

# Intervention in the Internal Affairs of States

Written by Anthony Paphiti

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ANTHONY PAPHITI, OCT 25 2011

The coalition campaign against Libya, under the legal authority of UN Security Council Resolution 1973[1], had three principal objectives: an arms embargo, a no-fly zone and the protection of civilians. But to what extent does the UN Charter permit legitimate violation of the sovereignty of another state, in the absence of international armed conflict or acts of national self defence?[2] Should moral imperatives override legal authority? Even assuming the mandate was soundly based in law, was it breached by the coalition and NATO in the manner of its execution? While the mandated authority to protect civilians was interpreted most liberally, some might say it was used as a smoke screen for an intent which was subsequently revealed, that of regime change, for which there is no lawful authority under the Charter.[3]

### The UN Charter

The starting point is the Charter of the UN. Article 1 very importantly sets out its purpose:

1.1 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 acts of aggression or other breaches of the peace, and to bring about by peaceful means....

The clear reference to threats to “*international peace and security*” is fundamental to the whole Charter and it is only when they are established that steps can be taken under it (“to that end”). This is confirmed elsewhere. For example, article 2 provides,

2.7 Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

The proviso relating to Chapter VII enforcement (the authority governing UNSCR 1973), may seem to provide an exception. But Chapter VII is concerned with “action with respect to threats to the peace, breaches of the peace, and acts of aggression”. It is clear from article 39 that it is a matter for the Security Council (SC) to determine whether any threat to the peace, breach of the peace, or act of aggression exists and “shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”[4] This admittedly grants a great discretion to the SC to determine whether a threat to peace exists. However, it is suggested the threat must be real and must be relatively imminent, not a mere future possibility.[5] Where such a major step is to be taken as the violation of sovereignty, the grounds also need to be articulated.

Article 41 provides for the use of measures not including the use of force. Article 42, the “enforcement” provision, is the authority for the use of armed force, often expressed in a UNSCR as “all necessary measures” as may be necessary to maintain or restore international peace and security. Article 51 permits the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the [SC] has taken measures necessary to maintain international peace and security.

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The preamble to UNSCR 1973 declared a threat to international peace and security, and gave legal authority for Chapter VII action, but without explanation of what that threat was. Nations supporting UNSCR 1973 were concerned with the safety of civilians within Libya, not threats to external peace and security. Even the USA is quoted as saying, "*The Council's purpose was clear: to protect Libyan civilians*". That concern arose from Colonel Gaddafi's threat of civilian massacre in Benghazi, as President Obama alleged. However, looking at what he actually said, some might argue that Gaddafi's words were an entreaty for rebels to lay down their arms and those who did would come to no harm. In respect of those who did not he said,

we will search each and every flat and house, and if we find weapons in those flats and residences, then we would consider them as enemies.. Those infidels who are attempting to burn down our country to the ground. We should have no mercy on them. Those are the traitors.[6]

This is quite different to what was reported and used so readily as a justification for intervention. It underlines the importance of accurate information before decisions are made about the use of force. We saw how, in the case of Kosovo, claims of genocide by Serbian forces, which served to increase the moral pressure on the US to act, were never proven to have occurred. The moral imperative thereby overruled the facts. The Goldstone commission had a curious approach to the matter and determined that the bombing was "illegal but legitimate." Noam Chomsky, in his Statement to the United Nations General Assembly Thematic Dialogue on the Responsibility to Protect, 23<sup>rd</sup> July 2009, discussed the NATO bombing of Serbia, which he stated "plainly violated the Charter", said this was a conclusion reached by reversing the chronology of bombing and atrocities. [7]

Russia and China, for example, both UNSC members, were anti-interventionist. They viewed what was happening in Libya in February 2011 as very much an internal matter: some sections of the Libyan population rose up against their government. At this stage there was no civil war. Similar was happening elsewhere in the Middle East, where the UN response was markedly different. The killing of civilians is tragic whenever it happens but, as experience shows, during fighting between armed groups it is a fairly common tragic consequence (and nowadays the ICC may have jurisdiction to deal with war crimes and crimes against humanity) which *per se* does not amount to genocide or a threat to international peace and security.

