

SOMALIA HUMANITARIAN INTERVENTION 1992-1993

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INDEX

PRESENTATION

INTRODUCTION

PART A - SOMALIA'S HISTORICAL BACKGROUND BRIEFLY PRESENTED. RELEVANT LEGAL ISSUES.

1. Since the first nomads up to Somalia's independence.
 - 1 1.a. Introduction.
 - 2 .b. From Colonialism up to Independence.
2. From 1960 to 1991 President Siad Barre. Influence of the World Superpowers in Somalia.
3. Chronicle from December 1991 to October 1993.

PART B - THE PRINCIPLES AND PURPOSES OF UNITED NATIONS CHARTER

4. The preamble and the principles and purposes of the Charter of United Nations.
5. Maintenance of International Peace and Security - The United Nations Charter. Charter VII - Security Council Resolutions.
6. Resolutions of the Security Council against Somalia.

PART C - CONCLUSIONS. REFLECTIONS AND QUESTIONS

7. The Intervention of Peacekeeping forces - US Intervention.
8. Humanitarian Intervention.
 - 8.a. Concept.
 - 8.b. Development of the right of Humanitarian Intervention taking as a base the practice of the United Nations.
 - 8.c. Balance between sovereignty, non intervention in the internal affairs of states and humanitarian intervention.
9. Somalia: Is this a Humanitarian Intervention?

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PRESENTATION

The United Nations proceedings on Somalian land have awakened the interest of experts dealing in international affairs as well as that of the public at large.

Over the last few months, the TV media has accustomed us to witnessing desolating scenes. A clear example of this was when in December 1992 the arrival of US marines from Operation "Restore Hope" was shown before millions of people all over the world.

Two different worlds welcomed them. On the one hand, sordid parties of journalists thronged the Somalian beaches in order to record the images of "a historic moment" and, on the other hand, the Somalian population devastated by domestic wars, hunger, misery and anarchy.

We believe that to help understand the current situation in Somalia it will be useful to begin with a summary of the sombre history of the said nation, mentioning as a starting-point the first nomads who crossed the African Horn land in search of water and food up to the fall of Dictator Siad Barre.

Immediately afterwards, we set down the most relevant events which took place between 1992 and 1993.

In Section II, we deal with the legal aspect of the proceedings of the United Nations in Somalia. The starting point is the analysis of some legal institutes related to the Charter of the United Nations, such as art. 2.1 and 2.7, Chapter VII and other issues of the Organization's proceedings.

Once those notions have been defined, we pass on to summarize and briefly analyze the resolutions adopted by the Security Council. Finally, we tackle the issue of the so-called "humanitarian Interventions" or operations of "participation for humanitarian needs", and, by way of conclusion, we lay out some thoughts on the matter and pose some questions.

INTRODUCTION

It looks as if the 20th century turned out to get buried in the remains of the Berlin Wall, which collapsed in 1989.

This short century began with the First World War in 1914. Towards its end, the International Community, horrified by the indescribable suffering it had gone through, set up the League of the Society of Nations, by means of which the basis for collective security was laid down. Twenty years later, the world goes up in arms again.

And once again Mankind witnesses the most sorrowful war spectacle, and sees, to its astonishment, multiple human slaughter, the result of indiscriminated use of massive-elimination weapons, such as nuclear arms.

In January 1942, 26 countries signed the Declaration of the United Nations. Such assertion of a common cause on behalf of those who fought against the Axis powers was one of the stages leading to the San Francisco Conference in 1945 where the Charter was drafted, a charter which exposes the principles and purposes of the Organization, the main one being the maintenance of International Peace and Security.

By its end, the war had left a new power game of chess. All over the century, the colonial empires gradually deteriorated while, on the other hand, two superpowers which would leave the world insecure within the framework of what was known as the "Cold War".

Such "Cold War" was latent in the United Nations Security Council when one superpower or another exercised the veto over matters of interest to its counterpart, thus preventing the Organization from acting fluently in its attempt to fulfil its main objective.

In November 1989, the United States of America and the Union of Soviet Socialist Republics declared in a joint statement their intention to improve the effectiveness of the United Nations Organization and to ensure the observance of the Security Council's mandate with respect to the maintenance of International Peace and Security.

This was immediately seen. During the last two years, the Security Council has dispatched the same amount of Operations for the Maintenance or Restoration of Peace as has been done from its birth.

This "new century", which began 11 years in advance, is the result of the end of the Cold War, the collapse of one of the great superpowers, the events leading from the Gulf War and other current incidents, and has become known among specialists as the "New World Order".

The present United Nations Secretary-General, Boutros Boutros-Ghali has stated in "A Peace Programme" that we have reached, worldwide, an era of transition characterized by trends which are particularly contradictory. There exist regional and continental associations of States which create mechanisms aimed at strengthening cooperation and softening some of the contentious characteristics of the rivalries springing from considerations *of* sovereignty and nationalism. National borders get out of shape (become blurred) in the face of the advance of the mass media and world trade, as well as because of the decisions of the States to cede certain sovereign privileges to ordinary political associations of greater significance. However, meanwhile, new and violent declarations of nationalism and sovereignty are made and the cohesion of the States is threatened by brutal ethnic, religious, social, cultural or linguistic wars. The new assertions of discrimination and exclusion, on the one hand, and terrorist acts, whose object it is to undermine the development process and transformation through democratic means, on the other hand, pose a threat to social peace.

Even though it is now clear to understand how the Cold War mechanisms worked, its understanding will be of little use to discover which need and care has to be taken into account in order to solve the problems of a world lacking in antagonistic superpowers, full of questions and alarming situations which daily risk International Peace and Security.

We are in presence of the unknown. Any change brings about the recreation of new situations which have to be analyzed, understood and adapted.

For the time being, the International Community is beginning to discover the great disorder triggered off by the end of the Cold War and the bipolar world. It seems as though Statesmen are condemned, at least, to grope about and learn through their own mistakes.

Somalia's case is an excellent example of the challenges which the "New World Order" brought about.

Somalia was subject of interest to the Superpowers during the Cold War. First, as a means to keep close links with the Soviet Union. Then, after the "Ogaden War" between Somalia and Ethiopia, the Soviets helped Ethiopia, which forced Somalian Dictator Siad Barre to ask America for help.

After the fall of the octogenarian dictator, and without the needs which the Superpowers had during the Cold War, Somalia's Civil War posed a complex problem to the International Community: the struggle between factions in a country overflowed with weapons, refugees, outcasts and hunger (starvation) which almost hit half the population.

There are those who believe that in cases similar to Somalia, the prospects of effective action on behalf of the United Nations will depend on new ways of perceiving sovereignty and the responsibility of States, on the International Community's ability to avoid the breach of hostilities through preventive policies and on the States' failure to follow the Principles of the Charter of the United Nations.

Others consider that the Security Council's Operation is not legitimated and, though they acknowledge that the United Nations' role in matters concerning the maintenance of International Peace and Security has never been so important as it is today, they assert that it has also never before been ground for so much questioning.

Besides, with the Somalian case, specialists in international issues have got around tackling the issue of humanitarian intervention again.

It is our purpose in this paper to analyze both the historic basis as well as the legal framework and legitimacy of the United Nations Operation in Somalia.

We firmly believe that Somalia is a complex case which forces us to reflect deeply about whether the organization which the International Community enjoys at present proves to be useful for providing legitimate solutions when confronted with similar situations.

Therefore, in an attempt to counteract the habitual short-sightedness typical among some observers who are not very confident about the progressive development of Public International Law, we will be pleased if, being our reflections on the matter a starting-point, we at least encourage the reader to discover that this period known as the "New World Order" (a term which has not yet been accurately defined) is a good chance to review, reformulate and discuss terms such as sovereignty, intervention for humanitarian assistance needs, collective security system and others, as well as to define the United Nations' role and that of the Peacekeeping or Peacere restoration Forces in times of internal crises which affect International Peace and Security.

PART A
SOMALIA'S HISTORICAL BACKGROUND BRIEFLY PRESENTED.
RELEVANT LEGAL ISSUES

1. SINCE THE FIRST NOMADS UP TO SOMALIA'S INDEPENDENCE

1.a. Introduction

Somalia is a sickle-shaped and arid expanse on the Horn of Africa. For centuries nomads have crossed and recrossed the territory in search of food and water. This homogenous people, who have the same religion and language, have never achieved their stability due to their limited natural resources and internal disputes by its clans, which have taken the crisis of the political system to a state of anarchy.

This situation has got to such a critical point - starvation, destruction, huge numbers of refugees, death and looting - that the survival of the Somali people is at stake and, there is a threat that this conflict can probably spread into neighbouring countries, standing as a menace at international peace and security.

