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Collective Security and the Legality of the ECOWAS Intervention in the Liberian Civil War

Ikechi Maduka Mgbeoji

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COLLECTIVE SECURITY AND THE LEGALITY OF THE ECOWAS INTERVENTION IN THE LIBERIAN CIVIL WAR

By

Ikechi Maduka Mgbeoji

Submitted in partial fulfillment of the requirements for the Degree of Master of Laws

at

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DEDICATION

To the Chair and Graduate Studies Committee of Dalhousie Law School whose kindness and generous scholarship award made this exercise possible, I send a kingdom of thanks And gratitude.

To my parents and siblings who have borne my long absence from home with grace, I Send a deep felt appreciation.

TABLE OF CONTENTS

ABSTRACT

The spate of civil wars in sub-Saharan Africa has not only consumed people and resources, it has raised issues regarding their latent and patent causes, their impact on global security and on the regime of laws on the use of force. This thesis is a contribution to the discourse on those anxieties from a nuanced perspective using the Liberian civil war as a case study. This approach has its obvious limitations, least of which is the danger of illicit generalizations inherent in using one instance as representative of all. Liberia's emergence as a state and its polity, however, has parallels in other African states.

These states emerged from European colonization and exploitation of Africa, which phenomenon was packaged as a proselytizing mission to "save the heathen savages" of that continent. The territories in Africa, which subsequently emerged as states in the Eurocentric model, had little or no semblance to the pre-existing polities. African states therefore owe their contemporary genesis and existence to global morality and international law. It thus follows that those global changes in security, economics and politics would reverberate in them, sometimes with deadly consequences. While the European (re)partitioning of Africa created socio-political contradictions potentially inimical to a stable polity, a huge portion of the blame for the ubiquitous and chronic civil conflicts in that continent should be placed at the door-steps of African states themselves.

By decades of corrupt and inept misrule, and systemic abuse of human rights, these states denied themselves of internal legitimacy capable of withstanding external pressures. Such is the case with Liberia. It was created and sustained by a peculiar American mix of racism and its messianic ardour to save its freed slaves from a self-created racial oppression. The internal contradictions in the new state were not so obvious because of global pre-occupation with the politics of anti-colonialism and intrigues of the Cold War. This did not however stop the massive flow of military aid and arms to that country and to the continent. With the end of the Cold War, the seething discontent rose to the surface and the arms came handy.

The discontent in Liberia, which found expression in a violent rebellion, was soon fanned across the sub-region by the inconsistencies of the Berlin boundaries in Africa. Faced with a defective global machinery for the resolution of armed conflicts, what should the neighbouring states do? The West African states found an answer to that conundrum by forcefully intervening on the grounds of a collective security interest in Liberia. In an age of widening conception of collective security, the West African states have urged as legal justifications, the invitation by the incumbent President of Liberia, collective self-defence and an *ex post facto* ratification by the Security Council. The last justification in itself presents additional problems and worries regarding the criteria for such *ex post facto* ratification and dangers of abuse. Would it become a hollow ritual to sanctify unilateralism in the use of force? What should be the advisable role of regional bodies in identifying and removing threats to collective security when the Security Council seems paralysed?

This thesis attempts to tease out and examine the various ramifications of some of these issues and concludes that the threads of legitimate governance, state stability and coherence in the world order are interwoven and integral to a holistic concept of collective security.

LIST OF ABBREVIATIONS

AJICL	African Journal of International and Comparative Law
AJIL	American Journal of International Law
All ER	All England Reports
ASIL	American Society of International Law Proceedings
BYIL	British Yearbook of International Law
Can.Y.B.I.L	Canadian Yearbook of International Law
CSCE	Conference on Security and Cooperation on Europe
ECOMOG	ECO WAS Cease-fire Monitoring Group
HR	Hague Recuiel
ICJ Rep.	International Court of Justice Reports
ICLQ	International Comparative Law Quarterly
JISS	International Institute for Strategic Studies
ILM	International Legal Materials
INPFL	Independent National Patriotic Front of Liberia
Is. L.R	Israeli Law Review
LAP	Liberia Action Party
LDF	Lofa Defence Force
LPC	Liberia Peace Council
LRC	Law Reports of the Commonwealth
MOJA	Movement for Justice in Africa

NATO	North Atlantic Treaty Organization
NDPL	National Democratic Party of Liberia
NPFL	National Patriotic Front of Liberia
OAS	Organization of American States
OAU	Organization of African Unity
PAL	Progressive Alliance for Liberia
PLD	Pakistan Legal Department
PMAD	Protocol on Mutual Assistance and Defence
PRC	Peoples Redemption Council
RUF	Revolutionary United Force
SADC	Southern Africa Development Community
TWP	True Whig Party
ULIMO	United Liberation Movement of Liberian Democracy
UN	United Nations
UNGAOR	United Nations General Assembly Ordinary Rresolution
UNMIH	United Nations Mission in Haiti
UNOMIL	United Nations Military Observer in Liberia
UNTAC	United Nations Temporary Authority in Cambodia
UNTAMIC	United Nations Advance Mission in Cambodia
YBIL	Yearbook of International Law

ACKNOWLEDGMENTS

A thesis is hardly the exclusive work of the person whose name appears on it as its author. This thesis is no different in that regard. In ruminating over some of the issues raised by the Liberian crisis, which has formed the subject of this thesis, a lot of people, events, and circumstances have aggregated to shape the views expressed. I cannot name all those people, events and circumstances but mention must be made of Professors Hugh Kindred and Moira McConnell, whose incisive, probing and profound nudgings, questions, comments, suggestions and direction, have made this thesis readable. I equally express my appreciation for the helpful comments and observations of my examiner, Prof. Dawn Russell. These three scholars, inspite of their busy schedule, always read and returned the earlier drafts of this thesis in good time. I have not forgotten Professors Bruce Archibald, Aldo Chircop, Esmeralda Thornhill, Teresa Scassa, Richard Devlin and David VanderZwagg. They are fine souls and I thank them.

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CHAPTER ONE

COLLECTIVE SECURITY AND THE LEGALITY OF THE ECOWAS INTERVENTION IN THE LIBERIAN CIVIL WAR

1.0: GENERAL OVERVIEW

On the eve of Christmas 1989, Charles Taylor, a Liberian fugitive, led a band of armed dissidents allegedly trained in Libya and Burkina Faso, and attacked Northern Liberia from Cote d'Ivoire. It marked the beginning of a militarized rebellion against the authoritarian government of Samuel Kanyon Doe. Within six months of the crisis, half of Liberia's population of 2 million had been internally and externally displaced and over 200,000 lay dead as direct victims of the rebellion. As the crisis raged, the United Nations, short of its platitudes on peace, focused its attention on the Middle-East where the events in Kuwait/Iraq were unfolding. The determined efforts of the Liberian Representative at the United Nations failed to elicit serious response from the Security Council. The personal and political interests of some West African leaders in the crisis and the cross-border ethnicity of West African countries added fuel to the raging human tragedy. Soon the rebellion acquired an ethnic character and colouration and became more fractious and deadly.

It was under those circumstances that Presidents Babangida of Nigeria and Rawlings of Ghana, acting under the aegis of the Economic Community of West African States (ECOWAS) spearheaded a regional campaign to bring the crisis to an end. After fruitless attempts at achieveing a negotiated settlement, the ECOWAS decided to despatch a peacekeeping force. It was a decision taken in the face of opposition from several fronts. On the opposing side were mainly the Francophone states of Cote d'Ivoire,

Burkina Faso and Togo. On the othe other side were the Anglophone states of Nigeria, Ghana, Gambia and Sierra Leone. On the battlefields, the decision to intervene was bitterly opposed by the leading rebel faction, the National Patriotic Front of Libera (NPFL). However, other factions such as the Independent National Patriotic Front of Liberia (INPFL) and the rump of the Liberian army, the Armed Forces of Liberia (AFL), supported the ECOWAS decision. In addition, the embattled President Doe of Liberia wrote ECOWAS asking for its intervention in the crisis.

The intervention by a majority of ECOWAS member states (later ratified by all members) spanned a period of seven years and culminated in the holding of elections and the inauguration of a democratically elected government in Liberia. While the dust of conflict in Liberia may have settled, several issues arising from the causes of the conflicts and the unprecedented intervention by a regional organization in what ostensibly was a domestic matter of a sovereign state are still extant. An inquiry into some of those issues forms the subject of this thesis.

The Liberian state in its structure, polity and organization raises questions with regard to the crisis of statehood in Africa and the urgent need for a redefinition of the parameters of legitimate governance in that continent. Further, the causes of the Liberian conflict evoke interesting issues concerning the impact of global events and phenomena on the stability and security of most African states. The intervention is significant because it marked the first active collaboration in peacekeeping by a regional organization with the United Nations. This unprecedented development presents a fecund area for exploring the frontiers of international law.

This thesis explores some of the aspects relating to the United Nations Charter

regime on the use of force. In this broader context, some observations are pertinent. First, the intervention impacts seriously on the contemporary regime on the use of force by regional bodies, especially, when undertaken without the prior authorization of the United Nations Security Council. Second, the intervention raises the question of whether a regional organization can use force to maintain peace within its area of relevance, given the paralysis of the Security Council and the increasing marginalization of Africa as an actor or subject of Security Council's states interest. With chronic UN indifference or half-hearted responses to militaristic conflicts in Sudan, Zaire, Angola, Chad, Ethiopia, Eritrea, Guinea-Bissau, Sierra Leone, Uganda and Somalia, Burundi, and other flashpoints in Africa, the temptation for relatively powerful neighbouring states to seize the initiative and intervene cannot lightly be discounted. Moreso, when the chords of ethnic affiliations have survived the European knife of division of Africa at the 1884 Berlin Conference. One can only refer to the Watutsi (Tutsi) crisis in Central/East Africa which has found expression in the infamous Rwandan genocide, Zairean war, and several other ethnic motivated crisis in that part of the continent. Consequently, the dangers of abuse inherent in the ECOWAS precedent may be worse than the Security Council's notorious indifference. The question then becomes how to improve the relationship between the Security Council and regional organizations in the maintenance and enforcement of peace.