## Other Treaty obligations

Treaty obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide which require parties to act in prevention of genocide[8] (some argue this is part of the concept of R2P) do impose positive legal obligations, including prosecution, punishment and extradition, and allow a Contracting Party to "call upon the competent organs of the United Nations to take such action *under the Charter of the United Nations* as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3",[9] (emphasis added) but not the right of intervention. Professor William A. Schabas has observed that,

The drafters [of the Convention] quite explicitly rejected universal jurisdiction for the crime. Article VI recognises only territorial jurisdiction, as well as the jurisdiction of an international criminal tribunal. [10]

Military force and violation of territorial sovereignty can be lawfully undertaken only if they are permissible within the terms of the UN Charter. The solution, it is submitted, is to amend the Charter. That document does provide a mechanism for its amendment, so why is it not used? Is it because there is insufficient real (as opposed to token political) consensus among the international community which sees such a doctrine as a means of permitting intervention too easily (see below). Some might argue that was indeed the case in Libya. There was much said about genocide, but no evidence that it occurred, according to Amnesty, whose findings confirmed a recent report by the authoritative International Crisis Group, which found that while the Gaddafi regime had a history of brutally repressing opponents, there was no question of "genocide".[11] So, were the 5 Security Council abstainers right to be sceptical?

The Rome Statute created an International Criminal Court which can exercise criminal jurisdiction for offences set out in articles 6 (genocide), 7 (crimes against humanity) and 8 (war crimes), subject to the principle of complementarity (where the state to which the accused belongs may exercise criminal jurisdiction instead).[12] In addition, in

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international armed conflict (IAC), the Geneva Conventions and Additional Protocol I will apply. In internal, non-international armed conflict (NIAC), common article 3 applies and APII. Libya acceded to the GCs (2/5/1956) and API and II (7/06/1978). Importantly, Article 3 of APII of 8 June 1977 states:

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

At page 27 of its report of September 2011, entitled "The Battle For Libya Killings, Disappearances And Torture", Amnesty 's view is that "At time of writing there is in Libya a non-international armed conflict between al-Gaddafi forces and opposition fighters. There is also currently an international armed conflict between the NATO-led coalition forces and the al-Gaddafi forces. ..." IAC will trigger the Geneva Conventions and AP1, whereas common article 3 will apply to NIAC.

## Responsibility to Protect<sup>[13]</sup>

The UN has understandably become concerned about the plight of oppressed people and has developed the concept of R2P (Responsibility to Protect), based on the report of the International Commission on Intervention and State Sovereignty in 2001 (The Evans Commission), [14] and articulated in 2005 in a diluted form at the World Summit by the then Secretary General, Kofi Annan, in his report on UN Reform priorities. This said, at paragraph 194:

In the wake of these conflicts, a new understanding of the concept of security is evolving. Once synonymous with the defence of territory from external attack, the requirements of security today have come to embrace the protection of communities and individuals from internal violence.

Then, at para 212:

New approaches in this area could include establishing a mechanism to monitor compliance by all parties with existing provisions of international humanitarian law....<sup>[15]</sup>

The Evans Commission report was concerned that:

"There were too many occasions during the last decade when the Security Council, faced with conscience-shocking situations, failed to respond as it should have with timely authorization and support. And events during the 1990s demonstrated on too many occasions that even a decision by the Security Council to authorize international action to address situations of grave humanitarian concern was no guarantee that any action would be taken, or taken effectively. "

In the "Principles for Military Intervention", principle D, it is recommended that the P5 members of the UNSC should not use their veto powers where their vital state interests are not involved. At Principle E, it recommends that "If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:

I. consideration of the matter by the General Assembly in Emergency Special Session under the "Uniting for Peace" procedure; and

II. action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council." However, at Principle F it states: "F. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to

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protect in conscience-shocking situations crying out for action, **concerned states may not rule out other means to meet the gravity and urgency of that situation** – and that the stature and credibility of the United Nations may suffer thereby.” (emphasis added).