The hatred seems ironic in a people steeped in the unifying belief that they are all descended from one man: the mythical Samaale. From his sprang a vast genealogical tree of clans that form the basis of the social system.⁽ⁱ⁾

However, since those times a sharp divisiveness has infected them, when rival groups laid claim to the same wells and grazing lands. Nowadays this kind of conflict still prevails with certain changes though.

1.b. From colonialism up to independence

Colonialism came to Somalia in the late 19th century, when Britain took the northern third and Italy the south.

To avoid the conflicts sprang from the irruption of the European power in Africa, the Berlin Conference (November 1884 - February 1885) regulates by rules the colonization of the continent.⁽ⁱⁱ⁾

Within the resolutions made by the Conference and, especially since 1890, there were many treaties of distribution that were signed, but unfortunately, without taking into account the unity of the different ethnical groups, which harmed the Somali people seriously - their homogeneity was not respected when the time came for the scramble.⁽ⁱⁱ⁾

In 1891 the great religious leader of the Somali nomads, Sayyid Muhamad Abdile Hassan, came back to his country from the small British Protectorate of the Southern Coast of the Aden Gulf.⁽ⁱⁱⁱ⁾

Hassan, a clever man, soon understood that there was a terrible threat menacing the Arabian world due to the expansion of the Christians; so he began to preach resistance, launching attacks against these and neighbouring countries in the Ogaden lands, where he had retreated with his supporters, after being declared out of law by the British.

The first ideas of national unity came from Sayyid Muhamad Abdile Hassan, who died in 1920. The lack of a son to succeed him ended the resistance and started the establishment of the colonial government in the British Somalia and in the Italian Somalia.⁽ⁱⁱⁱ⁾

From then on, the political interest of northeastern Africa turned to the plans of the fascist government which expected to conquer the Ethiopian Kingdom. The conflict started in 1934, resorting to the old dispute of the Ogaden boundaries between Ethiopia and Somalia. The Ethiopian emperor - Haile Salassie - appealed to the League of Nations. France and Great Britain supported him, but failed to show sufficient determination so as to avoid the aggression. (III)

In May 1936 Mussolini completed the conquest of Ethiopia. Thus, the old Italian dream of owing an empire in Oriental Africa, made up by Eritrea, Ethiopia and Somali, became true but at least short, for it ended after five years.

Italian military colonialism brought about harmful consequences to the communities in oriental Africa. On the other hand, the other European powers were trying to obtain the welfare of their people. In Somalia and Libya. Italy brought things to a standstill.

Ethiopia became independent thanks to the actions of the British troops in 1941. The two ancient colonies of Somalia and Eritrea were conquered in the same campaign, and went on being under the British government during the Second World War and some time later too, this being the reason for several disputes in the United Nations.

Somalia, after similar disputes, was assigned to Italy in 1950 by the United Nations as a territory under Fiduciary Administration Regime for 10 years; after that time independence would be declared. The International Community agree on the fact that during this period of time the Italian government was exceptionally efficient.

The quick decolonization of Italian Somalia can be put down probably to the feeling of nationalism and the unity of language and religion of the Somali people. Nevertheless, the problem of the Somalies arose due to this conscience of nationalism prevailing in an area much bigger than the one under Fiduciary Administration.

Although it happened in a too fast and disorganized way, the British Somalia gained its independence five days before those territories under Italian administration. And, thus, on July 1st of 1960, the representatives of the two countries assembled in Mogadishu formed a National Assembly of the Sovereign Republic of Somalia.⁽ⁱⁱⁱ⁾

However, some important communities in the lowlands of oriental Ethiopia, in the district of the northern boundary of Kenya and in the small but important French territory of the coast - whose capital Djibouti, still remained outside the boundaries of the new state. In 1967 the people in the territories under French administration voted for remaining under it. Nowadays, this region is known as the Territory of Issa and Afar.⁽ⁱⁱⁱ⁾

2. FROM 1960 TO 1991. PRESIDENT SIAD BARRE. INFLUENCE OF THE WORLD SUPERPOWERS IN SOMALIA.

In 1960 when the Italian administration came to an end after ten years, the Somali tried to establish the basis for an incipient democracy.

Among many other important issues, the concept of "The Great Somalia", which had kept the northeastern Africa in a state of war for seven years, was given up, and in June 1967 the world witnessed a radical modification in the internal and external policy of the country, after the peaceful and constitutional appointment of Mohamed Egal as Prime Minister.⁽ⁱⁱⁱ⁾

This proved to be an exceptional change in the pattern of violent changes that normally occurred in the African countries.

However, that government would be toppled by a military coup led by Major General Mohammad Siad Barrath or Mohammed Siad Barre in 1961. He searched for a way to replace the loyalty of the Somali to their clans by a new Somali national conscience, centralizing his political base and his best army forces in the city of Mogadishu at the expense of the elders of the tribes and lords of clans.

The Somali Flag has got a white star with five points, which stand for the five regions inhabited by the Somalies: Northern Kenya, the region of the Ethiopian

Ogaden, Djoubiti, Northern Somalia and Southern Somalia, and at the same time these five points symbolize the irredentist objectives of the pan-Somali movement.

During the Cold War the region of the Horn of Africa represented a strategically important area for many different reasons.

Being aware of this Siad Ban-e increased the use of the Marxist rhetoric, which brought about an increasing economic and military assistance by the Former Soviet Union. In 1974 U.R.S.S. signed a Treaty of Friendship and Cooperation with Somalia which, allowed the Soviets to use the port of Berbera, while the Soviets promised to Siad Barre to increase the political, economic and military assistance.^(iv)

The Somali people, encouraged by the Soviet help and by an insurrection in the neighbouring Ethiopia - which broke out in 1977 - tried to recover another point of the white star in their flag launching the Ogaden War.^(iv)

In August 1977, Siad Barre visited Moscow unaware of the fact that the Soviets would soon change sides and would ally with the Ethiopians.^(iv)

This brought about serious consequences for Siad Barre, who saw how his dream of a pan-Somali state vanished, while his territory watched about 2.000.000 refugees from Ogaden come. (IV)

Facing these internal difficulties, Siad Barre sought another wealthy benefactor that could supply him with the military and economic resources necessary to establish at least a minimum of effective governance. In 1980, in exchange for increased aid, Somalia agreed to provide the United States with access to port facilities at Berbera and to allow the installation of infrastructure to support the Rapid Deployment Force.^(iv)

In May 1988, Northern Somalia, home of the large well-educated and entrepreneurial Isaak-clan, erupted in antigovernment violence. Retaliation was savage. According to the human-rights group Africa Watch, 50.000 or more people had since died from aerial bombing, artillery fire and reprisal executions. Some 340.000 northerners had fled into neighboring Ethiopia.^(iv)

The fighting in the north, which continued unabated, spelled the beginning of a steep slide into instability verging on anarchy. A second insurgent army drawing its strength from the large Hawiye clan moved in the following weeks onto the offensive in central Somalia. Meanwhile, the renegade army Colonel, Omar Jess, stalked southern Somalia with 600 or 700 man force, which he had led in a mutiny the year before. Desertion plagued the ill-paid and ill-led Somali Army.^(iv)

Barre offered political concessions, but the conflict still went on. The help that Barre had previously received from the United States started to diminish in 1990, and Bush administration decided not to carry on giving Barre any help until there was improvement in the dismal human-rights record.

Siad Barre, who stayed in power for twenty-one years was finally defeated in January 1991 and sought asylum in Nigeria, after having failed in his aim at creating a great pan-Somali state.

- (i) Taken from magazine "TIME", January 1993. initial pages.
- (ii) RENOUVIN, PIERRE, *"Historia de las Relaciones Internacionales"*, Chapter IX, Akal Editor, Spain-1982.
- (iii) Condensed from *"Africa since 1800"*. OLIVIER, ROLAND & ATMORE, ANTHONY. Spain Editors - 1977
- (iv) Taken from magazine "NEWSWEEK", December 1990, *"Somalia"*.

3. CHRONOLOGY OF UNITED NATIONS HUMANITARIAN INTERVENTION IN SOMALIA

27 December 1991: Secretary General Javier Perez de Guellar informed the President of the Security Council that he intended to take an initiative in an attempt to restore peace in Somalia. Accordingly, after consulting incoming Secretary-General Boutros Boutros-Ghali, he had asked Under-Secretary-General for Political Affairs James O. C. Jonah to visit the area.^(*)

Early January 1992: The despite continued fighting in Mogadishu, Mr. Jonah led a team of senior United Nations officials into Somalia for talks aimed at bringing about a cessation of hostilities and security access by the international relief community to civilians caught in the conflict. During that visit, support for a cease-fire in Mogadishu was expressed by all faction leaders except General Aidid.