Notwithstanding the diversity of the issues raised in the Liberian conflict and the consequent military intervention by ECOWAS, this thesis is limited in its scope of inquiry. It is primarily focused on a nuanced exploration of the conception and practice of collective security and the inter-dependence of global peace and legitimate governance at

the municipal level. Towards achieving this objective, the historical, contemporary, legal and social factors which trigered off the rebellion in Liberia occupy a substantial space in this thesis. This aspect of the discussion has been particularly difficult. This is so because the injustice and brutality in Liberian political and constitutional history,[1] as in most African States, could have been avoided, or at least, substantially reduced.

In examining this situation, this thesis locates the seeds of the conflict, not only in Liberia's (and by parity of reasoning, other African states') historical foundations but within the international statist framework. In determining the quotient of culpability attributable to those African countries, the objective is to suggest international legal mechanisms by which the municipal factors of disturbance may be curbed. It also seeks to address the means by which the regime may be rendered more accountable to the required political order and to the international community to ensure collective security.

Further, the relevant doctrines on the enforcement of peace are scrutinized in the context of contemporary state practice. This naturally raises the question of whether we are at the threshold of an era when regional organizations assume primary responsibility for the maintenance of global peace on their own terms without substantive reference to the United Nations Security Council. This implicitly questions the role and responsibility of members of the Security Council, especially the permanent members. Is theeir primary responsibility owed to all states? Or is it a hostage of their respective national interests? When China, Great Britain, Russia, France and the United States sit at the Security Council, is it in the interest of humanity as a whole as they purport or is it primarily for the protection and propagation of the limited Chinese, British, Russian, French or

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[1]Cassel Abayomi, *Liberia: History of the First African Republic* (New York: Fountainhead Publishers Inc: New York, 1970) at ii.

American agenda? If the answers to these questions are in the affirmative, it may then be asked whether that is a cue for the contemporary epidemic use of force by regional bodies?

In other words, is there an emerging pattern of the United Nations "franchising" out its obligations to regional bodies? It may well be argued that in some cases, there has not been a wilful or deliberate "franchise" to regional bodies by the UN. Rather, the responsibility has been wrested from the Security Council (in the face of its inaction) by unilateral actions masked as multi-lateralism. When this happens, the Security Council at best, merely assumes the role of a helpless legitimizer. At worst, its aggrieved members purport to decry the situation by making ineffective and belated calls for compliance with the relevant provisions of the United Nations Charter.

There is a gap in a body of rules and principles to guide regional bodies and or multi-lateral organizations deciding to act on behalf of the United Nations in securing peace. There is hardly a clear *modus operandi* at international law governing the emergency relationship created between the United Nations and such regional bodies/multi-lateral organizations when the latter take steps ostensibly calculated to secure or restore peace or remove threats to international peace. With this ad-hoc and emergency relationship quietly assuming the character of a rule (as evidenced by regional initiatives in Bosnia and Kosovo by NATO, the OAS in Haiti, the ECOWAS in Liberia and the ongoing SADC intervention in Zaire), practical and theoretical problems arise. The problems arising from this recurring practice are examined in this thesis. Especially, as such interventions stretch the traditional concepts of aggression, non-intervention, state sovereignty, enforcement actions, and invitation of foreign intervention by effective

governments.

Furthermore, in identifying the Liberian crisis as a product of the end of the Cold War and consequent active globalization of human rights, marked by a campaign for a redefinition of the parameters of legitimacy of governments,[2] this thesis argues that international law has not remained impervious to these changes. It has moved almost in tandem with the times and is in turn responding to and influencing the emerging practice. In the context of the Liberian crisis, this thesis explores how the emerging regime impacts on the notions of collective security.

In the context of these emerging trends and issues, this thesis evaluates the arguments on collective security as canvassed by the ECOWAS interveners in Liberia. It approaches and concludes its analysis in three progressive and complementary parts. The first approach is an examination of the causes of internal violent conflicts in Africa and concludes with a set of preventative measures. This phase has both domestic and international aspects. The second phase is on the adequacy of contemporary international law regime on the use of force by regional organizations and concludes with arguments on the probable grounds for the legitimacy of ECOWAS intervention. The third phase is on the impact of rising regional assertiveness in the management of internal conflicts of international character on the UN Charter. It concludes with a set of proposals for containing and managing the growing assertiveness of regional security organizations in their ready willingness to use force without the prior authorization of the Security Council.

In executing this three-phased approach to the Liberian crisis, this thesis is

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[2] Reginald Ezetah, "Are We in a *Grotian* Moment" (1997) 13 *International Insights*, at 71.[Hereinafter, Ezetah]

divided into six chapters. The present chapter is merely introductory and offers an overview of the discourse in the entire thesis. However, chapter two of this thesis is divided into five sections. The overall aim of this chapter is to situate the Liberian crisis in its historical/regional context. It examines the Liberian crisis as symptomatic of the phenomenon of troubled statehood in Africa and its impact on the political stability of neighbouring states having identical or closely related ethnic groups. It will demonstrate that the notion that the Liberian civil war was a domestic problem of Liberia downplays historical and contemporary factors such as boundary problems caused by colonial intrusion in Africa.

The "internal conflict" argument, which has been advanced by international law scholars to question the legality of the intervention, poses a formidable barrier and challenge in appreciating the role of that factor in African regional security. Explicitly, it contradicts the "regional security" argument made by the West African states as justification for the intervention. Chapter one contends that in coming to a decision on the legality or otherwise of the intervention, it is useful to adequately situate the crisis in its proper historical and geographic context. In deconstructing the "internal conflict" argument, section one of chapter two introduces the subject while section two engages in an historical examination of Liberia and argues that its emergence as a state was not necessarily as a result of its capacity to be a state but largely a result of changes in international politics. This pattern of creation of states in Africa, reaching its bizarre height with the Berlin Partitioning of Africa in 1884, threw up a host of peopled territories of diverse ethnicity internationally recognized as states but lacking the institutional structures necessary to sustain a modern state.

Further, the contemporary absence of a general idea or consensus of statehood within those territories is shown as rooted in the manner in which these states came into being and the poverty of vision and lack of transparent leadership endemic to the continent. In the Liberian case, the internal contradictions and frustration of its hopes of becoming a beacon in Africa was largely self-inflicted. The practice of black-upon-black discrimination in Liberia from its origins is identified as the fundamental cause of this lack of societal cohesion. This section argues that the internal political dynamics of Liberia, which resulted in tragedy, were largely sustained by the myopia of the international community. Those inherent weaknesses as exemplified by ethnic discrimination, aristocratic opportunism and intimidation of the populace paved the way for the eventual collapse of Liberia.

A situation where a group of people constituting less than five per cent of the populace had absolute political control for over 125 years was bound to unravel sometime. In sum, section one exposes the democracy in Liberia, an aristocratic dictatorship, as a travesty. It argues that this sham created a fragile polity and its fragility was demonstrated by the ease of the emergence of the dictatorship of Staff-Sergeant Samuel Doe which forms the general discussion in section three.

Section three of chapter two examines the emergent regime of Samuel Doe as a final precursor to the rebellion. It explores the origins of the tyranny and the intimations of its appetite for excessive bloodshed, cruelty and chicanery which distinguished it from the previous regimes. This section equally examines the feeble attempts by some West African states to deny the Doe coup d'etat the legitimacy it needed to sustain itself. It is nearly impossible to escape the conclusion that Doe's tyranny was largely the result of

the prevailing Westphalian regime of non-intervention in the internal affairs of sovereign states and of Cold War politics. However, the seeds of Doe's eventual downfall, largely sown at the inception of the regime were to bloom as soon as the Cold War ended.

Section four of chapter two analyzes the emergence of the militaristic rebellion in Liberia, its character and motives. It explores the roles of various states in West Africa in the conflict, its ethnic dimensions, probable destabilizing influence in the sub-region and its relationship to the legal parameters of the State of Liberia. In this context, the veracity of the allegations of sabotage and subversion levelled against some West African countries (Heads of States) by Doe is scrutinized. The real motives behind the ECOWAS intervention are also explored.

Section five of chapter two examines in detail the internal and external causes of instability in West Africa and indeed Africa as a whole. Liberia is used as a case study. An attempt is made in this section to underscore the destabilizing tendencies of colonial boundaries in Africa vis-a-vis the sanctity attached to them by heads of African states. This section explores the threat to regional security posed by the many breaches of humanitarian law by the Doe regime and the consequent crisis.

Within the global order, section five of chapter two also contends that the legitimated tyranny of Doe lasted so long, not because he was invincible but as a result of changes in global politics. The international complicity in legitimizing these breaches of human rights by the incoherent and self-serving application of the doctrines of non-intervention to Liberia is examined. While ostensibly keeping to the letter of that doctrine, Doe's regime was the largest beneficiary in Sub-Saharan Africa of American economic and military aid until the end of the Cold War. Once the Cold War ended, Doe

lost his relevance and shortly thereafter, the internal violence erupted. In sum, chapter two relates the Liberian tragedy to history, the perversion of the Liberian municipal polity and to template shifts in global morality and security realignment.

The issue of collective security dominates discussion in chapter three. It has three sections. Section one of chapter three is merely introductory of the subjects forming the substance of the entire chapter. Section two examines the origins, constitutional structure and juridical nature of the ECOWAS. Close attention is also paid to the regional politics in and post-colonial influence on ECOWAS; especially the Anglophone versus Francophone divide, and its impact on the capability of the organization to function as a regional mechanism for integration and economic growth. It also traces the evolution of the ECOWAS as a regional security organization and its ingenious provisions regarding collective security in the sub-region. Similarly, the dominant role of Nigeria and Cote d'Ivoire in the regional organization is examined in the context of their impact on the intervention by ECOWAS. The justifications by ECOWAS for its intervention in Liberia are noted for subsequent analysis. The rebuttals by critics of the intervention are equally noted in this section. However, as this thesis is primarily aimed at addressing the practice of collective security in the nuanced contexts of legitimacy of governance in multi-ethnic juridical states, the primary focus is on those justifications and opposing views which bear directly upon the question of collective security.

Section three of chapter three extends the debate further by examining the origins and practice of collective security, its evolution from a narrow concept to one which now includes legitimate concerns for economic development, protection of the environment, democratization, population explosion and mass migration. This section also explores the

hijacking of the concept of collective security by regional and other forms of multilateral security arrangements short of a unified and effective global collective security system. It also relates this trend to the historical pretensions of the Holy Alliance. The question here is whether ECOWAS had a legitimate collective security interest in the tragedy in Liberia when it intervened. Chapter three is therefore concerned with the doctrine and practice of collective security in the context of the West African region and its peculiarities.

