and states the first as:

" To maintain international peace and security; and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of the acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and

⁷⁰ Opcit

international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."⁷²

Oppenheim contends that:

*"While anticipatory action in self-defence is normally unlawful, it is not necessarily unlawful in all circumstances, the matter depending on the facts of the situation including in particular the seriousness of the threat and the degree to which pre-emptive action is really necessary and is the only way of avoiding that serious threat; the requirements of necessity and proportionality probably have an even more pressing relation to anticipatory self-defence than they do in other circumstances."*⁷³

The evidence about the level as well as the nature of threat that Iraq was alleged to have posed, to other countries, was not clearly defined. The UK governments and US did not make clear the extent to which the threat posed by Iraq was viable and imminent. The question of self-defence does not apply because the threat was not imminent and the proximity was not proportionate to the severity of the threat claimed by the two states that made war on Iraq. No credible evidence was advanced as to how imminent and proximate the threat on the US was by Iraq.

From the accounts given of the experiences of countries that have been the subject of forms of intervention, it is clear that intervention is not a far-fetched notion or a concept

⁷¹ Rabinder Singh QC & Alison Macdonald. Legality of use of force against Iraq. at 8

⁷² Charter of the United Nations. Chapter I. Article 1 (1)

⁷³ *Opcit.*, at 10

that exists only in theory. It is a concept that has existed and will continue to exist for as long as there is still war and strife within nations as well as between them. Intervention is not in itself a vice, but it is the forms that it takes and the justifications or the lack thereof that makes it a notion that may be termed a 'nuisance' in itself.

This chapter has clearly shown that though in many cases intervention may be termed democratic; it is not in all cases that the aim of such intervention is to ensure that states adhere to this ideology. Various reasons though not advanced, lie at the heart of many instances of intervention and availed as Pro-democratic. It can be asserted that the intervention of the UN in Sierra Leone in the first instance is more justified than the intervention of the US and UK in Iraq in the second instance.

Another important point to note is that in most if not all cases, powerful countries tend to defy the provisions of international conventions or even instructions given by international bodies such as the Security Council of the UN, and undertake to interfere in the affairs of weaker states. The question to be asked is; should the international community continue to refer to such interferences as intervention or should it be plainly referred to as what it actually is, interference.

CHAPTER V

It is of utmost importance to give an overview of this paper before the recommendations to how intervention can be most effectively applied, are advanced.

Chapter one opened the discussion by giving the definition of democracy considering that this is a discussion on pro-democratic intervention. This was with a view to ensuring that it was understood from the onset, that the ideology of democracy is one that is applied in many countries and having been adopted as the 'best ' form of governance, by such countries endeavor to introduce it to other states that may not easily adopt it without reservation. This chapter went on to give a brief account of the development of democracy after which its application by states was discussed.

Chapter two focused on the concepts of sovereignty and recognition establishing these two concepts as important in the discussion of pro-democratic intervention, in the sense that, they assist in creating the foundation upon which the forms that intervention takes can either be justified or unjustified.

Chapter three tackled the concept of intervention and the different forms that it takes. The different types of intervention were discussed in detail and their justifications were thereafter advanced.

Chapter four gave brief accounts of interventions in Sierra Leone and Iraq and this was with a view to giving a clearer understanding of how the concept of intervention is a reality. It also discussed the different forms of intervention that were carried out in these two countries.

From the discussion, it is clear that consensus has not yet been reached on the concept of pro-democratic intervention. In this light, listed below are recommendations that may guide individual states as well as international organisations in dealing with the concept in question.

5.1 RECOMMENDATIONS

1. The primary challenge of the stakeholders to negotiations is to develop a culture that identifies negotiation as the best way of resolving conflict. Upon identifying hostilities therefore, all parties should dialogue. The international community should ensure that dialogue is encouraged.
2. The international community should be prepared to guarantee the implementation of any agreement. International participation in the resolution of a conflict, should one arise in the process of intervention, must be based on a firm mandate and an adequate presence capable of effecting it.
3. It is imperative that the concept of pro-democratic intervention is identified as one that states should acquaint themselves to both in principle and in practice. To achieve this, it is inevitable that the 'stronger' democracies should spear head the

campaign so as to create awareness. This should not only be done in instances where the stronger democracies intend to introduce the ideology to the 'weaker' states, but the former should be seen to apply democratic principles in the running of their own governments.

4. Primarily, the challenge is on the international community to create an enabling environment in which parties to a conflict will have a level playing field. It should not tolerate situations where certain states override the United Nations instructions and resort to the use of force.
5. Future conflict could be avoided if it were ensured that parties renounce violence at the preliminary meeting as well as pledge themselves to a peaceful resolution to the conflict.
6. It should be understood by single states and the international community, that the concepts of intervention generally and pro-democratic intervention in particular should be given universal definitions. This is to ensure that parties understand that a single state cannot construe it in the way that they desire because a standard would have been adopted.
7. Punitive measures should be placed on states that defy the UN Security Councils instructions. This means that, if a state is seen to be in defiance even after being given strict instructions not to, it should face punishment at international law. The use of force as a form of intervention should not be tolerated unless a country is threatened by force or foresees an imminent use of force. If it follows that force is used where it should not have, sanctions should be instituted to ensure that states that defy measures do not go scott free.

8. The UN Charter's provisions on the use of force should be strictly adhered to, to avoid states unilaterally intervening by using force and killing innocent people and wasting unnecessary time on war.
9. More international conventions should provide for conditions for intervention to ensure that it is carried out on the grounds that are provided for under the conventions and the state(s) that seeks to intervene should be placed under serious scrutiny so as to avoid arbitrary interference.
10. There should be a system that allows for countries being interfered with, to decide whether or not they need the intervention before it actually takes place. This is to ensure that the intervention is strictly carried out for the benefit of that state as opposed to that of the intervening state.
11. The recommendations advanced are applicable not only to other countries but to Zambia both in its internal and external relations. Taken together they have major policy implications at all levels and for all stakeholders including the government, civil society, private sector and the general masses. This is because the above recommendations aim at improving human security and sustainable peace.

5.2 CONCLUSION

In view of the foregoing, it can be concluded that pro-democratic intervention is not a subject that should be sidelined, as it is one of utmost importance. It should instead be taken seriously so as to ensure that innocent lives are not unnecessarily deprived of the rights that they have, even those as inherent as the right to life for example, due to war or other forms of strife.

The subject may seem inapplicable to Zambia but it is necessary to note that even to Zambia, which is a relatively peaceful nation, the subject of intervention is important because it is a young democracy and the international community is bound to impose certain measures to ensure that the principles of the ideology are followed to the letter. Zambia has not in fact been exempted from intervention in that, even in the electoral process the international community has been involved in ensuring that there is transparency and in cases where it has been alleged that the principles of democracy have not been adhered to, has threatened to use measures such as withdrawal of aid which despite having not been discussed, may also be seen as a form of intervention.

Zambia therefore should not be complacent in ensuring that the pros and cons of intervention as well as concepts such as sovereignty and recognition are understood in order that no other state may interfere in the running of the affairs of the country. It is also important that both government officials and the general masses are enlightened on the subject, to ensure that any form of arbitrary intervention is thwarted even before it reaches an advanced stage, as all stakeholders will be able to recognise it.

At international level, general rules and procedures should be laid down by organisations such as the UN in an attempt to give guidance to states in their interrelations as well as creating a level playing field.

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