23 January 1992: The Security Council approved Resolution 733/92, in it urged all parties to the conflict to cease hostilities, and decided that all States should immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia. The Council requested the Secretary General to increase humanitarian assistance to the affected population and to contact all parties involved in the conflict to seek their commitment to the cessation of hostilities, to promote a cease-fire and to assist in the process of a political settlement of the conflict.

31 January 1992: The Secretary-General invited LAS, OAU and OIC, as well as interim President Ali Mahdi and General Aidid to send their representatives to participate in consultations at United Nations Headquarters from 12 to 14 February.

Between 29 February and 3 March 1992: After four days of intensive negotiations, interim President Ali Mahdi and General Mohamed Farah Aidid signed an "Agreement on the Implementation of a cease-fire". This Agreement also included the acceptance of a United Nations security component for convoys of humanitarian assistance, and the deployment of 20 military observers in each side of Mogadishu to monitor the cease-fire.

17 March 1992: The Security Council adopted its resolution 746/92, supporting the Secretary-General's decision to dispatch to Somalia a technical team to prepare a plan for a cease-fire monitoring mechanism. The Council also requested that the team develop a high-priority plan to ensure the delivery of humanitarian assistance.

Between 23 March and 1 April 1992: The team visited Somalia.

27 and 28 March 1992: General Aidid and Interim President Ali Mahdi, respectively, signed Letters of Agreement on the mechanisms for monitoring the cease-fire and an arrangement for equitable and effective distribution of humanitarian assistance.

24 April 1992: In response to a recommendation of Secretary-General, the Security Council adopted resolution 751/92 by which it decided to establish a United Nations Operation in Somalia (UNOSOM). The Council also asked the Secretary General, in cooperation with LAS, OAU and OIC, to pursue consultations with all Somali parties toward convening a conference on national reconciliation and unity. It also called on the international community for financial and other support for the Secretary-General's 90 day Plan of Action for Emergency Humanitarian Assistance to Somalia.

28 April 1992: Mr. Mohammed Sahnoun of Algeria was appointed Special Representative for Somalia to assist in convening a conference for national reconciliation and unity in Somalia. He would also provide overall direction to United Nations activities in the country, including those directed at economic recovery and rehabilitation, as well as demobilization and disarmament."¹

Between 4 May and 19 July 1992: The Secretary-General's Special Representative undertook extensive consultations with various Somali leaders and Elders and other personalities throughout the country.

23 June 1992: The Secretary-General informed the Security Council that both principal factions in Mogadishu had agreed to the immediate deployment of the unarmed observers.^(c)

Early July 1992: The Chief Military Observer, Brigadier-General Imtiaz Shaheen of Pakistan, and the advance party of UNOSOM observers arrived to Mogadishu.

22 July 1992: The Secretary-General reported to the Council on the complex political and security situation in Somalia, as well as desperate situation the country faced in terms of needs of humanitarian assistance, recovery programmes and institution-building. The Secretary-General concluded that the United Nations must "adapt" its involvement in Somalia and that its efforts needed to be enlarged in order to bring about an effective cease-fire throughout the country, while at the same time promoting national reconciliation.

27 July 1992: The Security Council approved the Secretary-General's report and urged all parties, movements and factions in Somalia to facilitate United Nations efforts to provide urgent humanitarian assistance to the affected population. The Council strongly supported the Secretary-General's decision to dispatch another technical team to Somalia.

24 August 1992: Following the technical team's visit to Somalia from 6 to 15 August 1992, the Secretary-General submitted his further report, dated 24 August, to the Security Council, in which he described a number of urgent steps, being planned or already taken, to mitigate the widespread starvation in the areas of Somalia most seriously affected by the civil war and drought and to prevent the incidence of hunger escalating in other parts of the country. The Secretary-General recommended the deployment of four additional United Nations security units, each with a strength of up to 750, to protect the humanitarian convoys and distribution centres throughout Somalia. Also in accordance with his earlier proposal, the Secretary-General recommended the establishment of four zone headquarters of UNOSOM.

28 August 1992: The Security Council, by its resolution 775/92, approved the Secretary-General's report and authorized the increase in strength of UNOSOM. The Council requested the Secretary-General to continue, in close cooperation with LAS, OAU and OIC, his efforts to seek a comprehensive solution to the crisis in Somalia.

Between 10 and 12 September 1992: As part of the overall effort to accelerate humanitarian relief activities, the United Nations Under-Secretary-General for Humanitarian Affairs, Mr. Jan Eliasson, led a high-level-agency mission to Somalia. A major outcome of the mission was the decision to develop a 100-Day Action Programme for Accelerated Humanitarian Assistance, for the period until the end of 1992.

3 November 1992: Secretary-General Boutros Boutros-Ghali appointed Mr. Ismat Kittani from Iraq as his Special Representative for Somalia to replace Mr. Mohammed Sahnoun who has resigned.

Between 24 and 29 November 1992: In a letter to the Security Council on 24 November 1992, the Secretary-General reported on the deteriorating situation in Somalia, with particular reference to the factors preventing UNOSOM from implementing its mandate. The Secretary-General did not exclude the possibility that it might become necessary to review the basic premises and principles of the United Nations efforts there. The members of the Council discussed the Secretary-General's letter. They asked the Secretary-General to present specific recommendations on how United Nations could remedy the present situation. In

response, the Secretary-General submitted to the Security Council a further letter, dated 29 November, in which he outlined, for the Council's consideration, five options for creating conditions for the uninterrupted delivery of supplies to the starving people of Somalia. The Secretary-General also informed the council of a visit received on 25 November from Mr. Lawrence Eagleburger, the Acting Secretary of State of United States, who indicated that, "should the Security Council decide to authorize Member States would be ready to take the lead in organizing and commanding such an operation, in which a number of other Member States also participate".

3 December 1992: The Security Council approved Resolution 794 (1992) (see part B).

9 December 1992: The mission known as "Operation Restore Hope" starts.

From 4 to 15 January 1993: In the meantime, the Secretary-General convened an informal preparatory meeting at ECA headquarters in Addis Ababa, for a national reconciliation conference envisaged under United Nations auspices.

3 March 1993: The Secretary-General appointed Admiral Jonathan T. Howe of the United States as his new Special Representative for Somalia for an initial period of three months, effective 9 March 1993.

From 11 to 13 March 1993: The Conference about humanitarian assistance to Somalia under auspices of United Nations took place in Addis Ababa. The Conference of National Reconciliation took time in 15 March.

26 May 1993: The Security Council approved Resolution 814 (1993) (see part B).

5 June 1993: Forces of the General Mohamed Farah Aidid Faction, killed 24 Blue Helmets from Pakistan.

6 June 1993: The Security Council approved Resolution 837 (1993) (see part B).

9 June 1993: Defense Secretary Les Aspin received a request for a team of Delta Force commands to get Aidid. He rejected the idea, thinking that even if Aidid could be found - which the military rated one-in-four chance an already skeptical public would consider this dangerous escalation; the rest of National Security Council agreed (Newsweek, 10/18/93, p. 14).

17 June 1993: American Forces attack Headquarters of Aidid faction with air rides killing 60 civil people and 5 Blue Helmets (Cambio 16, 6/28/93, p. 12).

13 July 1993: "L' Observatore Romano" qualified the operation with the word "Massacre" (Clarín, 7/14/93, p. 31).

From 14 July to 19 July: Italian troops menaced the United Nations to withdraw from Somalia Operation because they didn't approved the orders given by the Central Commander of the operation to attack Aidid faction.

September and October 1993: The attacks against the forces of United Nations recurred.

22 September 1993: The Security Council approved Resolution 865 (1993) (see part B).

10 October 1993: Robert Oakley, President Clinton representative went to Mogadishu to try to find a solution for the problem of the violence against the peacekeeping forces.

November 1993: The Conference against National Reconciliation beginning in Ethiopia without the presence of Aidid.

(*) UN HRONICLE, December 1992.

(ç) UN CHRONICLE, March 1993.

In all these paragraphs were not mentioned the precedence which was taken from the Refer Paper "*The United Nations and the situation In Somalia*". UN publication, April 1993.

PART B

THE PRINCIPLES AND PURPOSES OF UNITED NATIONS CHARTER

4. THE PREAMBLE AND THE PRINCIPLES OF THE CHARTER OF UNITED NATIONS

The preamble of the United Nations Charter states, among other things, that the armed force will not be used but when the common interest is at stake.

That's to say, that the states will have to be tolerant, live together in peace and join their efforts to safeguard and maintain peace and Security, by accepting principles and by adopting methods to assure that the armed force will not be used unless the use of such force were necessary for the common interest.