Chapter four is devoted to analysis of the doctrine and practice of collective self defence as an important aspect of collective security. The objective is to ascertain whether the legal defence of collective self defence avails ECOWAS. The arguments here are decidedly nuanced and located within the security peculiarities of the sub-region. Towards a better appreciation of the arguments made in this part of the thesis, chapter four is divided into five sections. Section one is introductory and periscopes subsequent discussion contained in that chapter. Section two examines whether Doe could in the circumstamces of the rebellion invite ECOWAS intervention and the capacity of the ECOWAS to act on such invitation. Even if Doe could not invite external intervention, the question still remains whether ECOWAS, acting under the principles of its Protocol on Mutual Assistance in Defence (PMAD) and the traditional principles of the right of collective self defence, was entitled to intervene.

Section four examines the impact, if any, of the UN Charter on the traditional elements of the doctrine. Attention is also paid to its doctrinal modification and adaptation in the ECOWAS Protocol on Mutual Assistance in Defence (PMAD). The characteristics of the PMAD, which in addition to the traditional concerns for external aggression, has provisions relating to mutual assistance on externally supported internal

rebellion are dissected in the context of the Liberian crisis. This prepares the ground for subsequent discussion in section five.

Section five explores such questions as whether the PMAD provisions afford legal justification for ECOWAS intervention in Liberia, the impact of PMAD on the general notions on collective security vis-à-vis the question of what constitutes internal or domestic matter in an increasingly shrinking globe. Further the suitability of such agreements as the PMAD for developing states like Liberia caught in the grips of a dictatorship is closely analysed. Would such interventions not sustain the heavy hands of tyrants in that part of the globe? How would the UN security system cope with the growing regional assertiveness in the enforcement of peace? While this section and the entirety of chapter four does not pretend to have definitive answers to these and many questions, it explores the nuances of the issues raised and concludes that the ECOWAS action in Liberia is defensible under the doctrine of collective self defence.

Chapter five has three sections of which section one is merely introductory. Section two chronicles the expanding meaning of the phrase, "threat to international peace" in its role as the trigger mechanism for the provisions of chapter 7 of the UN Charter. It details the response of the UN to the tragedies in Haiti, Somalia and Sierra Leone. The objective is to demonstrate that in recent times internal crisis and tragedies are increasingly being construed as threats to international peace. However, this section argues that recent state practice shows an untidy and incoherent compliance with the relevant Charter provisions. In most cases like that of Liberia, the relationship between regional bodies and the Security Council in the application of chapter 7 of the UN Charter is accidental and leaves much to be desired. This regrettable aspect appears to

present the Security Council with the need to ratify whatever presumptous or unathourized measures that have been adopted by multi-lateral security organizations without the prior authorization of the Council. The cases of Liberia and Kosovo are in point.

Section three thus examines the juridical nature of UN Security Council resolutions and traces its process of ratification of the ECOWAS action in Liberia. In this section, attention is also paid to the probable reasons why the Security Council readily ratified the ECOWAS action. Its value as a precedent also forms an aspect of the discussion in section three. Section three and indeed the whole of chapter five conclude with the observation that in view of the Security Council's ratification, the ECOWAS action, notwithstanding some of its obvious defects was lawful at international law.

Chapter six is the concluding chapter. Like the entire thesis, its contents are divided into three parts. The first identifies the causative factors responsible for the Liberian crisis and posits certain preventative measures. The second part examines the adequacy or otherwise of contemporay norms regulating intra-state conflicts. The third and final part evaluates the impact of the growing cases of regional enforcement actions on the Charter regime. How can the international order utilize the advantages of regional bodies without sacrificing a global mechanism for the maintenance and enforcement of peace? The common theme of the conclusion is that individual liberty, state stability, regional security and systemic coherence are inter-linked. These are some of the lessons immanent in the Liberian crisis.

CHAPTER TWO

2.0: LIBERIA–A DUBIOUS DEMOCRACY AND THE SEEDS OF TRAGEDY

> The civilized Liberian, to maintain his standing as a light and a ruler of the country, must live in some way aloof from the people he governs. This is the custom in America and it is far more necessary in Africa.[3]

2.: INTRODUCTION

Liberia is Africa's oldest republic and was founded by freed slaves from the United States of America. It once was perceived as a free and democratic society. Its elite largely made up of the freed slaves from the United States held absolute sway over the country and the pre-existing indigenous peoples of the country. The freed slaves, barely constituting five per cent of the entire Liberian population, ruled for over 125 years, warding off the political turbulence in neighbouring countries and lording themselves over the majority number of members of the native ethnic groups. As the wave of coup d'etats swept over Africa in the mid-sixties and seventies, Liberia appeared immune to that phenomenon. This apparent immunity was not to last forever. In April 1980, a handful of semi-literate soldiers of indigenous extraction, led by Samuel Doe struck a fatal blow to that regime. The injustice of the old order was replaced with a more terrible one, culminating in human and material disaster for Liberia and its neighbours.

This chapter oulines and examines the history of Liberia and the phenomenon of black-upon-black discrimination and section 2.2 argues that Liberia's emergence as a state was not necessarily a result of its capacity to be one but largely a function of

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[3] Charles C. Boone, *Liberia As I Know It* (Connecticut: Negro Universities Press, 1970) at 81. The "civilized" Liberian at the material time referred to the settlers from the United States. See also, Roger Clark, "Steven Spielberg's *Amistad* and Other Things I Have Thought About in the Past Forty Years: International (Criminal law), Conflict of Laws, Insurance and Slavery" An Inaugural Lecture as Board of Governor's Professor, Rutgers School of law, Camden 19 November 1998 (Unpublished essay on file with the author) at 1-80. [Hereinafter, Roger Clark]

international morality which papered over its internal problems and inadequacies. Further, like most African countries, the inability of its elite to create an inclusive idea or consensus of its statehood exacerbated the internal contradictions in that country and paved the way for the emergence of military dictatorship.

Section 2.3 examines the military tyranny of Samuel Doe in Liberia, and its appetite for excessive bloodshed, cruelty and chicanery. It spawned the eventual rebellion. Similarly, it examines the feeble attempts at legitimacy of governance by some West African states. It argues that the length and success of Doe's tyranny owed largely to the prevailing Westphalian regime of non-intervention in the internal affairs of sovereign states and to Cold War politics.

Section 2.4 analyzes the emergence of the militaristic rebellion in Liberia, its character and motives. It explores the roles of various states in West Africa in the conflict, its ethnic dimensions and probable destabilizing influence in the sub-region. Section five examines the international aspects of the Liberian conflict and impact of external forces on Liberia and other African countries. The destabilizing tendencies of colonial boundaries in Africa vis-avis the sanctity attached to them by heads of African States is also underscored. This section also explores the threat to regional security posed by the humanitarian aspects of the Liberian conflict. In sum, chapter two situates the Liberian tragedy in its history, the perversion of its municipal polity and in the contemporary template shifts[4] in global law, morality and security.

[4] Jeffrey Roy, "The Emerging Nexus of Transnational Governanace and Subnational States: Shifting Templates of International Theory" (1997) 13 *International Insights* 171.

2.2: LIBERIAN STATEHOOD: HISTORY AND CONTEXT

Liberia was conceived by political expediency in response to the paroxysm of white racism in the United States of America. It was born out of the fear by the white Americans who could not contemplate co-existence with their freed black slaves.[5] The institutionalized enslavement, exploitation and denigration of the black race in the United States is an embarrassing proof of humanity's amazing capacity for cruelty.[6]

In the course of the journey of the estimated 40 million blacks to the Americas, the West Indies and different parts of the world for subsequent sale and exploitation, at least two and a half million of their skeletons today lie buried at the bottom of the Atlantic.[7] The magnitude of the evil of slavery and the suffering endured by the slaves raised the question, "where was God at that time?" The propagation of the practice of slavery by a people who fled from tyranny is a riddle. As one writer observed, "it is stranger than fiction, yet it is true that the very same people who fled from British oppression to America to be free, as soon as they inhaled the first breath of freedom, they turned boldly and enslaved others."[8]

The economic impact of this diabolical trade is no less profound. The productive value of slave labour in the United States prior to independence is said to be $2billion.[9] For Africa, it was an unmitigated disaster so much so that the world's second largest continent was set back for almost a thousand years and is still in relative economic coma.

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[5] But see, Marc Weller, *Regional Peacekeeping and International Enforcement: The Liberian Crisis* (Cambridge: Grotius Publications, 1994) at 18-19. [Hereinafter, Weller] He argues that Liberia was a genuine gesture to humanity.

[6] *Supra* note 1 at 8. Records indicate that well over 40 million blacks were cruelly shipped across the oceans for enslavement in different parts of the world. The greatest forced human migration in recorded history, the slave trade lasted over 400 years. See also, Lerone Bennet Jr., *Before the Mayflower: A History of Black America* 6th ed. (New York: Penguin Books., 1993) at 29; Roger Clark *supra* note 3 at 23-44.

[7] *Supra* note 1 at 10.

[8] *Ibid.*

[9] *Ibid.* See also Kappman Edward, *Great American Trials* (Washington: Gale Research Press,1994) at 91-94.

However, there were still people in America who questioned the humanity and justice of slavery as they believed it constituted "a monument of reproach...to principles of civil liberty."[10] Perhaps, this different attitude was not so much a moral conversion as it was a calculated reaction to the economic and political dynamics of the institution of slavery.[11]

First, the rapid increase in the Negro population was already a matter of grave concern in the United States of America as the industrial age was undermining the economic *raison d'etre* of slavery - cheap labour for agriculture.[12] By 1820 there were at least a quarter of a million freed slaves in the United States and there was the question of what to do with them. This question merged with the fear by the slavers of the looming prospect of equality at law with freed slaves. Thus, the legislature of Virginia had in 1800 requested its members in the United States' Congress to "correspond with the President on the subject of purchasing land without the limits of this state whither persons obnoxious to the law or dangerous to the peace of society may be removed."[13] What was to be done with the freed slaves? It was at this historical juncture that the American Colonization Society was born. It's objective was to "rescue" free people of colour and to colonize them outside the United States "where they might enjoy the blessings of liberty."[14]

Second, the season of unease and fear was further fueled by the Negro revolt led by Nat Turner in August 1831.[15] He organized an insurrection against slave-owners and in the process more than 60 slave-owners were killed. As a fearful precedent, this act of violent defiance struck terror into the hearts of several members of the establishment and thus strengthened the case for colonization. The Society persuaded the freed Negroes to emigrate to Africa and those who bought the argument reasoned thus: "I am an African

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[10] *Ibid.*
[11] Roger Clark, *supra* note 3 at 14.
[12] E. Dunn and S. Holsoe, "*Historical Dictionary of Liberia*" (London: Scarecrow Press, 1985) at 5. Save for Cuba and Brazil, the institution of slavery was no longer economical in other places.
[13] Wilson Charles, *Liberia* (New York: William Sloan Associates., 1947) at 8. (emphasis added)
[14] *Ibid.* at 13.
[15] *Supra* note 3 at 34.

and in this country, however meritorious my conduct and respectable my character, I cannot receive the credit due to either. I wish to go to a country where I shall be estimated by my merits and not by my complexion."[16] It was to West Africa that they would eventually go.