Kofi Annan emphasized R2P was not to be confused with humanitarian intervention, but was to ensure that nations acted if another Rwanda loomed, when

[a]pproximately 800,000 Rwandans were slaughtered by their fellow countrymen and women... There was a United Nations force in the country at the time, it was neither mandated nor equipped for the kind of forceful action which would have been needed to prevent or halt the genocide.[16]

R2P developed at the 2005 World Summit[17] as a clear and unambiguous acceptance by all governments of the collective international responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Nations agreed a willingness to take timely and decisive collective action for this purpose, through the SC, when peaceful means prove inadequate and national authorities are manifestly failing to do so.[18] According to one commentator[19] R2P remains an “emerging norm”. In order to achieve consensus for the doctrine she states that “certain concessions, however, had to be made.... by limiting R2P’s scope to four crimes (genocide, war crimes, ethnic cleansing and crimes against humanity’ as well as ‘their incitement’) as opposed to [the suggested] criteria of ‘serious harm.’ Also omitted were the criteria for the use of force and references to the responsibility to rebuild”. She went on to say, at p.8:

Nonetheless, the absence of use of force criteria did expose one of the ongoing sources of anxiety and preoccupation for some states – the potential abuse of the norm by powerful states through unilateral or regional intervention. This remains an ongoing challenge reflected in the current parameters of R2P, which, in an effort to limit unilateral action, stress the norm’s grounding in the UN Charter and the principle of non-intervention outside of Security Council authorization.[20]

This, it is suggested, is a significant omission and underlines the necessity to bring a situation within the provisions of the Charter.

At the General Assembly (GA) debate in 2009, Member states were united on restricting R2P’s scope to the four crimes mentioned above. Several states insisted, however, that R2P would be misused to claim legitimacy for unilateral action. While this was rejected by the majority, it shows the concept has doubters, among them the President of the GA, who asserted that R2P is a “sovereign’s obligation” rather than one which the international community had accepted. He maintained that the Charter prohibits the SC from taking coercive measures to “alleviate suffering,” as R2P calls upon it to do. In his view,

[n]either R2P nor any other such norm of international conduct could be applied fairly ... so long as “today’s system” permits powerful countries to ignore elements of international law which they find inconvenient, “some great powers” resort to the use of force in violation of the Charter, and no means exist to “enforce accountability” upon such abusers.[21]

That is the central concern and one which presents the UN with a problem in extending the limits of the Charter in the way it seeks to do.

However, it was the case that “Several member states were explicit that mass atrocities committed within a state’s borders can be considered as threats to international peace and security.”[22] But it was never explained how this could be. This statement *simpliciter* is not sufficient, it is suggested, to oust the provisions of the UN Charter. The first case considered by the International Court of Justice (ICJ) decided on 9 April 1949, the *Corfu Channel* case, determined that it

can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the defects in international organization, find a

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place in international law...; from the nature of things, [intervention] would be reserved for the most powerful states, and might easily lead to perverting the administration of justice itself. [23]

Such threats ought to be shown to exist or be imminent threats to international peace. That is, that they are real and not possibilities, as one would expect in the analogous situation of self defence.[24]

## Re-defining “Sovereignty”

A method which seems to have been devised to overcome the sovereignty concerns was to view R2P as an “*an ally of sovereignty*”[25] and to redefine what sovereignty means. Writing in the Economist in September 1999, Kofi Annan said

State sovereignty, in its most basic sense, is being redefined—not least by the forces of globalisation and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa.

The report of The International Commission on Intervention and State Sovereignty has as its central theme “The Responsibility to Protect”, being the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe but, when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states. The Commission conceded, at para 1.34, “All that said, sovereignty does still matter.” Significantly, at para 1.35, “[t]he defence of state sovereignty, by even its strongest supporters, does not include any claim of the unlimited power of a state to do what it wants to its own people.” But this broader definition still does not actually address how internal disturbances, *ab initio*, pose a threat to international peace, which is essential to engage the Charter.