The principles stated in article 2 of the Charter make up the General frame of the obligations under which the action of the bodies and the members of the United Nations will develop.

From all the principles of the Charter it is convenient to take into account, for a better understanding of the case of intervention in Somalia those stated in article 2.1 and 2.7 especially.

The article 2.1 supports the principle of equal state sovereignty.

First, this principle declares that the Member States keep their sovereignty, this is the base of the Organization.

Second, this principle means the equal legal sovereignty among the states. This equality must be understood as equal protection of law that's to say that all the states are equal for the International Public Law.

The other principle, article 2.7 declares the prohibition of intervention in the internal affairs of the states, and will not force the Member States to submit those affairs to procedures of settlement provided by the Charter. But this principle is not contrary to the application of the coercive measures provided by Chapter VII.

As Professor Diez de Velasco says in "International Public Law Institutions" "... because of the sovereignty of the States, there are certain situations in which the action of international organizations can't interfere, and this becomes more evident as the real danger of that interference has its roots in the international practice".^(v)

5. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY - THE UNITED NATIONS CHARTER CHAPTER VII - SECURITY COUNCIL RESOLUTIONS

The Maintenance of International Peace and Security is the fundamental role of the United Nations as well as its primary purpose (art. 1.1. of UN Charter).

The Charter contains a whole system that aims at this object, which has been complete by the United Nations practice in this respect.

Chapter VI and VII deal with the peaceful settlement of disputes and with the actions to be taken in case of threats to the peace or aggression respectively.

The lack of development of some of the mechanisms foreseen and the disagreements among the Permanent Members in the Security Council till a few years ago brought about considerable imperfections in the applications of Chapter VII of the Charter, and in order to lessen them the United Nations practice had to develop and start other mechanisms, which became explicit in the Resolution 377 (v) of the General Assembly known as "Union Pro-Peace".^(v)

As it has been said from the very beginning of this paper, the main purpose of the United Nations is the maintenance of the International Peace and Security. Hence, the United Nations will have to take efficient and collective measures to prevent an eliminate threat to the peace and to suppress any act of aggression or any other breach of the peace.

The body that has got the fundamental responsibility of peacekeeping is the Security Council, as it is laid down by the Charter together with the General Assembly, whose competence even though being restricted in this subject according to arts. 11 and 12 of the United Nations Charter, has been broadened with the Resolution "Union Pro-peace".^(v)

Now, when making reference to the Security Council, art. 39 of the United Nations Charter states: the Security Council will determine the existence of any threat to the peace, breach of the peace or any act of aggression, and it will recommend or it will decide what measures are to be taken acting in accordance with arts. 41 and 42 of the Charter to maintain or restore International Peace and Security.^(v)

This article coincides with articles 24 and 25 of the Charter, in which the powers of the Security Council are analyzed.

As regards the measures that may be adopted in the case of threats to the peace, breach of the peace or acts of aggression, they are laid down by the Charter in this way:

a) The declaration of aggression, which can be made by the Security Council as provided by article 39 of the Charter of the United Nations, but which, although it contains an evident moral aspect, can be used to turn the United Nations action into a sanction against the power that has been declared as the aggressor.^(v)

b) Other measures are found in article 40 of the United Nations Charter, which are considered as provisional measures. The United Nations practice has confirmed the criterion that the previous declaration of aggression is not necessary to take up the provisional measures state in article 40.^(v)

The most well-known provisional measures - though not only the only ones - are the cease of hostilities and the establishment of the neutral zone under international supervision.

c) Other measures that can be taken are those not involving the use of force. These are stated in article 41, which authorizes the Security Council to decide on this kind of measures and to urge the United Nations members on their application. Some of them can be the temporary cessation of diplomatic, maritime, postal, economic relations and others. These measures must be taken cautiously so as not to affect a third state, which would be able to appeal to the Security Council as provided in article 50.^(v)

d) Measures that involve the use of force, found in article 42 of the Charter of the United Nations. Till not long ago this article containing those measures of extreme seriousness which the international Organization can adopt, had not been put into practice. Somalia is an exception to this.^(v)

In order to carry out the measures stated in article 42, it is necessary the creation of a system of military forces in the United Nations service by signing special agreements.

The carrying out of restrictive and restraining measures can be done by the Organization, by the State Members or by Regional Organizations.

All the measures mentioned so far make up the so-called "Collective United Nations Security-System".

6. THE RESOLUTIONS OF THE SECURITY COUNCIL OF THE UNITED NATIONS ORGANIZATION

There exists a normative power in the organizations, though not in all of them, which is evident in their actions.

As it was said by Professor Diez de Velazco, "... this normative power appears in the obligatory resolutions, in the internal recommendations and in the preparation of international texts".

Here we will deal only with the obligatory resolutions. These are truly obligatory judiciary acts for their destinees. The basis of their obligatory character can be found in the competence entailed in the body which adopts it.

As far as the Security Council is concerned, the obligatory character of its resolutions is supported by article 25 of the Charter of the United Nations.

According to the Charter itself, among those obligatory decisions, which appear in the resolutions which the Security Council makes, we can find those which appear when the Security Council takes up measures, aiming at the maintenance of peace and at the re-establishment of this peace as provided by article 39 to 48 of Chapter VII.

Having said all this, therefore, the Member States of the United Nations are compelled to act according to the measures taken by the Security Council in those situation.

6. RESOLUTION OF THE SECURITY COUNCIL AGAINST SOMALIA

I. Resolution S.C. 733 (1992)

Approved on 23rd January, 1992.

This resolution as well as the next one establishes firmly the action taken by the Council making reference to:

The serious and critical situation in Somalia and the urgent need of humanitarian assistance to it.

The existence of a threat to International Peace and Security.

It calls back to mind the dispositions of Chapter VIII of UN Charter recognizing and acknowledging the international and regional organizations which have helped and given humanitarian assistance to the people affected by the conflict, deploring the amount of human lives these organizations have lost and admitting the need to go on cooperating with them bearing in mind several objectives:

First, meeting and discussing with the parties involved in the conflict aiming at agreeing on the cease-fire and on the end of hostilities; second, the security for

the distribution of that humanitarian assistance; third, the search for a way to reach a national reconciliation (and settlement of disputes); fourth, the re-establishment of the political system of the country, and soon.

It is also common to all the resolutions to make reference to the reports made by the Secretary General to the petitions made to the Member States so that they cooperate with the necessary efforts to provide humanitarian assistance to the Somali people.

Moreover, they frequently urge the parties to adopt all necessary measures to guarantee the security and safety of the staff sent there to provide humanitarian assistance.

In resolution 733 (1992) the most important decision is found in point 5 which decides, according to Chapter VII of UN Charter that, in order to restore and establish peace and stability in Somalia, all the States should impose general and complete embargo on the supply of weapons and military equipment to Somalia until the Security Council decides to lift this embargo.

As art. 41 of the Charter states it and authorizes it, the Security Council approved a measure and urged the Member States of the United Nations to enforce it in order to achieve its final purpose, which is in the maintenance of international peace and security. .

2. Resolution S.C. 746(1992)

Approved on March 17th, 1992.

Although Aidid and Mahdi had signed an Agreement on cease-fire and cease of hostilities in Mogadishu on March 3rd 1992, the factions to the conflict did not abide by the agreement.

Therefore, the Council approved resolution 746 (1992).

The Council urged the Somali factions to keep to the compromise they had acquired by the agreement reached on a cease-fire on March 3rd and its also kept on insisting on the parties collaborating with the efforts made by the Secretary General and on contributing to the easy distribution of humanitarian aid.

The Security Council supported firmly the decision made by the Secretary General to send a team of accompanied by a coordinator to make a report on the situation in Somalia to be handed in without delay to the Security Council. At the same time it must devise a plan of high priority to establish mechanisms necessary to guarantee the delivery of humanitarian assistance without obstacles of any kind.

3. Resolution S.C. 751 (1992)

Approved on the 24th of April, 1992.

This resolution bears vital importance, since in point 2 of such resolution the Security Council says that:

... it decides to establish an operation of the United Nations in Somalia - UNOSOM - under its authority and to support the Secretary General, in accordance with paragraph 7 *infra*...

In paragraph 7 *infra*, the Council asked the Secretary General to carry on with his efforts to facilitate the immediate and effective cease of hostilities and the maintenance of the cease-fire all over the country, all this as part of his permanent mission in Somalia, with the purpose of promoting the process of reconciliation and the political settlement in Somalia as well as of delivering humanitarian assistance urgently.

At the same time, so as to achieve the aim of the enforcement of the measures adopted in previous resolutions, it stated the set-up of a Committee of the Security Council composed of all members of the Council, so that it could verify all the questions related to the embargo laid according to Resolution 733 (1992).