In 1816, Paul Cuffee, a half-Negro from Massachusetts performed the first experiment on emigration to West Africa when with pomp and merriment he set sail with 38 freed slaves. Soon Alexander Hamilton, James Monroe, President James Madison, Bushrod Washington (brother of George Washington), Daniel Webster and Henry Clay were persuaded of the "peculiar moral fitness in restoring the Negroes to the land of their fathers."[17]

However, a large majority of the Negroes kicked against the objectives and activities of the Society dismissing them as "unmerited stigma attempted to be cast upon the reputation of the free people of colour."[18] The Society succeeded in gathering information about the African coast from the British home office and slavery abolitionist groups. At this juncture, the United States' Congress passed the "Slave Trade Act of 1819" empowering the United States President to "make such regulations and arrangements as he may deem expedient to safeguard, support and remove Africans stranded in the United States."[19] This legislation afforded the legal basis for the dispatch by the government in 1820 to Africa of the vessel "*The Elizabeth*" with 300 Africans rescued from slave carrying ships.

On April 25, 1822 the immigrants landed on the West Coast of Africa at a place called Montserrado and took possession of the ceded Providence Island. The seeds of Liberia had been sown. By 1837 the idea of a colony on the West Coast of Africa for freed slaves from the United States became an unfolding reality. The little band of

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[16] *Supra* at 27.
[17] *Ibid.*
[18] *Ibid.*
[19] *Supra* note 1 at 34.

colonists at Montserrado (later renamed *Monrovia* in honour of President James Monroe, the fifth U.S President) organized and expanded their original territory by purchasing land from the natives. To convince the majority of the Negro population who remained in the United States to emigrate to Monrovia, the reports by the Society spoke gloriously of a people who now "enjoyed the liberty once denied them and know nothing of that debasing inferiority stamped on us [them] in America."[20]

The new colony was threatened from diverse quarters and its status denied. The British and the French encroached upon and significantly decreased the original extent of the colony but the United States declined to intervene and in desperation, the young colony on July 26, 1847 declared itself a republic. It chose the name "Liberia" from the Latin for freedom-*liber* and the *"ria"* for euphony.[21]Recognition of the new republic was quick in coming from the least expected quarters. Great Britain, Denmark, Belgium and France were quick in granting recognition to the young republic. Ironically, it took the United States 15 years to recognize Liberia because the American South resisted the idea of receiving a black envoy in Washington.[22] Yet, the mode of governance in the young republic was tailored after that of the United States of America. Its Declaration of Independence read like the American Declaration of Independence. And like the American original, no native Liberian was signatory to the all-important document. It's Constitution defined "Liberians" as "originally the inhabitants of the United States of America."[23] Its motto read " the love of liberty brought us here." In effect, the natives who were not "former inhabitants of the United States" were not deemed to be "Liberians." The politics of exclusion had begun.

Liberia was thus founded upon and sustained on the supposed superiority of the Americo-Liberians over the natives. As Liebenow lamented,

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[20] *Supra* at 49.
[21] *Supra* note 12 at 1.
[22] Gus Liebenow, *Liberia: The Evolution of Privilege* (Ithaca: Cornell University Press, 1969) at 5. [Hereinafter, Liebenow]
[23] Charles Boone, *supra* note 3 at 82.

> [T]he experiment in colonization was not the 'in-gathering of' Africa's lost children. These were Americans, and their views of Africa and the Africans were essentially those of nineteenth-century whites in the United States. The bonds of culture were stronger than the bonds of race, and the settlers clung tenaciously to the subtle differences that set them apart from the tribal 'savages' in their midst. It was not then (nor is it today) unusual to hear tribal people refer to the Americo-Liberian as 'white' people."[24]

In living out their American fantasies, they became more American than their former masters in the United States,[25]making a fetish of their exposure to the West.[26] As they regarded the natives as the country's greatest problem[27]a state policy of political and economic exclusion of the natives was created and thus subverting the very logic behind their colonization in Africa. A country founded for Africans long torn from their roots and with the fond hope that they would feel at home in Africa amidst their kin was determined to distance itself culturally and spiritually from its roots. It looked up to America and desired everything American. A people rejected by America was bending over backwards to love America. Yet, the love was hardly reciprocated.

According to Merran Fraenkel, whose incisive and monumental work on Liberia remains a classic,

> [T]hey identified themselves closely with the way of life of the New World, despite their repudiation of the role in which they had been cast in it...They were expatriates rather than repatriated: they were not buoyed up-as were the Jews in Israel for example-by the idea that they were returning to their ancestral continent. Indeed, the entire Declaration contains no mention whatsoever of Africa as the land of their forefathers, despite the fact that, for some of them, Africa may have been only one or two generations back...Africa was a strange and barbarous continent; their

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[24] Liebenow, *supra* note 22 at 15.
[25] Merran Fraenkel, *Tribe and Class in Monrovia* (London: Oxford University Press, 1964) at 14. [Hereinafter, Fraenkel] To the consternation of the natives, the Americo-Liberians wore three piece suits in tropical heat; had large houses and kept their Christian faith and Anglo-Saxon names. It was only in the early 1970's that the Liberian leaders deigned to wear any clothes indicative of their African pedigree. For over 150 years, the official attire in Liberia and which was strictly enforced was a suit.
[26] *Ibid.*
[27] Anderson Earle, *Liberia-America's African Friend* (North Carolina: Chapel Hill, 1964) at 8.

'native land' was America. [28]

This rejection of their African heritage was also reflected in the country's foreign policy and in their attitude to the struggle for independence by colonial Africa. The prevailing emotion exhibited by the ruling class in Liberia to the emergent wind of freedom and end to colonialism in Africa was sheer apprehension. According to the then Liberian Secretary of Defence in his *Annual Report* for 1960,

> [W]ith the attainment of independence of our sister African brothers contiguous to our borderline, problems which we never thought of are arising and have to be grappled with every degree of efficiency and alertness. Not only are the problems of the crossing into our territories of citizens of other states involved but also the question of national ideologies, some of which are divergent to ours and destined to threaten and uproot the very foundation upon which our democratic institution was founded.[29]

It also denounced the pan-African[30] rhetoric of Marcus Garvey on "Africa for Africans" and at the San Francisco debates on the proposed United Nations, the Liberian Legation reminded the pan-Africanists that Liberia was there "to represent a nation not a race."[31] In the pertinent remarks of Fraenkel, "their self-identification as 'inhabitants' of North America', and their apparent lack of any feelings of sentiment towards Africa, were of vital importance in determining the manner in which the new settlement developed."[32] It was also to set the stage for the tyranny of Samuel Doe-a native Liberian.

The first Americo-Liberian settlers also had pretensions of superiority over some of their very class. Thus, the mulatto affected superiority over their contemporaries of darker pigmentation and for some time monopolized politics and commerce on that basis.[33] The Negroid West Indian statesman, Edward Wilmot Blyden who emigrated to Liberia in 1855 was politically frustrated by the mulatto on the basis of colour and broke

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[28] Fraenkel, *supra* note 25 at 8-9.
[29] As Quoted in Liebenow, *supra* note 22 at xviii-xix
[30] Amate O.C, *Inside The OAU: Pan Africanism in Practice* (New York: St. Martins Press., 1986) at 35.
[31] *Supra* note 27 at 35.
[32] Fraenkel, *supra* note 25 at 9.
[33] *Supra* at 7.

ranks with the ruling Republican Party in 1867 in opposition to the "mulatto oppression."[34] In the fullness of time, the mulatto oligarchy naturally withered away and metamorphosed into an oligarchy of the very dark pigmented Americo-Liberians. In all these ebb and tide of class power in Liberia, the lot of the natives' stagnated. Worse still. the Americo-Liberians were in political control even in the remote hinterlands. One may then opine that the clear stratification of the Liberian society at inception was a tool and at once, a consequence of intra-racial economic exploitation and political exclusion. Strictly speaking, it was a black-upon-black apartheid regime lacking normative legitimacy.

In addition to this testy relationship with the natives who themselves had diffuse geographic boundaries, the encroachment on the young republic's territory by the European powers continued and[35]between 1847 and 1910 Liberia had lost 44% of its original territory. By its Treaty of 1885 with Great Britain, it had been forced to part with a sizable portion of its coastline to British Sierra Leone. This phenomenon attracted the anger, if not the action of the United States which in the Taft Commission Report of 1909 lamented that Liberia "as an independent power may speedily disappear from the map."[36]

For 125 years, the Americo-Liberians, who constituted less than 5% of the Liberian population, excluded the natives from the government of Liberia and monopolized all political, economic and social positions of eminence.[37] It was only in 1963 that an attempt was made to unify the laws of the land and integrate the disparate native groups.[38] If democracy is to be understood as the spread of potential political

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[34] Holden Edith, *Blyden of Liberia* (New York: Vintage Press, 1966) at 350.
[35] Liebenow, *supra* note 22 at 22-24. The deep jungle of the hinterland did not help matters as it remained virtually inaccessible in the face of the inability of the new republic to build necessary road networks.
[36] *Supra* note 12 at 21.
[37] Liebenow, *supra* note 22 at xvii. In his words, the Americo-Liberians and their descendants became "masters of the art of survival."
[38] Loewenkopf Martin, *Politics in Liberia: The Conservative Road To Development* (California: Hoover Institution Press,1976) at 3.[Hereinafter, Loewenkopf]

power to wider groups in society,[39] there was no democracy in Liberia. The rule of the True Whig Party (TWP) was a government of the few by the few and for the few, a classic exemplar of aristocratic dictatorship. In spite of the occasional political differences amongst the settler elite, there was one body against whom they found unity--the natives. Prior to the arrival of the settlers from the United States, the political structure of the disparate native groups varied from one ethnic group to the other.[40] The stabilized and sophisticated groups existed alongside the amorphous and diffusely spread groups. As Liebenow observed, the amorphous ethnic structure and spread of the native groups in Liberia did not help matters.[41] Most Liberian native groups lacked the political sophistication and solidity of [42]contemporary states or of the famed empires and kingdoms of pre-colonial West Africa such as the Mali Empire, the Songhai Empire, the Benin Kingdom or the Oyo Empire.[43]