Interestingly, article 4.h of the Constitutive Act of the African Union[26] sets out “The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.” In other words, there is, by treaty, clear authority that intervention may occur in the territories of treaty states if any of the specified triggers operates. The UN Charter does not contain such a provision.

## Conclusions

The moral imperative to intervene in a nation’s internal affairs where acts of genocide are threatened is a powerful one. It becomes even more powerful when threats turn into action. Many consider that the declaration by the Security Council of a threat to international peace, as *they* define it, is sufficient to intervene. Perhaps this is what should happen. In the United Nations, the R2P concept lacked the support of one third of the Security Council – neither Russia nor China used their veto. Perhaps this was because, at the time, the Resolution was not perceived as providing the sort of interventionist licence that France, UK and NATO took. Regime change became a feature of UK/French/NATO policy in the course of the campaign, and was never authorised by the UNSCR.[27] Moreover, the Resolution was only actively supported by less than one third of NATO states. In the case of Libya, it is questionable whether Gaddafi’s threats against the people of Benghazi, taken at their highest, actually amounted to the offence of genocide. Amnesty International found no evidence to say genocide was occurring in Libya. Did coalition action prevent it, or was it precipitous? After the collapse of the regime NATO did not prevent attacks on Tawerghans by the rebel forces they were supporting. Some described this as genocide.[28]

We have seen how mere mention of the accusation of genocide touches a very raw nerve in these human rights aware times. Kosovo was an example.[29] Libya is another. The situation was not comparable to what happened in Rwanda. UN members never articulated in what way the internal situation in Libya threatened international peace. Had the mandate explained the nature of the threat, rather than taken on the appearance of a box ticking exercise, doubts may have been removed. In any event, there should be strong evidence of an imminent threat to international peace before sovereignty of a member state is violated. Merely saying there is, without more, can lead to an abuse of the Charter provisions.

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There is no universally agreed doctrine of humanitarian intervention.<sup>[30]</sup> As long ago as the *Corfu Channel Case*,<sup>[31]</sup> the ICJ was concerned about mighty nations violating the sovereignty of the weaker. The UN Charter is founded on principles of respect for state sovereignty and the maintenance of international peace. Moral pressures from human rights abuses by autocratic rulers have stretched the limits of the Charter: the moral imperative drives nations into action in support of international treaty obligations, even where such obligations make no provision allowing for breach of sovereignty, and even where, in the case of genocide allegations, the strict requirements of the offence are not made out. Consequently, if there is a wish to exercise a right of intervention in times of internal civil unrest, it is suggested that R2P is not enough.

Article 4.h African Union Constitutive Act is a template for nations explicitly agreeing to permit violation of their sovereignty in the circumstances envisaged. It is suggested the UN Charter should be amended along similar lines, through the mechanism provided in articles 108 and 109 in order to remove “legalistic manoeuvring”.<sup>[32]</sup> This may be harder to achieve now due to concerns about the extent to which UNSCR 1973 has been liberally interpreted, whereby NATO became the *de facto* rebel air force, attacking Gaddafi’s forces wherever and whenever they could be found, and the ambivalence of the international community in relation to dealing with other oppressive regimes in the world.<sup>[33]</sup> Nevertheless, in his address to the UN on 22 September 2011, British Prime Minister David Cameron urged more intervention, emphasising the moral imperative:

You can sign every human rights declaration in the world, but if you stand by and watch people being slaughtered in their own country when you could act, then what are those signatures really worth?