It also asked the international community for financial aid or any other help in order to enable the application of a Plan of 90 days to provide emergency humanitarian assistance to Somalia.

4. Resolution S.C. 767(1992)

Approved on July 27th, 1992.

The Members of the Security Council were extremely worried about the deteriorating situation in Somalia, and they approved Resolution 767 (1992).

After acknowledging the fact that the supply of humanitarian assistance to Somalia made up an important element in its efforts to re-establish International Peace and Security in the zone, the Council asked the Secretary General to make complete use of all the means and possible arrangements - including the organization of an urgent air lift or air bridge operation admiring at facilitating the efforts made by United Nations and specialized organism, to guarantee the delivery of humanitarian assistance and relief to the somali people menaced by widespread starvation.

In this resolution, the Secretary Council being tired of the dangers to which those carrying out the distribution of humanitarian assistance were exposed due to the hostility between the factions in the conflict, it hardens its.

In point 4 of such resolution, the council asks the cooperation of all the parties to enable the deployment of the United Nations staff of security established in Resolution 751 (1992) without delay as well as to contribute in the general settlement of the situation in Somalia.

And it adds:

"In case that cooperation were not given, the Security Council does not include the adoption of other measures to provide humanitarian assistance to Somalia".

In our opinion, this statement allows us to anticipate those decisions that the Council would make afterwards in Resolutions 794 (1992) and 814 (1993).

Besides, in point 12 the Council approves the proposal made by the Secretary General of establishing four areas of operations as part of the operation carried out by the United Nations in Somalia - UNOSOM

5. Resolution S.C. 775 (1992)

Approved on August 28th, 1992.

With Resolution 775 (1992), the Security Council starts a number of increases in the amount of troops for the United Nations Operation in Somalia - UNOSOM - and their subsequent deployment.

6. Resolution S.C. 794 (1992)

Approved on December 3rd, 1992.

The Security Council Resolution 794 (1992) marks the first time the United Nations sanction the use of force to guarantee the delivery of humanitarian assistance.

This measure was based on the evaluation made by the Secretary General, in the sense that the measures foreseen for the United Nations Operation in Somalia.

"... could not offer adequate response to the seriousness of the tragedy", whose "particular characteristics ... complexity and unique in usual nature ... demand an immediate and exceptional answer".

During the debate about this historical resolution, the members of the Council pointed out that the "exceptional" circumstances of anarchy and human suffering in Somalia justified the adoption of "a different approach to the operations for the maintenance of peace from the habitual one."^(vi)

The unprecedented text allowed the deployment of thousands of armed forces from USA and from other countries on December 9th, with the purpose of escorting the convoys carrying relief in Somalia, so that the huge operation for the provision of humanitarian relief started in October and which was to last 100 days could go on.

Pursuant to the text of the Resolution approved unanimously, under Chapter VII of the UN Charter which lays down the action to be taken, including the use of force, in case of threat to the peace or acts of aggression, the Council authorized the Secretary General to cooperate to put into practice the offer made by United States of America of establishing a secure environment for the operation of humanitarian relief as soon as possible.

The Council concluded that, "the extent and magnitude of the human tragedy caused by the conflict in Somalia, now even more aggravated by the obstacles that have been offered to the distribution of humanitarian assistance constitute a threat to international peace and security".

It made reference to the constant reports on generalized violations to the International Humanitarian Law in Somalia, including acts of violence against the workers and vehicles that participate in relief operations.

The Secretary General and the Member States, who supplied troops to the international forces, were authorized to take the necessary measures for the command and control of the forces in a unified way. The deployment of 3500 additional troops from UNOSOM authorized by the Council in August would act under the Secretary General supervision, who was requested to a small group of link from UNOSOM to the headquarters of the unified command of the international forces.

Acknowledging "that the people of Somalia hold the ultimate responsibility" for a negotiated conflict, the Council encouraged invited the Secretary General and his Special Representative to carry on with their efforts to work out a political solution in Somalia (Sometime later, the Secretary General representative, met with the leaders of several Somali groups in Addis Abeba (Ethiopia) from January 4th to January 15th, with the purpose of organizing a conference for national reconciliation).

Summing up underestimating the rest of the questions dealt with in the Resolution, its importance and consequence lies in the fact that it authorizes *the use of the necessary means to establish a safe environment to carry out the operations of humanitarian assistance and relief in Somalia as soon as it were possible, acting under Chapter VI I of the UN Charter.*

7. Resolution S.C. 814 (1993)

Approved on May 26th, 1993.

Acting under Chapter VII of UN Charter the Council adopted Resolution 814 (1993), in which it decided to enlarge the size and the mandate of UNOSOM II, as it had been recommended by the Secretary General.

The mandate would come to and end on October 31st 1993 initially.

Among other requirements, the Council demanded the parties in Somalia to respect the Agreements reached to faithfully, these were: disarmament and the security of the staff of the humanitarian organizations.

Once again the Member States are called upon to cooperate with the embargo on arms and supplies stated in Resolution 733 (1992).

Moreover, The Council asked the Secretary General to support the application of this embargo on arms from which was enforced by Resolution 733 (1992), rescuing to UNOSOM II forces as he considered it convenient - authorized by the Resolution and present recommendations - with the purpose of taking more effective measures in the future, as well as to set up the necessary conditions of security to facilitate the repatriation of refugees and the re-settlement of displaced people resorting to UNOSOM II forces.

Besides, in other dispositions of the Resolution, the Secretary General was requested to go on providing humanitarian assistance to the people together with the help of specialized offices, so as to achieve the reconstruction of their political system and their economy as well as to promote national recommendation.

Finally, was requested to give instructions for the commander of UNOSOM II forces to assume the responsibility for the consolidation, enlargement and maintenance of security all over the territory of Somalia, organizing a swift transition from UNITAF to UNOSOM II. The Secretary General was to do this through his Special Representative in Somalia.

8. *Resolution S.C. 837 (1993)*

Approved on June 6th, 1993.

The Council was extremely deeply (alarmed by the armed and premeditated attacks launched by forces apparently belonging to the USC/SNA against the staff of the UN operation on June 5th of 1993.

It condemned those acts severely.

It reaffirmed that pursuant to Resolution 814 (1993) the Secretary General was authorized to take and execute all the necessary measures against those responsible for having induced publicly to them, so as to establish the effective authority of UNOSOM II all over Somalia, even to investigate those actions and to arrest and imprison the people responsible for the attacks for their later accusation, trial and punishment.

It urged the Secretary General to carry out the convenient investigations of the incident urgently laying emphasis on the role of the leaders of the different factions in it.

So as to restate disposition made in previous resolutions, the Resolution also contained the demands made to the parties on disarmament, establishment and maintenance of a safe and secure environment for the distribution of humanitarian assistance, and soon.

9. *Resolution S.C. 865 (1993)*

Approved on September 22nd, 1993.

Highlighting the importance of the peace process started with The Agreements of Addis Abeba in Resolution 865 (1993) the Security Council voices its acknowledgment to the regional African organizations for their cooperation.

At the same time it acknowledges the improvements in the general situation achieved by UNOSOM II, particularly the eradication of massive starvation, the establishment of a great number of local councils, the opening of schools and the restoration of normal life achieved by the Somali people in the greatest part of the Somali territory.

However, the Council was still worried about the continuation of armed attacks against UNOSOM II personnel, bearing in mind and Resolution 814 (1993), in which it gave fundamental relevance to a vast and effective programme of disarmament of the Somali parties, including the movements and factions.

At the same time, the Resolution asserted the importance attributed to the effective, urgent and hurried achievement of UNOSOM II objectives goals to facilitate humanitarian assistance to re-establish public law and order and to obtain national reconciliation in a free, democratic and sovereign Somalia, so that its mission could be totally carried by March of 1995.

This Resolution contains petitions of different kind made to the Secretary General.

- (v) Taken from "*Instituciones de derecho internacional publico*", Tomo I, Author: MANUEL DIEZ DE VELAZCO, Chapter LXI, pag. 132 to 151, TECNOS, Spain - 1990.
- (vi) UN CHRONICLE, March 1993.

PART C
AS A CONCLUSION: REFLECTIONS AND QUESTIONS

We have pointed out from the very beginning that the new era of the Post-Cold War or "New World Order" invites us to reflect on some institutions of International Law, politics and international relations.

The Somalian case presents multiple sides to be analyzed, both from the legal point of view as well as from that of the world of international relations and politics. It is obviously impossible to deal with all of them in one single paper. Therefore, we will only tackle some issues which we consider interesting and we will leave a number of questions posed for further study.