The political structure of the native groups was primarily based on kinship cemented by religious, cultural and social ties. The diffuse nature of political authority built as it were on lingual, cultural and religious peculiarities was alien to the settlers. Commenting on the fluidity and flux nature of pre-colonial boundaries and societies amongst Liberian ethnic groups, Liebenow further observes that "there has always been a certain amount of fluctuations of tribal boundaries. The constant search for new agricultural lands or the flight from arbitrary rulers have constantly driven people into previously uninhabited and uncharted sections of Liberia."[44] For some of the ethnic groups, membership in a group was by a mere sense or consciousness of belonging.[45]

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[39] *Supra* at 9.
[40] Liebenow, *supra* note 22 at 21. The Mandingoes appear to have dominated a substantial part of the area as their "military and political organization ...was much more sophisticated than that of the non-Muslim tribes."
[41] *Supra* at 31. See also, Gabriel Omoden, "Brief History of Liberia" in Margaret Vogts ed., *Liberian Crisis and ECOMOG: A Bold Attempt at Peacekeeping* (Lagos: Gabumo Publishing, 1992) at 23.
[42] *Supra* at 36.
[43] *Ibid.* Liebenow asserts that the major Liberian ethnic groups were settling in the country almost at the same time as the Americo-Liberians.
[44] *Supra* at 36.
[45] *Supra* at 38.

Thus, the political boundaries between the native groups was so diffuse that it had meaning only in the context of culture and language. Liebenow thus concludes that "apart from the Mandingo-dominated kingdom of Kondo at Bopolu, Liberia had nothing resembling the complex trading kingdoms found elsewhere in West Africa."[46] There are sixteen major native groups in Liberia and only two, the Bassa and the Kpelle constitute more than ten percent of the total population.[47] The rest of the ethnic groups respectively constitute five percent of the entire Liberian population. The eventual control and domination of the natives by the settlers was by a gradual process of expansion by conquest aided by superior firepower and deeds of cession of landed territory to the immigrants.

The relative ignorance and poverty of the natives was a tool with which the settlers perpetuated their hegemony. For instance, franchise was dependent upon proof of literacy in English language and property rights.[48] Perhaps not surprisingly, while the natives lived in the hinterlands, the schools where literacy in English language could be acquired were located in the distant coastal areas inhabited by the settlers. The earliest natives who acquired the franchise were those who served and waited on their settler masters. To further reduce the native number in this enchanted circle of enfranchised citizens, the government opened its doors to freed slaves from the West Indies. This ingenious plan failed largely as a result of the emancipation of slaves in the United States and tales from Liberia in the United States of the numerous conflicts between the settlers and the natives.[49]

In futile rejection of this internal colonialism, the Krus, a seafaring native group revolted in 1915 and the Golas also engaged the settler government in a bloody war in

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[46] *Ibid.* See also Pfaff William, "A New Colonialism? Europe Must go Back Into Africa," *Foreign Affairs* 74 (1995) 2-6. The question of the impact of colonialism on boundaries of African ethnic groups as it affects the Liberian civil war is addressed in section five of this chapter.
[47] Liebenow, *supra* note 22 at 37.
[48] *Ibid.* See also, *supra* note 22 at 18.
[49] Liebenow, *supra* note 22 at 21-26.

1918. These were military efforts by the natives to put off the yoke of the settlers. These rebellions were viciously put down with arms and soldiers of the United States' army. The outcome of these conflicts, to borrow the words of Maugham, was that the "natives were broken" and "no more troubles were experienced"[50] from them. The hegemony of the settlers was further sustained by the instrumentality of a monolithic party machinery built around the True Whig Party.[51] Membership and ascendancy in the TWP was a direct function of membership in the Masonic Order which in itself refused admission to the natives.[52] This ubiquitous and powerful organization founded in 1867[53]literally controlled Liberian politics and economy. What was good for the members of the Masonic Order was good enough for the party and, in turn, the country.

The emergence of William Tubman in 1944 with his promise of enhanced native participation in the governance of Liberia wilted as the ruling elite once again preferred to inject "new blood" of their own "race."[54] This was a revival of the policy of encouraging the emigration of Negroes from West Indies. As this project failed to stem the tide of native agitation for equal access to power, the elite resorted to terror. Thus, when Didhwo Twe, a native and leader of the opposing Reformation Party opposed Tubman's re-election bid for the presidency in 1951 elections, he was speedily charged with treason on very spurious evidence. He fled the country and of course, Tubman won the election.[55] Later Tubman sought to integrate the natives but a large number of the elite were opposed to the idea.

The position of Tubman was a response to the climate in Africa at the prevailing

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[50] R.C.F. Maugham, *The Republic of Liberia* (New York: Negro Universities Press, 1969) at 57.
[51] Hereinafter, the TWP. This political party founded in 1860 dominated the entirety of Liberia for 125 years. Although Liberia has never been officially a one-party state, for the period of the dominance of the TWP, Liberia was to all intents and purposes, a one-party state.
[52] Nelson Harold, *Liberia: A Country Study* (Washington: American University, 1985) at 104.
[53] *Ibid.* The pervasive and ubiquitous nature of the Masonic Lodge in Liberia was equally reflected in the habit of the masons whereby membership of the Lodge was not treated with secrecy; instead it was a badge of honour used to "open doors" in Liberia. Almost every Liberian of substance was of the Masonic Lodge.
[54] Charles Boone, *supra* note 3 at 45.
[55] *Supra* at 51.

period. The other natives in colonial Africa were agitating for self-rule. Politically inspired riots were already widespread in countries like Sierra-Leone, Guinea, Ghana, Nigeria and the other West African countries. Liberia, thus operated a form of internal colonialism, a subtler form of apartheid which the natives could not understand.[56] Given that all the other countries in Africa were labouring under "white" colonial rule, it was natural to reduce colonialism to a "white against black" paradigm. To be colonized and suppressed by their own race was beyond their comprehension and unlike their kith and kin in colonial Africa who were eagerly looking forward to seeing the backs of the European colonizers, the Liberian natives were stuck with the Americo-Liberians.

It is under these prevailing circumstances that Tubman's resolve to quickly integrate the natives in the politics and governance of Liberia should be seen as a masterstroke to save the status quo.[57] Tubman quickly liberalized Liberian citizenship rights to grant citizenship to all the native Liberians. The franchise was also apparently liberalized. As a master politician, he contrived a system of cosmetic integration of the natives but which essentially sustained the settler domination of Liberia. Thus, in 1946 although the natives constituted ninety seven percent of the population, they had only twenty percent of the seats at the Lower House. Worse still, the native seats were held by Tubman's lackeys and chorus-singers.[58] For instance, in 1955, this legislature, acting on the Tubman view that opposition parties were "dangerous, unpatriotic, illegal...and unconstitutional",[59]outlawed all major opposition parties.

The elections, especially the presidential election, were a total sham. For instance,

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[56] Fraenkel, *supra* note 25 at 15.

[57] Liebenow, *supra* note 22 at xx. Note that Tubman stood between Schyla and Charybdis. The natives outnumbered the Americo-Liberians by over 100 to 1. True democracy would in effect uproot the existing order. On the other hand, sustaining the status quo in it's entirety would equally create a bloodbath which could wipe out the elite. To worsen matters, some of the countries in West Africa attained independence from their colonial masters. Nkrumah of Ghana and Sekou Toure of Guinea with their pan–African rhetoric were at this time stoking the fire of political freedom for African natives.

[58] *Supra* note 52 at 113. The nomination by the T.W.P ensured that native "troublemakers" could not find their way to the Congress.

[59] *Ibid.*

in the 1959 elections Tubman scored 530,474 votes as against 55 votes recorded for his opponent.[60] In fairness to Tubman, similar feats had been recorded by past Liberian Presidents. For instance, in the 1923 elections in which 6000 voters had been registered, President King had miraculously returned 45,000 votes to clinch the presidency![61] The educated native elite were not spared by the Americo-Liberians. In 1968, Edward Fahnbullah, a Liberian diplomat of native extraction, was charged with treason and in spite of the scanty and dubious evidence presented, convicted and his property confiscated. The trial further polarized the settler elite and the natives.[62] Three years after the spectacle of the Fahnbullah trial, President Tubman died and was succeeded by his deputy, William Tolbert.[63] In spite of Tolbert's liberal posture, "the upper levels of government and the economy were still controlled by about a dozen interrelated Americo-Liberian families."[64]

The declining economic fortunes of the country further worsened the situation. Opposition against the regime gained strength and courage. The heart of this newly strengthened attitude lay in the student body especially inside the University of Liberia. The Togba Tipoteh led Movement for Justice in Africa (MOJA) was the most prominent of these groups and was also supported by external bodies of opposition such as the United States based Progressive Alliance of Liberians (PAL) led by Bacchus Gabriel.[65]The PAL soon metamorphosed into a political party -The People's Progressive Party (PPP) and declared its readiness to oppose Tolbert in the elections[66]but the Tolbert regime refused to register the PPP.[67]

Following a controversial subsidy placed on the price of rice (Liberia's staple

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[60] *Ibid.*
[61] *Supra* note 52 at 114.
[62] *Ibid.*
[63] *Supra* note 12 at 53. Tolbert tried to heal the wounds of the Fahnbullah trial by releasing the diplomat from prison and rehabilitating him.
[64] *Supra* at 62.
[65] *Supra* at 128.
[66] *Keesing's Contemporary Archives* (1980) (Longman Group Limited, London) at 30405.
[67] *Ibid.* The Liberian Supreme Court overturned this decision on January 8, 1980.

food) the MOJA issued a 'General Declaration of Rice and Rights" enjoining the populace to march in protest against the rice subsidies.[68] According to Amadu Sesay, "the rice riots of April 1979 marked a turning point in the history of Liberia."[69] The issue here was that the government insisted on subsidizing imported rice and refused to extend a similar policy to locally cultivated rice which was even cheaper than the imported one. The Americo-Liberians dominated the rice import business in Liberia. While the landing cost of the imported rice was $30, the government was willing to pay the difference of $8 per bag to stabilize it at its standard prize of $22 per bag. Meanwhile it could have paid the local farmers $3 per bag of rice to reduce the cost of locally grown rice from $25 to $22 per bag of rice.[70] Therefore, the proposed subsidy was generally perceived as a means to further enrich the dominant class who monopolized the rice imporation business. The PAL preference for stoppage of rice imports and encouragement of local rice farmers was rejected by the governemnt.