However, when it came to a vote on a much watered down draft resolution to address the situation in Syria, two Permanent Members of the Security Council, China and Russia, exercised a veto, expressing concerns over the possibility of outside intervention. Russia’s UN Ambassador Vitaly Churkin said that draft was based on “the philosophy of confrontation”. China’s UN ambassador Li Baodong said that Beijing opposed the idea of “interference in (Syria’s) internal affairs.” The BBC reported that

[t]he Libyan conflict has sharpened divisions among Security Council members, with both Moscow and Beijing saying that the resolution authorising the use of force to protect civilians was misused by Nato to bring down Col Muammar Gaddafi’s regime. <sup>[34]</sup>

It would therefore seem that, having obtained UNSCR 1973 by a very narrow margin, which indicated the concerns of abstaining nations, the manner of its implementation may have done significant damage to the concept of R2P. It is suggested that the strong moral imperative to act to save lives should be complemented by a sound legal imperative in conformity with the UN Charter. That the UN is eager to push the doctrine of R2P and to re-define sovereignty to permit intervention in a state’s internal affairs is testimony to the fact that the Charter does not provide that legal authority. It should.

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[1] Passed by a vote of the 10 out of 15 members of the Security Council, Russia and China (both Permanent Members), Germany, India and Brazil abstaining. Out of 28 NATO members, only 8 provided aircraft to bomb Libya. Germany, a major NATO ally which abstained in the UNSC vote, did not deploy any aircraft.

[2] The only 2 lawful grounds for use of force under the Charter are, (a) where enforcement measures are authorised by the Security Council (see art 2.7) or (b) where a state acts in self defence (see art 51)

[3] See: ‘The bombing continues until Gaddafi goes’, by David Cameron, Barack Obama and Nicolas Sarkozy, Daily Telegraph, 15 April 2011 and ‘The Guardian’, 2<sup>nd</sup> October, ‘How David Cameron swept aside sceptics over Libya

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campaign'. That intent is far removed from the authority to protect Libyan citizens.

[4] See also article 24.1 which provides: "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of *international peace and security*, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf" (emphasis added).

[5] The Times reported, on December 1, 2004: "In a tacit rebuke to the Bush Administration, the UN High Level Panel Report On Threats, Challenges And Change said that "states should take military action only when faced with an actual or imminent attack. Any 'preventive' military action should require approval by the UN Security Council...In a world full of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based, is too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted." This is within the context of a threat to international peace. See also, SC/7666 "Security Council Hears Over 60 Speakers In Two-Day Debate On Iraq's Disarmament; Many Say Use Of Force Should Be Last Resort, Others Urge Swift Action", (19 Feb 2003).

[6] *Boston Globe* on 14th April, Alan J. Kuperman; [http://articles.boston.com/2011-04-14/bostonglobe/29418371\\_1\\_rebel-stronghold-civilians-rebel-positions](http://articles.boston.com/2011-04-14/bostonglobe/29418371_1_rebel-stronghold-civilians-rebel-positions) ; See also the video of the speech given by Col Gaddafi on 17<sup>th</sup> March: <http://www.youtube.com/watch?v=ULw5IUG5wI0>

[7] For an interesting article on the matter, see John Pilger in The New Statesman, on 13 December 2004, "Kosovo - the site of a genocide that never was". Further reference "Kosovo assault 'was not genocide' " - BBC Friday, 7 September, 2001. "A United Nations court has ruled that Serbian troops did not carry out genocide against ethnic Albanians during Slobodan Milosevic's campaign of aggression in Kosovo from 1998 to 1999." This is available on-line at <http://news.bbc.co.uk/1/hi/world/europe/1530781.stm> See also the transcript of the UN supervised Supreme Court of Kosovo in the final appeal by Miroslav Vuckovic , 7 October 2009: <http://www.eulex-kosovo.eu/docs/justice/judgments/criminal-proceedings/SupremeC/Vuckovic/SupremeCourtVerdict-MiroslavVuckovic-Ap-KzNo1-2009-E.pdf> .

[8] A crime of intentional destruction of a national, ethnic, racial and religious group, in whole or in part by (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

[9] *Ibid*, Article 8

[10] See Convention For The Prevention And Punishment Of The Crime Of Genocide, 2008 (available on-line at [http://untreaty.un.org/cod/avl/pdf/ha/cppcg/cppcg\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/cppcg/cppcg_e.pdf))

[11] See The Independent, Friday, 24 June 2011.