7. THE INTERVENTION OF PEACEKEEPING FORCES - US INTERVENTION - THE ITALIAN MATTER.

The international community's main objective on creating the United Nations was to keep international peace and security. The main responsibility for these matters lies in the Security Council which is entitled to apply - in accordance with the Charter - a set of policies which range from the peaceful settlement of disputes to the application of coercive measures implying or not the use of armed force. Such provisions make up the so-called United Nations' collective security system.

However, during the Cold War period, such system was paralyzed owing to disagreement among the superpowers in the Security Council. This situation led the Organization into looking for alternative ways to pursue its aims: the Peacekeeping Forces were born.

The notion which the term "peacekeeping" entails was developed by the United Nations as a pragmatic mechanism whose aim it was to check and control armed conflicts which imply a threat to international peace and security.

The objective of the Peacekeeping Forces consists, not only in separating the litigant parties, but also in maintaining peace and preventing - as far as possible - the resumption of conflict while a peaceful settlement is under way. The suspension of utilities and the balanced "freezing" of the situation are a conclusive stage to move from the military and combat level to negotiation at the diplomatic level.

Regarding the legal nature of such operations, Doctrine resorts to "Chapter VI and a half, to quote its creator, the then Secretary-General Dag Hammarskjöld.

This is so due to the fact that the Peacekeeping Forces go beyond the measures of peaceful settlement of disputes considered in Chapter VI: they involve

specific proceedings which aim at paving the way towards the use of those means as contemplated in the chapter in question. Besides, it has been claimed that their legal basis can be traced in the Charter's Chapter VII and, in particular, in its article 40. Nevertheless, the dispositions stated under the said article, such as a cease-fire or cease of hostilities, the declaration of truce or armistice, disarmament observance and the like, are the Security Council's instructions imparted to the Parties to the conflict which, as such, must be adopted by the said Parties. Instead, the Peacekeeping Forces consist of certain proceedings and policies which must be adopted, not by the parties but by the United Nations Agencies and are based on the parties' consent and cooperation.

In the light of the preceding exposition, we could say that the legal basis on which the Peacekeeping Forces lie arises - if we stick to a *praeter legem* interpretation of the Charter - from inherent powers of the organization, necessary for the pursuance of its aims.^(vii)

In 1985, the United Nations' Information Agency defined them as those operations which involve military staff, though without being entitled to war powers, required by the United Nations in order to help maintain International Peace and Security.

The First Peacekeeping Force was UNEP I and its task or concrete example was followed by subsequent ones, at least up to some time before the Persian Gulf War.

Some of the characteristic features of the classic type UNEF I Peacekeeping Forces which are worth mentioning are: cooperation, the consent of the parties to the conflict, no use of force (except for legitimate defense), impartiality and the international community's approval.

Thus, we come to our first question. Are the forces deployed in Somalia part of a classic Peacekeeping Force operation?

On several occasions, the United Nations Secretary-General Boutros Boutros-Ghali qualified the Organization's strategy deployed on Somalian land as:

"A new notion in the field of operations for the Maintenance of Peace".

Just for the sake of exemplification and to list out a few of the differences that can be found out between the behaviour of the Peacekeeping Forces deployed in Somalia with respect to that of previous Operations, we can highlight the following:

- * The forces deployed in Somalia have moved from "deterrence" to head-on attacks against the forces of one of the parties in conflict, those of General Mohamed Farah Aidid, and even to his persecution.
- * Although the Operation is carried out by United Nations, the USA has almost always planned and executed the principal operations, and, in particular, when they were under its own command.
- * The typical Peacekeeping Operations provided their personnel with light equipment and had a mainly deterring role. In Somalia, there has been violent land deployment of heavy equipment, air raids on specific targets surrounded by civilian dwellings, missile attacks from US aircraft carriers launched from the Indian Ocean and soon.
- * Resolution 794 (1992) stated for the first time the authorization for the Peacekeeping Forces in Somalia to make use of the necessary means to secure an adequate environment for the supply of humanitarian assistance, which also involves the possibility to use force in order to attain the said objective.
- * Several groups opposed the Operation's General-in-Chief owing to differing criteria regarding the way to lead the operation.
- * The habitual international consensus which the Peacekeeping Forces' operations meet - we should not forget that they were awarded the 1988 Peace Nobel Prize - and of which the Operation Restore Hope was also recipient in its beginnings is currently undergoing criticism and claims directed by a large portion of the International Community.

Bearing in mind the above-mentioned differences as well as others, many experts on international matters and the world press have wondered, with deep concern, whether Somalia was a valid example of what the Secretary-General considered "a new notion in Peacekeeping Operations".

Taking as a starting point the practice of the United Nations in this matter, as from the Post-Cold War Period, the Peacekeeping Operations do not follow a single model and, among them, they pursue different objectives.

It would be appropriate to make a comprehensive analysis of when and under what circumstances Peacekeeping Operations must be organized.

It is not new to us that the Security Council's determination of the existence of a threat to International Peace and Security is a political fact. However, we believe that it does not prevent the United Nations - concerned as it is about solving

on a legal and effective basis the disputes facing the world today - from promoting the study of its practice related to Peacekeeping Operations. This would enable us to measure or define certain elements or situations which must necessarily hold for the Security Council to consider the existence or non-existence of a threat to International Peace and Security faced with a concrete event and for it to require, on a more legitimate basis, the deployment of Peacekeeping Forces.

We do understand that the regulation of conditions does not undervalue the political spirit of the decision and would prevent similar cases to Somalia from suffering so much questioning and claims from the International Community as the Somalian case is undergoing.

Somalia: The US stance - From Bush to Clinton

The crude conditions that the Somalian people were going through also called President Bush's attention who, towards the end of term of office, announced the decision to send a significant US force to the African Horn country, on a mission, limited in terms of duration. Mr. Bill Clinton, by then President Elect, authorized the initiative and the Security Council backed the proposition which was endorsed by 14 countries.

Not few members of Bush's government let their fears reach the White House.

The US Ambassador in Kenya, Smith Hempstone, warned that his country's troops would not enjoy an "easy way out" from Somalia as the Somalians were "by nature guerrillas".^(viii)

In December 1992, Ms. Jeanne Kirpatrick, the US Ambassador to the UN, posed the following question:

How far can the government legitimately go in committing US resources in international operations without a clear relationship to national interest?^(viii)

She also warned people that "One thing is sure: the disarmament of the Somalian warlords would deeply involve the United States without the consent of the Somalian people or the US people".

Once the Restoration Hope Operation had brought about a score of deaths, UNITAF came to be replaced by UNSOM II with more manpower and force magnitude.

On the death of 23 Pakistani blue casks in early June 1993, the United Nations laid the blame on the party led by the rebel General Mohamed Farah Aidid.

From then onwards, the mission would experiment a different tone. The "warlords" had to be punished and the factions had to be disarmed so that humanitarian assistance could carry on being provided to the defenseless Somalian civilians.

At that moment, both the United Nations as well as the USA shared the belief that Mohamed Aidid had to be arrested, tried and punished.

In the meantime, Italy parted with the Operation's Commander-in-Chief and its threat to withdraw its forces from Somalian land. To the Italians, persecuting Aidid meant getting involved in the Somalian Civil War. They were ready to negotiate and carry on with their peaceful mission without taking part in armed conflicts.

UNSOM II's Commander estimated that the Somalian factions had to be disarmed, especially Mohamed Aidid's and that he himself had to be submitted to Justice.

Boutros Ghali called for the preservation of the unity of leadership by force, which strengthened his wish to create for the future a long-standing military power pursuant to the Charter's An. 43.^(viii)

The Vatican's voice, too, made itself heard. By mid-July, they pointed out that the humanitarian mission had been "momentarily forsaken or forgotten" and the newspaper *L' Observatore de Roma* qualified the US attack against one of Aidid's functional centres as "utter massacre".^(ix)

It looked as though Ambassadors Kirpatrick's and Hempstone's warnings had been right. The situation daily worsened and the crews of blue casks, in particular from the US, suffered heavy death tolls. As a counterpart, Aidid was not captured. Instead, his image grew among his people.

When the US TV network displayed the horrifying images of dead soldiers dragged along the Mogadicius streets and pilot Michael Durant's testimony, it looked as if the USA had gone back to the Vietnam syndrome.

Since August, Clinton's team and Parliament's stances confronted themselves over the permanence of US troops in Somalia.

Parliament managed to lead Clinton into consulting them before the deployment of troops abroad. Besides, he had to commit himself to fixing December 31 st as the deadline for the withdrawal of US troops from Somalia.

Clinton had Ambassador Robert Oakley sent to negotiate with Aidid's faction, and in so doing, pilot Durant together with other prisoners were released and deponed back. Aidid declared that he did so as a sign of Peace with the United Nations and the USA.