Consequently, PAL called for a public demonstration but on the proposed date, just as it was proposing to call off the strike and defuse tension, government forces acting precipitously,[71]descended on the hapless demonstrators. In the process over 200 people were feared dead. Harsh prison sentences were imposed on the alleged perpetrators of the riot. The PPP leadership was charged with capital offences.[72] Apparently, the Tolbert government was running short of ideas on rational governance of Liberia. In his last tirade, the embattled President vowed to deal with the opposition in such a way " that they will never rise again."[73]

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[68] *Supra* note 12 at 129.
[69] Amadu Sessay, "The Historical Background to The Liberian Crisis" in Margaret Vogts ed., *Liberian Crisis and ECOMOG: A Bold Attempt at Peacekeeping, supra* note 41 at 35.
[70] *Ibid.*
[71] *Ibid.*
[72] *Ibid.*
[73] *Ibid.*

2.3: THE DAWN OF DICTATORSHIP AND THE SOUND OF REBELLION

> Had we been candid about the standards of government in Liberia it would have been very damaging to US interests...Great powers don't reject their partners just because they smell.[74] Chester Crocker, Former US Assistant Secretary of State for African Affairs (1981-88), 4 February 1993.
>
> We had the Liberian Executive Mansion pretty well wired. So we knew what was going on in the Mansion. Womanising until 3 am.[75] Chester Crocker.
>
> Perhaps I made a wrong career choice if it was people like that I was going to meet. Doe was unintelligible.[76] George Schultz, U.S Secretary of State 1980-1988.

On the night of 11th day of April 1980, a group of seventeen semi-illiterate junior soldiers of native background led by a scruffy 28 year old Master-sergeant Samuel Kanyon Doe struck a fatal blow to the 133 years old minority rule of Liberia. In that night of the long knives, President Tolbert and 27 of his guards were butchered. Like all *coup d'etats*, it was a secretive plot which upstaged the prevailing political order.[77] In his maiden broadcast to the nation, the military junta read out a litany of evils allegedly committed by the defunct oligarchy. It imposed a dusk-to-dawn curfew, closed all Liberian borders and set up a Military Tribunal to try the members of the defunct regime for alleged corruption, treason and violation of human rights.

This body of seventeen was composed of seven sergeants, eight corporals and two privates. None had gone beyond high school. Their modest ranks were soon to be

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[74] Mark Huband, *The Liberian Civil War* (London: Frank Cass Publishers, 1998) at 27.
[75] *Ibid.*
[76] *Supra* note 74 at 31.
[77] David Steven, *Third World Coups d'etat and International Security* (Baltimore: The Johns Hopkins University Press, 1987) at 7. In a rather belated substantive analysis of the causes of the Doe coup, Mr. Herman Cohen, the then United States' Assistant Secretary of State for African Affairs, in his testimony before the United States Congress, observed that "it (the coup) represented the takeover of Liberia by the majority of the people. You must remember that for over 100 years, a minority of Liberians controlled that country and essentially excluded the majority of the population...They did nothing to bring up the indigenous people...It was an internal colonial system...Doe was living in terrible squalor, which essentially represented the conditions of the indigenous people. See Weller, *supra* note 5 at 50. Yet, the United States accorded the minority government legitimacy and never for once used its good offices to raise the issue.

dropped for more glorious epaulettes. The junta called itself the "Peoples Redemption Council" (PRC). The first few days of the coup was marked by excesses in vendetta on and widespread looting of the assets of the vanquished elite which were punished with extra judicial killings.[78]

This penchant for bloodshed was to characterize the regime. Apart from declaring martial law, it dismissed the top echelon of the Liberian civil service, assumed legislative and executive powers,[79]suspended the Constitution of Liberia and disbanded the Supreme Court. Assets and property of the top members of the True Whig Party were summarily confiscated and bold promises to right the wrongs of the past were announced. While the coup d'etat was welcomed by a large majority of Liberians as it dispensed with the hated oligarchy of the True Whig Party, its excesses were condemned by some African countries for at least, three reasons.

First, the assassinated President Tolbert was at the material time, the Chairman of the Organization of African Unity (OAU) and was widely respected by his colleagues with whom he had developed some deep personal relationships. One of Tolbert's sons was married to a daughter of the Ivorian Head of State, Felix Hougheout Boigny.[80] His murder by Doe's forces at the premises of the French embassy where he had sought refuge was to play a significant part in Boigny's subsequent support for the rebellion against Doe.

Second, although a considerable number of African rulers came to power via the instrumentality of *coup d'etats*, Doe's coup was by all comparative standards excessively bloody. No less than 200 persons were killed in the first three days of the putsch. This bloodletting continued with the brutal execution of the 13 top members of the Tolbert regime. The procedure adopted in their hasty trial and execution did not have any redeeming qualities. They had been summarily tried without any legal representation and

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[78] *Supra* note 66.
[79] *Supra*, at 30406.
[80] *Supra* note 38 at 238.

in spite of weak and brief global protests, were executed in a gross and sadistic manner: tied to stakes and without blindfolds, they were machine-gunned to death before a gleeful crowd. The International Commission of Jurists issued a statement on April 23, 1980 describing both the trial and execution as violations of accepted international norms.[81] No sanctions or other serious normative measures were adopted or pursued by the international community against the Doe regime. Third, Doe's coup came at a time when Africa was coming to terms with the tragedy of the tyranny in Uganda[82] and Bokassa's excesses in the Central African Republic.

For these and other reasons, Liberia's delegation to the contemporaneous special session of the OAU Council of Ministers was refused admission to the conference venue in Lagos, Nigeria. Similarly, the Liberian delegation led by Doe himself was refused participation at the Economic Community for West African States (ECOWAS) Summit convened in Lome, Togo.[83] Commendable as these measures were, hindsight shows that the international community should have completely refused to accord the Doe regime any legitimacy at all. Doe's response to these measures betrayed his rashness. He recalled the Liberian ambassadors in Nigeria, Cote d'Ivoire and Sierra Leone[84]and on June 14, 1980 Liberian troops invaded the French embassy and arrested Adolphus Tolbert, the brother of the slain President Tolbert. Similarly, in February 1883 when a Sierra Leonean newspaper allegedly libeled him, President Doe unilaterally closed the borders between Liberia and Sierra Leone and threatened to keep it closed until the Sierra Leonean government shut down the offending newspaper.[85] This rashness and contempt for the due process of law portended the greater evil, bloodshed and severe regional dislocations which Doe would precipitate.

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[81] *Supra* note 66 at 30406
[82] R. Welch, "The OAU and International Recognition: Lessons From Uganda" in Yassim El-Ayoutry, ed., *The OAU After Ten Years* (New York: Praeger, 1975) at 103-117.
[83] *Ibid.*
[84] *West Africa Magazine*, 7 March 1983 at 598. Note that Sierra Leone refused the demand and their international borders were for that reason closed for over 8 months
[85] *Ibid.*

The new helmsmen lacked the sobriety required of their new station in life. Barely a fortnight after taking power, they announced rapid promotions for themselves ranging from the commissioned officer ranks of Major to five-star General. Doe leapt from the lowly rank of Master-sergeant to the dizzying height of a five star General of the Liberian Army[86]and increased the salaries of the military by 150 percent. It is equally siginificant that of the 27 cabinet members constituted by the PRC, ten were from the Krahn-speaking part of Liberia- the same ethnic background as Doe; 5 members were from the Kru speaking part; 7 from the Gio/Mano speaking region and 4 from the mixed Lofa speaking parts of Liberia. In effect, the soldiers had learnt the politics of ethnicity and exclusion from the old order.[87] This was soon to become a factor in the ultimate crisis.

Within the caucus of the PRC, cracks soon appeared. It was becoming clearer that Doe's rabble-rousing rhetoric on "African socialism" and diatribes against the "corruption of capitalism" was a cover for his quest for ultimate personal control of Liberia. For instance, some members of the PRC preferred a leaning towards the communist Soviet Union. This attitude appeared not to go down well with Doe and his then deputy, Brig-Gen Quiwonkpa who preferred to sustain the Liberian connection with the United States.[88] Doe's camp prevailed and the pro-socialist camp led by Major-General Weh Syen was marked for destruction. Both camps disagreed openly. The pro-American camp ordered the Soviet embassy to reduce its embassy staff by half for acts described as "unbecoming attitude."[89] The Libyan Legation, called "the Peoples Bureau,"[90]was asked to shut down and leave Liberia within two months. This antagonism with Libya was to become a critical factor in the subsequent crisis as the rebels were

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[86] Binaefer Nowrojee, "Joining Forces: United Nations and Regional Peacekeeping-Lessons From Liberia" (1995) Vol.18 *Harvard H.R.Journal* at134. [Hereinafter, Nowrojee]
[87] *Supra* note 50 at 220.
[88] *Keesings Contemporary Archives* (1982) (London: Longman Publications, 1982) at 31281.
[89] *Ibid.*
[90] *Ibid.*

alleged to have Libyan support.

Three months after this split, 13 lower ranking officers sympathetic to the Weh Syen camp were implicated in an alleged coup plot against Doe and executed for treason. Three months after the executions, Weh Syen himself and four members of his camp were allegedly implicated in another coup plot and also executed for treason. Doe constantly changed his cabinet and created a personality cult.[91] As at December 1991, only two of the original 17 members of the PRC were alive.[92] The only potential threat to Doe's personal rule of Liberia was his charismatic deputy, General Quiwonkpa, a Gio/Mano of the Nimba County of northern Liberia. The Gio/Mano ehtnic group straddles Liberia and Cote d'Ivoire. Doe's prompt demotion of Quiwonkpa was rejected by the latter.