[12] *Ibid* article 17

[13] "The Responsibility to Protect doctrine has been described by its founders and proponents ... as promoting global governance while allowing the international community to penetrate a nation state's borders under certain conditions." See: <http://nation.foxnews.com/george-soros/2011/03/23/soros-fingerprints-libya-bombing> and <http://www.mail-archive.com/osint@yahoogroups.com/msg71470.html>

[14] See the report, published 30 September 2001: <http://www.iciss.ca/pdf/Commission-Report.pdf> . See also note 18 below.

[15] See: <http://www.un.org/millennium/sg/report/full.htm>

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[16] UN Secretary-General's Statement of 16 December 1999 on Receiving The Report Of The Independent Inquiry Into The Actions Of The United Nations During The 1994 Genocide In Rwanda.

[17] However, more than 40 delegates expressed views from full support to strong scepticism. See: "2005 World Summit Outcome: Responsibility To Protect", a summary of which can be found on-line at [http://www.un.org/summit2005/presskit/fact\\_sheet.pdf](http://www.un.org/summit2005/presskit/fact_sheet.pdf) . See also, General Assembly Sixtieth session A/60/L.1 Follow-up to the outcome of the Millennium Summit, Draft resolution, para138-139. Any collective action, is to be taken in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. (para139). This is available on-line at: <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>

[18] Fact Sheet of 2005 World Summit High-Level Plenary Meeting, 14-16 September 2005

[19] 'Responsibility to protect', keynote paper, by Naomi Kikoler, Global Centre for the Responsibility to Protect, presented to the International Conference: 'Protecting People in Conflict and Crisis: Responding to the Challenges of a Changing World' September 2009.

[20] *Ibid*, p.7,

[21] See note 19 above

[22] See note 28 above, *ibid* para 1.

[23] *Ibid*, p35.

[24] R2P, it might be thought of as self defence of others, based upon human rights principles.

[25] See remarks by Switzerland, GA/10849 of 24 July 2009

[26] [http://www.au2002.gov.za/docs/key\\_oau/au\\_act.htm](http://www.au2002.gov.za/docs/key_oau/au_act.htm)

[27] The arming of rebels by Qatar and France was also a breach of the arms embargo.

[28] See reports by Human Rights Investigations (26 September 2011), the New York Times (September 23, 2011) and Wall Street Journal (September 13, 2011).

[29] NATO, British leaders allege genocide in Kosovo – CNN, March 29, 1999

[30] "The doctrine of "humanitarian intervention" has long been a controversial subject, both in law and in international relations, and remains so today. Given that by no means all States accept the principle involved, there is no generally accepted definition of "humanitarian intervention"." The ICRC's position on "humanitarian intervention", by Anne Ryniker: IRRIC June 2001 Vol. 83 No 842, at p.527. "Leading public international law scholars and the great majority of states – including states that have engaged in humanitarian intervention – refuse to endorse the legality of HI for fear of its abuse as a pretext." See: Ryan Goodman, *Humanitarian Intervention And Pretexts For War*, American Journal of International Law, January 2006.

[31] 1949, ICJ: <http://www.icj-cij.org/docket/files/1/1645.pdf> .

[32] Chomsky, *op cit*. See note 8 above.

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[33] Eg Syria, Yemen, Bahrain, Saudi Arabia. In September 1999, former US National Security Adviser Sandy Berger, commented on the failure to intervene to stop the genocide of the East Timorese population: "I don't think anybody ever articulated a doctrine which said that we ought to intervene wherever there's a humanitarian problem." Quoted by Chomsky, *op cit*, p.6. He mentions "the consensus of the [2005] World Summit adheres to the Corfu principle and its descendants only if we assume that the Security Council is a neutral arbiter. It plainly is not. The Council is controlled by its five permanent members, and they are not equal in operative authority."

[34] [www.bbc.co.uk/news/world-middle-east-15177114](http://www.bbc.co.uk/news/world-middle-east-15177114)