On such an occasion, Bush criticized the fact that the US forces had got involved in combat and his former Defense Secretary Dick Cheney maintained that Bush had refused to "build the African country" instead of feeding its people.^(viii)

By mid-October, Clinton acknowledged before the world press having committed mistakes in Somalia, criticized the United Nations and admitted the need to call for a "national dialogue" in order to discuss the US role after the cold war.^(x)

The degree of error perpetrated by US politics with respect to the Somalian case has aroused deep concern among the International Community over the role which the US should fulfil in the face of international crisis.

It looks as if foreign policy is Clinton's Administration's Achilles' heel.

The "New International Order" must still be defined and, with it, the US stance as a single surviving power to the Cold War. The lack of adequate replies, on behalf of the US Administration, to the Post-Cold War challenges in the international arena can prove detrimental to its leadership.

We believe that the "New World Order" needs the respect of nationalities and cultures. There are those who wonder whether in Somalia the historic-cultural needs of a nation which has its own characteristics quite different from the European world have been forgotten, although it has been stated in the Security Council's Resolutions that the final decision of its political reconstruction depends exclusively on the Somalian people as a tribute to its sovereignty.

Those who claim so point out that the rebuilding of the Somalian society, disarming the warlords and creating a state authority over the clans was a horse of a different colour.

The ambiguity lying between the humanitarian aim and what has just been stated and the fluctuations of the US proceedings in the issue brought about the opposite effect to that pursued at the beginning of the operation.

Undoubtedly, the Somalian case offered an excellent opportunity to show the international community that foreign intervention is feasible for humanitarian issues. So many mistakes in decision making and the failure to a complete US subjection to the United Nations' Operation can bring future Peace missions into discredit and reveals once again that it is necessary for the States which take part in

Peacekeeping Force to have it clear that it is not they but the Organization the one which take decisions.

We believe that, at present, the anticipated withdrawal of US troops could bring about to Operation a setback difficult to redress.

Possibly, the worst mistake of all in this Peacekeeping Operation has been to trust more in power than in negotiation, overlooking the warnings of those people who knew the issues more or who confronted the proceedings with methodological warnings.

Thus, the United States, once more, became a party to a civil war in a distant country where it did not have specific interests and, possibly, if we analyze a bit further, what they would be left with as a basis for their intervention - besides the humanitarian assistance first fostered by the United Nations - would be the idea of spreading Western values to a people who, because they have their own and different values, find it difficult to understand the role they are supposed to fulfil.

- (VII) Taken from *"Importancia del respeto y difusion del Derecho Internacional Humanitario por las Fuerzas de Mantenimiento de la Paz de las Naciones Unidas"*, Author: SUSANA FRAIDENRAIJ, Editor: La Ley, pag. 1 to 4,4 June 1993, Buenos Aires - Argentina.
- (VIII) Condensed from *"Somalia..."*: Author: R. ALONSO, Newspaper "CLARIN", Editorial pages, 18 October 1993, Bs. As., Argentina.
- (IX) Newspaper "CLARIN", pag. 31, 14 July 1993, Bs. As., Argentina.
- (X) Newspaper "CLARIN", pag. 39, 8 October 1993, Bs. As., Argentina.

8. HUMANITARIAN INTERVENTION

8.a. Concept

As it was said by Peter Malanckzuk in "Humanitarian intervention and the Legitimacy of the use of force", at the Inaugural Lecture of the University of Amsterdam. 22 January 1993, "The literature shows that there are numerous and often conflicting definitions of "humanitarian intervention", some of which appear to be mere the fact of "working definitions", and others which are meant to be normative in the sense that the definition itself purports to establish criteria of legality or illegality."

Christopher Greenwood said about "humanitarian Intervention" that term will here be confined to cases in which a substantial part of the population of a state is threatened with death or suffering on a grand scale, either because of the actions of the government of that state, or because of the state's slide into anarchy. (First category: the situation in the Kurdish and Shiite areas of Iraq following the Kuwait conflict; second category: Liberia and Somalia)".

It is not intended to discuss here the different case of a state intervening to protect its own nationals.

The central matter at issue is how to reconcile:

- a) The principle of territorial sovereignty of states still envisage in legal terms as a corner stone of international relations.
- b) The principle of non-interference into the domestic affairs of states and
- c) The prohibition of the use of arm force stipulate in the United Nations Charter

... with the effective protection of human rights in extreme situations of their violations and with international peace and security.

Humanitarian intervention involves two different types of action:

1. Intervention as collective action authorized by a competent global or regional international organization,
2. Multilateral or unilateral action by states without such authorization by government of the state to be intervened.

As it was said by Adam Roberts in "Humanitarian War: military intervention and Human Rights", parts of the international community are now beginning to accept that there can be a right of humanitarian intervention, this is in sharp contrast to what happened before in the practice of the United Nations.

8.b. Development of the right of Humanitarian Intervention taking as a base the practice of the United Nations.

Let's discuss now the development of the right of the humanitarian intervention taking as a base the practice of the United Nations.

In the United Nations Charter, the prohibition of attacks on states is fundamental; and self-defense against armed attack is the one remaining completely unambiguous justification for states using forces. The Charter even places limits, in the article 2(7), on intervention within states by the United Nations itself. In the years since 1945 there have of course been many military interventions, in many types of circumstances, but the United Nations almost routinely condemned them.

Many other General pronouncements were made on the subjects, such as the 1970 Declaration on Friendly Relations which said in a preambular paragraph that:

"the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security..."

By the mid-1970s, the non-intervention principle was coming under strain; but it was still more or less hanging on to its throne, at least in most UN pronouncements, and more precariously in practice.^(xi)

Thus when the non-intervention principle was breached in practice, as it all too frequently was, states seemed markedly reluctant to cite the protection of human rights as their reason for invading another country. (The Indian invasion of East Pakistan in 1971; the Vietnamese invasion of Cambodia in December 1978 and Tanzanian invasion of Uganda in 1979).^(xi)

It appears that in each of these cases the government of the intervening country felt that a claim to be acting on the basis of self-defense as spelt out in Article 51 was an easier and better means of relating to the UN Charter; and there was probably also a thought that to sanctify a doctrine of humanitarian intervention would be to store up trouble for themselves or their friends.

Since those events, the idea of humanitarian intervention has gained strength for good reasons, most, but not all, of which focus on the United Nations.^(xi)

Since 1991, there have been several cases in which interventions with some element of UN backing have had a fundamental humanitarian purpose (The Kurdish affair in North Irak, Liberia, Former-Yugoslavia, Somalia).

This work is not meant to deal deeply with all the different cases. We only mention, just as an example, the Kurdish problem.

The implacable treatment of the Iraqi government towards its Kurdish and Shiites minorities gave rise to terrible human problems for more than 2.5 million of refugees, something which accelerated the confrontation between some basic principles in the international order.

On 5 May, 1991 some progress took place, when the Security Council approved a Resolution which condemned the Iraqi repression of its civilian population, considering this as a threat to international peace and security, and declaring this as the own concern of the Security Council.

By means of this Resolution, the Security Council confirmed two important principles.^(xi)

Firstly, at least under certain circumstances there is a relation between internal repression and international peace.

Secondly, the massive violations to human rights may prove to be a legitimate and right interest of the Security Council.

Although both principles turned out to be consistent with the Charter of the United Nations, neither of them was a normal doctrine of the United Nations by that time.^(xi)

We must remember that Resolution 688 was approved because the Cold War had ended and the system of "bloc politics" had collapsed as well as for the change in what is referred to us what is considered the own field of the Security Council.

The next step to be taken to find a solution to the problem presented by the Kurdish refugees confronted the Security Council with another conflict of basic principles on the one hand the protection of Human Rights and human life, and on the other hand the respect for "territorial integrity".^(xi)

We would like to recall here opinion given by Jeanne Kirpatrick of the Resolution: "till the adoption of Resolution 688 (1961), even the most brutal of all repression made by a government on its own peoples was considered "an internal affair" out of the jurisdiction of the Security Council, even though this one brought about thousands and thousands of refugees and pressures over neighbouring states. The principle of no interference in the internal affairs of states stopped any kind action, no matter if these were aimed against the most terrible violations of Human Rights".^(o)

"When Mi Amin killed a thousand civilian a week, the Security Council didn't assume any course of action. When Pol Pot made two million people die from forced labour or by shooting them in Cambodia the Security Council didn't act. When Mengistu caused massive starvation in Ethiopia ... the Security Council didn't act either. All these cases were considered purely internal affairs. Only South Africa, considered a legitimate state, witnessed how the Security Council scrutinized and condemned the treatment of its own nationals".⁽⁶⁾

From the UN practice during the last three years concerning humanitarian interventions (Liberia, Former Yugoslavia, Somalia, and so on), it's seen that both the Organization and the States have changed their attitude towards this kind of action.