Quiwonkpa was consequently dismissed from the Liberian Army and expelled from the PRC.[93] One month later, he was implicated in a 'plot' to overthrow Doe allegedly sponsored by the defunct Soviet Union and Ghana.[94] In spite of their protestations of innocence, the ambassadors of both countries in Liberia were respectively asked to leave within forty-eight hours.[95] General Quiwonkpa fled to Cote d'Ivoire through Nimba but Doe quickly rounded up those suspected to be sympathetic to Quiwonkpa and had them tried for treason. Doe's crackdown on the perceived opposition and rivals was not restricted to his primary constituency - the military or the traditional political class. It extended to the student body in Liberia.

The students had expressed shock and disapproval of his brutal execution of the 13 members of the Tolbert cabinet and were agitating for reforms. Doe banned by decree

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[91] *Supra*, at 32297.
[92] *Ibid.*
[93] *Keesing's Contemporary Archives* (1984) (London: Longman , 1984) at 32715.
[94] *Ibid.* Allegations of plots to "destabilize" African states are often made by African leaders to divert popular attention from burning issues. See Raymond Copson, *infra* note 95.
[95] Raymond Copson, *Conflict Among The African States* (Unpublished Doctoral monograph, John Hopkins University, 1971) at 53. The indifference of the Soviet Union to the Liberian tragedy is not unrelated to the cold relations between these two countries throughout the rule of Doe. Ghana/Doe relations was hardly free of recriminations over Doe's constant allegations that Ghana wanted him out of the Liberian Presidency.

the holding of parties in the higher institutions of Liberia on the grounds that they were a subterfuge for inciting the youths against his "revolution."[96] In 1984, a civil demonstration was brutally quelled by Doe's security forces and at least 40 people were killed in the process.[97] It is equally significant that Doe's regime was mired in fraud and corruption.[98]

The clamour for a speedy return to civil rule did not affect Doe's intention to succeed himself as the President of Liberia. A committee headed by Amos Sawyer was set up to draft a new constitution for Liberia.[99] Doe formed the National Democratic Party of Liberia (NDPL) and named himself as the party's presidential candidate. Other political parties such as the United People's Party (UPP) led by Gabriel Bacchus Mathews, the Liberian People's Party (LPP) led by Amos Sawyer, the Liberian Action Party(LAP) led by Tuan Wreh, and the Unity Party(UP) led by Edward Kessely were floated. As the new Liberian constitution pegged the qualifying age for the presidency at 35 years, Doe's true birth date of May 6, 1952 disqualified him from running but by diverse means, his age was "corrected" to show that he was born in 1950.[100] To make assurance doubly sure, he rescheduled the election timetable and fixed the presidential elections for 8th October 1985.[101] He resorted to a systematic and vicious crackdown on the opposition. On August 19, 1985, he "uncovered" a plot by Professor Amos Sawyer, the leader of the LPP to overthrow him. Sawyer was arrested alongside three others and immediately charged with treason.[102] In an official statement, Sawyer's plot consisted of a campaign "to create confusion, fear, distrust and division among the people" and thus secure the "resignation" of President Doe.[103]Further allegations were that Sawyer and his

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[96] *Ibid.*
[97] *Ibid.*
[98] *Supra* note 94 at 32898.
[99] *Supra* note 88, *ibid.* The committee submitted a draft constitution on April 11, 1983 which was by a popular referendum in July 1994 approved by Liberians.
[100] *Supra* note 52 at 231.
[101] *Keesings* 1984, *supra* note 93 at 32898.
[102] *Ibid.*
[103] *Ibid.*

supporters intended to blow up important public buildings and set fire to the capital city of Monrovia.[104]Once again, the students demonstrated against Doe's increasing tyranny and in response, Doe's presidential guards opened fire on them.[105]

Bolstered by the huge aid and finances pumped into Liberia by the United States, Doe had ample resources for his unprecedented repression of the Liberian people. Between 1980 and 1985, Doe received over USD500 million in aid and military wares from the United States. While this aid was supposedly meant to bolster Liberia's defense from the forays of Libya's Ghaddafi, "it is unlikely that President Doe would have been able to entrench himself in power without this unconditional support."[106] Doe dissolved the PRC and constituted an Interim National Assembly with himself as the head.[107] It is significant to note that it was under the regime of Doe that his ethnic group, the Krahn-speaking part of Liberia and the Mandingoes, gained relative political ascendancy over other ethnic groups in terms of domination of political appointments in Liberia.[108]

As the election date drew near, President Doe banned the popular Liberian People's Party led by the embattled Amos Sawyer on the ground that it advocated "foreign ideologies"[109] and had thus infringed the electoral laws. In addition, some opposition figures were arrested for "spreading lies, rumours and misinformation"[110]and charged with treason.[111] It was under this situation that the presidential election was held on the 15th of October 1985. The electoral commission had as its vice chairman Mr. David Gbala, an NDPL (Doe's political party) activist.

Despite credible allegations of electoral irregularities, on October 29, 1985, Doe was announced the winner of the elections with 50.9 per cent of valid votes cast.[112] The

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[104] *Ibid.*
[105] *Ibid.*
[106] *Supra* note 52 at 135.
[107] *Keesing's Contemporary Archives* (1985) (London: Longman Publication, 1985) at 33322.
[108] *Supra* at 33323.
[109] *Keesing's Contemporary Archives* (1986) (London: Longman Publication, London, 1986) 34146.
[110] *Ibid.*
[111] *Ibid.*
[112] *Ibid.*

opposition parties protested and contended that Jackson Doe (no relation to President Doe) of the Liberian Action Party (LAP) had "won" the election with 63 per cent of the total votes cast. The other results showed that Doe's NDPL had "won" 22 of the 26 Senate seats and 51 of the 64 Lower House seats.

The opposition parties refused to take their seats in the congress describing the elections as "a mockery of the law and of the people of Liberia"[113] Amidst this confusion, General Quiwonkpa, who had fled Liberia to Cote d'Ivoire on allegations of treason,[114] launched a dramatic but tragic coup attempt on the 12th of November 1985. During his exile in Cote d'Ivoire and in the United States, Quiwonkpa had made public his resolve to return to Liberia and stage a coup against Doe.[115] The coup attempt lasted three days and unofficial accounts put the death toll at more than 1,000.[116] Opposition politicians were placed in "protective custody"[117]by Doe.

According to some independent sources, "Quiwonkpa was captured, tortured, castrated, dismembered and parts of his body publicly eaten by Doe's victorious troops in different areas of the city."[118] Doe recalled the Liberian ambassador in Sierra Leone for alleged Sierra Leonean complicity in the coup attempt. Nationals of other West African countries such as Ghana, Guinea and Cote d' Ivoire were allegedly involved in the coup attempt.[119] The Gio/Mano people of Nimba County, Quiwonkpa's ethnic group, were routinely victimized for their alleged support for the coup attempt.[120]

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[113] *Ibid.*
[114] *Ibid.* See also, Huband *supra* note 74 at 37-41.
[115] *Ibid.*
[116] *Ibid.*
[117] *Ibid.*
[118] Huband, *supra* at 40. Note that Charles Taylor equally alleged that Quiwonkpa's body was eaten by Doe's men. See Amadou Sesay, *supra* note 69 at 52
[119] *Supra* note 109 at 34148. Virtually all coup attempts against Doe were alleged by him to have extra-Liberian backing. It is also interesting that the Quiwonkpa coup of 1985 which was arguably the most serious attempt to unseat Doe was launched from the Liberian border town of Nimba and with West African nationals. Similarly, the Taylor rebellion which started in 1989 was also launched from this same border town and with West African nationals as part of the rebel army. There may therefore be some element of truth in Doe's persistent assertion that neighbouring states were subverting his regime.
[120] Huband, *supra* note 74 at 40.

As the economic situation worsened,[121]Liberia's political isolation increased.[122] In spite of his transformation to a civilian president, Doe 's heavy hand still rested on the opposition[123]despite a United States' Congress non-binding resolution urging the administration to suspend aid to Liberia.[124] Some opposition members such as Mrs. Johnson-Sirleaf went into exile for fear of their lives.[125]

The opposition from the Nimba County[126]reared its head again on 4th September 1987 giving rise to a Liberian Treaty of Non-Aggression and Security Co-operation with Sierra Leone and Guinea.[127] However, on March 22, 1988, the Doe government announced the uncovering of a plot to assassinate Doe.[128] Six months later, another coup attempt, was launched from the Nimba County[129]and Doe's erstwhile deputy, Nicholas Podier was officially implicated and died in the alleged putsch.[130] Although the alleged coup plotters of March 1989 received stiff penalties for their alleged treason,[131]the fatal threat to the regime was to start[132]on December 24, 1989.[133]

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[121] *Ibid.* World demand for Liberia's major produce of iron ore, rubber and timber was falling rapidly. Note also that the resources of Liberia was deployed by Doe to wage his politics of personal survival. See Huband, *ibid* at 43.
[122] *Ibid.* Only nine diplomats attended Doe's swearing-in-ceremony.
[123] *Keesing's Contemporary Archives* (1987) Vol. XXXIII (Longman Publications, London, 1987) 34978.
[124] *Supra* note 109.
[125] *Supra* at 34979.
[126] The Nimba County is a classic image of the consequences of the partition of Africa by Europe at the Berlin conference of 1884. Here, the borders of three West African countries-Liberia, Guinea and Cote d' Ivoire intersect. Most of the coups against Doe was allegedly launched from this region. Further, the Berlin boundaries are notoriously fractious and controversial. See Dennis Austin, "The Uncertain Frontiers: Ghana and Togo" (1963) Vol. 1 *Journal of Modern African Studies* at 139-145.
[127] *Supra* note 111.
[128] *Keesing's Contemporary Archives* (1988) Vol. XXXIV (London: Longman Publications, 1988) at 35884.
[129] *Keesing's Contemporary Archives* (1989) Vol. XXXV (London: Longman Publications, 1989) at 36610 The government moved in over 1,000 soldiers to quell the insurrection. In the process, atrocities of ethnic character were committed by the troops. This set the stage for the massive exile of the Gio/Mano who supported the subsequent rebellion by Charles Taylor.
[130] *Ibid.* See also *Amnesty International Annual Report* 1989 (Amnesty International Publications, London, 1989) 62-63. The Amnesty report showed that he was not involved in the plot. His death was extra-judicial.
[131] *Amnesty International Annual Report* 1990 (Amnesty International Publications, London, 1990) at 151.
[132] *Supra.*
[133] *Keesing's Contemporary Archives* 1990 (Longman Publications, 1990) at 37132.