8.c. Balance between sovereignty, non intervention in the Internal affairs of states and humanitarian intervention.

Let's discuss the balance between sovereignty, non-intervention in the internal affairs of states and humanitarian intervention.

In the face of the many conflicts which have arisen in the post Cold War and which imply the need to intervene in sovereign states so as to deliver humanitarian assistance and relief, many different opinions have been given either in favour such a kind of action or simply against it.

The latest actions taken United Nations in Irak, Former-Yugoslavia, Haiti, Cambodia and Somalia had led experts to question about what has remained of that concept of sovereignty stated by Bodino.

It seems that events of this new age move us to rephrase the concept of sovereignty, so that a part of its attributes should be dropped, thus it will deal with the new change more adequately.

In the process of evolution which this concept has undergone, for instance it is undeniable that the removal of the issue of Human Rights the exclusive field of the state competence affects and, consequently, modifies the concept of sovereignty, whenever this is defined as something belonging to the exclusive field of the state.

On the other hand, if the concept of sovereignty is seen as related to the autonomy of decision and the exercise of power in a context in which many different states coexist separately due to great ideological differences and other differences as well but which, at the same time, are states linked by a number of needs and ambitions which make them dependent one upon the other, them, this

removal of issues concerning internal matters does not affect sovereignty since is the way in which subjects transcend this into international field.^(xii)

It is something very difficult to define up to what extent a question remains within the sovereign powers of a state.

For many years and on many occasions, both dictators and tyrans justified indescribable sufferings inflicted on their minorities, internal-displaced peoples and their own nationals supporting their excesses in the exercise of the power within the sovereignty of the state.

At least within the Held of Human Rights, the normative consecration of these has led to generate international responsibility of the State which violates them.

It is appropriate here to ask when interference in the internal affairs of a state is reproachful juridically.

To give an only answer to this question is rather risky. Taking into account our own point of view, we can say that we are convinced that nobody can and, what is more, nobody must allow minorities and nationals of a state to be condemned to suffer from general starvation or permanent violations of their elementary Human Rights due to a justification of the power.

We are aware of the fact that the idea of the United Nations being able to act in accordance with its Charter to intervene in a state for humanitarian reasons seems to be beginning to take roots judging from the last events.

We also notice that the United Nations prefers to act with the consent of the government of the state in conflict, even if there is a certain artificiality in this consent on some occasions^(xi)

(In this respect, the General-Assembly reaffirmed in its Resolution 46/182 of December 1991).

This question did not count too much in Somalia since it was a country which had already plunged into anarchy.

However, the Secretary Council has shown that it is willing to act under Chapter VII to respond in the face of a humanitarian emergency as in Somalia case.

Of course, Chapter VII can only be invoked if the state be intervened poses a situation which constitute a threat to international peace and security.

In the case of Somalia, it is clear that that threat did not involve neighboring country necessarily, but that on this occasion the Security Council showed a real willingness to consider such a threat bearing in mind the plight of the population and the internal devastation of the country.

As far as Humanitarian intervention is concerned it seems that taking into account what happened with the Kurdish problem and what happened in Liberia with ECOWAS, the International Community has acknowledged there exist a right of intervention with a broader scope or range than the one known up till now.^(xi)

Obviously, we must not forget that the cases of Liberia and Somalia represent just merely single examples of that acknowledgment, because the International Community accepted the United Nations intervention more easily since there was a lack of government.^(xi)

The limits of the right of humanitarian interventions that does not violate what is provided for in article 2.7 of UN Charter are very hard to define generally.

Besides, to accept the fact that a humanitarian intervention may be legal under some circumstances does not imply to consider that the practical problems which may arise necessarily have the consent of the International Community. Somalia stands as a clear example of this.

Many considered the humanitarian intervention of December 1992 legal; after the problems which cropped up since June 1993 the International Community questioned the legitimacy of the operation.

The vital thing here is that whenever a humanitarian intervention is promoted, the mandate must be clear and precise and it must be determined temporally so as not to detract from the operation and contribute in a way, though without meaning it, to alter the balance of power in the state in a significant way.

We consider that it must be admitted that no longer can we claim that International Public Law prohibits military intervention for humanitarian reasons completely, and that the United Nations - with well defined mandate and with a totally neutral role - is one of the most plausible means to contribute to the maintenance and restore of international peace and security.

SOMALIA

IS IT A CASE OF HUMANITARIAN INTERVENTION?

The participation of the Security Council in Somalia started with the request of what was left of the government in that country. During 1992 it was marked with

approval of its resolutions, which lay emphasis on humanitarian assistance (There were some other resolutions in 1993).

The times UNOSOM went through at the beginning were hard. It was setup as a force for the safeguard of freedom counting on Humanitarian assistance as one of its principal components.

It took a long time to make this operation functional and the first troops that arrived in Somalia just showed that the United Nations was not properly equipped to carry out the operation.

Forces were increased so as to try to provide with an adequate environment for the distribution of humanitarian assistance.

By December the problem had turned unbearable. At the beginning the arrival of the American Marines helped the progress of the mission.

Somalia is not a case of intervention without the consent of a Government, but it is a case of intervention in a country where there is a "lack of government".

Robert Adams thinks that the operation "Restore of Hope" could have been justified in terms of an existing proposition in International Law dated from long ago, which states that when a state reaches a state of general and widespread chaos, a military intervention by other states come to be justified as far as this measure counts on true opportunities to re-establish law and order. This is partly what remains of the old European Colonialism.

In the case of Somalia Adams says that the Secretary-General gave a modern "turn" to this old proposition, thus placing the intervention in a legally safe context ready for an answer to a threat to international peace.

There are some who hold the view that this is not legitimate.

In December 1992 Jeanne Kirpatrick wondered if it was right to allow the Secretary-General to determine which are the international priorities.

At the same time she also wondered whether it was lawful to intervene in a state when the Charter of the United Nations did not allow it expressly.

Resolution 794 (1992) is the first resolution to authorize, expressly, a massive military intervention from the Member States in a country without any request of its government.

During discussion, over this resolution many states made reference to the unique case of the situation in Somalia: anarchy, devastation, general starvation, and so on. And, although it counted on some international elements as the result of threats to the personnel of UNOSOM and the flow of refugees to neighbouring countries, there was nothing that could be compared with the threats to international peace and security made to neighbouring states, as it was the case in Irak and Liberia.

In this resolution the "Humanitarian" aspect was mentioned eighteen times; this broke a record.

Operative Paragraph 10 uses the same language as the one used in Resolution 768, when the Security Council authorized military actions against Irak, basically because, so as to attain the objective for the sake of which they were authorized to make use of any means they considered necessary, they were much more limited in Resolution 794 than in Resolution 678.

On the other hand, this fostered that the use of force would not be used on a big scale.

There are two problems which were not solved in the Operation "Restore Hope". As regards:

- a) There was no coherent policy of disarmament.
- b) The way in which Somalia should have been administered.

At the beginning the Secretary-General had declared that effort were also needed to create the necessary political conditions for Somalia to solve its political and economic problems.

Finally, Roberts concludes that we are dealing with case of Humanitarian Intervention undoubtedly ^(*)

We can conclude that Somalia has revealed serious failures in the United Nations workings, but, at the same time, we must admit that there had never been a possibility to put into use the mechanisms stated in the Charter until now. Therefore, it is reasonable to assume that it is just a question of time.

Then, we must appeal to the profitable use of patience and assume that the New World Order will force all of us to learn from the probable mistakes we will make at each new operation that will arise in the years to come, and, especially, in cases of Humanitarian Intervention.

Only the habitual use of the mechanisms stated in the Charter of United Nations will allow the Organization to succeed, as it is expected to do, in each new operation to be carried out to reestablish international peace and security.

(XI) Taken from *"Humanitarian War: Military Intervention and Human Rights"*. Author: ADAM ROBERTS, John Vincent Memorial Lecture, Keele University 26 February 1993.

(XII) Extracted from *"No intervencion y Derechis Humanos"*, Author: MONICA PINTO, pag. 2, *Lecturas y Ensayos*, Buenos Aires, Argentina, 1990.

(O) Newspaper "CLARIN", Editorial Pages, *"The Gulf War..."*: January 1991, Bs. As., Argentina.

(*) We must remember that Robert's work was finished in February 1993.

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We also used several material got at the 21 Summer Session of International Public Law and International Relations "PEACE AND HUMAN RIGHTS", given in Thessaloniki University by the Institute of International Public Law and International Relations, Thessaloniki, Greece.

All the resolutions mentioned of the Security Council and the General Assembly of United Nations we took from the UN Centre for Information to Argentina and Uruguay, Buenos Aires, Argentina.