2.4: A BRUTAL AND FRACTIOUS REBELLION

Real power you take. It's not given to you.
Charles Taylor in conversation with his fellow dissident,
Tonia King, Abidjan, 1987[134]

On the fateful night of Chritmas eve 1989, 24 armed men of different West African nationalities[135] crossed over into Nimba County of Liberia[136] from the neighbouring Cote d 'Ivoire and attacked a border customs post killing an army officer and replacing the Liberian flag with an "unknown flag."[137] The hitherto exiled Charles Taylor[138]claimed that a group led by him, the National Patriotic Forces of Liberia (NPFL) was responsible for the rebellion. Within the first weeks of the rebellion, a massive refugee crisis had developed and the conflict had uprooted "60 per cent of Liberia's estimated population of 2,500,000."[139]

As the rebels increased in number and acquired more weapons[140]its ethnic tendencies[141]began to emerge. The Mandingoes and Doe's Krahn ethnic groups who were alleged to be the backbone of Doe's regime started receiving the butt of the excesses of the rebellion. Charles Taylor, an Americo-Liberian aligned himself to the Gio/Mano of the Nimba County who had borne the brunt of Doe's excesses. They now seemed to be taking retribution over the series of oppression[142]meted out to them by Doe's

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[134] Huband, *supra* note 74 at 45.
[135] Ofodile Anthony, "The Legality of ECOWAS Intervention in Liberia" (1994-95) 32 *Columbia Journal of Transn'l. Law* 381 at 384.[Hereinafter, Ofodile]
[136] Kofi Oteng Kufour "The Legality of the Intervention in the Liberian Civil War by the ECOWAS" (1993) 5 *A.J.I.C.L.* at 527.[Hereinafter, Kufour]
[137] *Supra* note 133 at 37174.
[138] *Supra* note 99.
[139] *Supra* note 133 at 37644. Sources from the Office of the UN High Commissioner for Refugees claimed that 500,000 people had fled from the conflict to the neighbouring countries-some 300,000 to Guinea, 120,000 to Cote d'Ivoire and 80,000 to Sierra Leone. A further 1,000,000,000 were believed to have been internally displaced. Monrovia's population jumped from 400,000 to over 1 million.
[140] Allegations and probable proof that the rebels were trained and armed by Libya, Burkina Faso and Cote d' Ivoire are addressed in the next section but suffice it to state that some of the captured rebels admitted receiving training in Libya and Burkina Faso.
[141] Konneh Augustine, *Religion, Commerce And the Integration of the Mandingo in Liberia.* (New York: University Press of America, 1996) at 132.
[142] *Amnesty International Annual Report* 1991 (Amnesty International Publications, London, 1991) 142.

Mandingo/Krahn dominated Liberian Army and government.

The NPFL's[143]rapid conquest of Liberian territory made it probable that it had substantial support from within and without Liberia.[144] It also increased in number by summarily executing unwilling recruits and wide use of children as soldiers, some as young as six.[145] Within the first two months of the rebellion, the rebellion suffered a split. This splinter group called itself the Independent National Patriotic Front of Liberia (INPFL) and had Yormie Johnson as its leader.[146] Johnson had allegedly left the NPFL after Taylor accused him of summarily executing his own troops and was determined to stop Taylor from seizing power.[147] As the rebellion mounted, Doe's lackeys and time-servers deserted him and fled abroad and within six months of the rebellion, the rebels controlled ninety per cent of Liberia and were marching speedily to the capital, Monrovia.[148] In addition, the rebels controlled very strategic points including the airports and seaports. By mid-June 1990, the NPFL rebels were within 50km of Monrovia and by June 28, 1990 they had seized the principal road links to Monrovia.[149]

Ethnically motivated atrocities against civilians were rampant and probably reached its peak with the massacre by the Krahn dominated regular army of 600 Gio/Mano civilians seeking refuge in a church compound in Monrovia.[150] Interestingly, Liberia's benefactor and "friend", the United States, which had lent considerable legitimacy to Doe's government, merely stationed 2,000 marines to safeguard its citizens and installations. The United States' strategic installations in Liberia included an Omega

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[143]Some commentators such as Stephen Ellis contend that the NPFL was an offshoot of the botched attempt by Quiwonkpa to seize power in the 1985 coup attempt. But see Lindsay Barret, "Liberia: The Nimba Equation" (1993) *West Africa* 1-7.

[144] *Supra* note 133.

[145]*Supra* note 130 at 37366. Some evidence indicates that students and survivors of the Quiwonkpa botched putsch willingly joined the rebellion.

[146] *Supra*, at 37601. This maverick was later granted safe passage to Nigeria after he was upstaged in the INPFL.

[147] *Ibid.* Allegations of atrocities dogged most of the rebel movements during the conflict.

[148] *Ibid.*

[149] *Ibid.*

[150] *Ibid.*

communications system allowing the tracking of shipping and submarine movements in the Atlantic, a powerful Voice of America radio transmitter situated near Monrovia, a communications and information-gathering centre at the embassy for contact with U.S embassies throughout Africa and refueling facilities at the Robertsfield international airport for the US Air Force.[151] The Marines were only ordered to "evacuate the remaining U.S citizens and protect the U.S embassy.[152]

There was an impasse as the various factions would not let Taylor seize the whole of Monrovia. The deadlock over the capture of Monrovia by the NPFL is attributable to the breaking away from the NPFL of its advance group commanded by Yormie Johnson who formed the INPFL. Thus, at the moment when ultimate victory was within the grasp of NPFL, Yormie Johnson's founding of his INPFL (Independent National Patriotic Front of Liberia) did not only frustrate Taylor's bid for control of the capital but set the stage for further factionalization of the rebellion against the Doe regime.

The Economic Community of West African States (ECOWAS) emerged as the solitary initiator for a settlement of the conflict as the United Nations and the Organization of African Unity, save for scattered homilies on the wisdom of peaceful settlement of crises did nothing to resolve the crisis. The ECOWAS approach was primarily aimed at a peaceful and negotiated end to the crisis. However, Taylor's NPFL faction, in the hope of wresting control of the capital city and the presidential mansion from the other contending factions, boycotted all peace talks.[153] Taylor's conduct and attitude is probably explicable on two geo-political and juridical grounds.

First, although the NPFL had effective control over a substantial part of Liberia, its frustration and fixation with capturing the capital city largely lay in the fact that the breakaway INPFL which controlled the Monrovia seaport and the major land access to

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[151] *Ibid.*
[152] *Supra* note 133 at 37645.
[153] *Supra* at 37602. [Hereinafter, ECOWAS] The origin, structure and legal character of the ECOWAS will be examined in the next chapter.

the capital city, Monrovia, although very determined, did not have Taylor's superior firepower. Taylor reckoned that sooner than later, the INPFL would yield to his superior men and firepower. In addition, the rump of the Liberian army, which had an unassailable control over the presidential mansion and its immediate environs, showed itself as undisciplined and rapacious.

The military and political significance of this situation is that in African political experience, control over the capital-city and contenders for state power generally regard the presidential mansion as the ultimate symbol of effective political control in the state.[154] It matters little that the force(s) in control of the capital and presidential mansion has no control or cannot extend similar control over the hinterlands of the country in question. Politically, effective control of other territories in an African country, no matter how extensive, is not the same as effective control over the capital city. The power which controls the capital city and the presidential mansion is the President and the forces in control of other parts of the country remain rebels until they have overrun the capital city and installed one of theirs in the presidential mansion. Thus, control over the capital city differentiates the "rebel" from the official "government." Proof for this proposition may be found in the cases of the chronic "rebellions" in Angola, Zaire, Uganda, Mozambique, and in other countries. Taylor therefore believed that given more time and in view of his considerable control over large Liberian territory, the other factions would weaken or self-destruct, thus enabling him to achieve his dream of ultimate control over Liberia. Taylor simply could not afford letting go of Monrovia.

On the other hand, this conception of power partly explains Doe's tenacious grip on the presidential mansion and Yormie's Johnson stranglehold on the main access to the capital city, Monrovia. In Taylor's calculation, the ECOWAS peace proposal would rob him of the momentum he had gained and would give his opponents a much needed

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[154] Christopher Clapham, *Africa and the International System- The Politics of Survival* (London: Cambridge University Press., London, 1996) at 20 [Hereinafter, Clapham on *African Politics of Survival*]

respite and time to search for more arms and troops. It is therefore understandable why Doe and Johnson's INPFL welcomed the ECOWAS interference and Taylor opposed it. Taylor's misgivings were further fueled by the closeness between Nigeria's General Babangida and Doe. What has baffled scholars is why President Babangida of Nigeria played such an active role in the Liberian crisis, spending well over US$ 8 billion in a conflict which posed only a remote threat to Nigerian security and for which there was "little solid gain for Nigeria."[155] In a continent with weak institutional structures for modern governance and for the formulation of foreign policies,[156]it is perhaps useful to go beyond the national interest paradigm in understanding the reasons for Nigerian leadership in the ECOWAS intervention in Liberia.

Both dictators were speculated to share sympathies and mutual business interests which possibly translated into military support for the beleaguered Doe.[157] This aspect of the peace process and its overall impact in complicating the intervention will be addressed in the next section but suffice it to note that as a result of this relationship betweeen Doe and Babangida, Taylor deeply distrusted the Nigerian-inspired ECOWAS peace plan for Liberia. By July 20, 1990 Doe had grudgingly (after realizing that the ECOWAS was determined to do away with his presidency) accepted an ECOWAS peace proposal. This provided for a cease-fire, deployment of a peacekeeping force in Liberia and the formation of a government of national unity.

In a move, which was to characterize the conflict, the NPFL rejected the peace proposals.[158] Doe's final isolation was to occur on July 21, 1990 when all his ministers signed a public statement urging him to resign "in order to save Liberia from further

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[155] Stephen Wright & Emeka Okolo, "Nigeria: Aspirations of a Regional Power" in Stephen Wright, ed., *African Foreign Policies* (Colorado: Westview Press., 1999) at 127-9.
[156] Robert Jackson & Carl Rosberg, *Personal Rule in Africa: Prince, Autocrat, Prophet, Tyrant* (Berkely: University of California Press, 1982) at 1. See also, Jona Rono, "Kenyan Foreign Policy" in Stephen Wright, ed., *African Foreign Policies* (Colorado: Westview Press., 1999) at 100-9
[157] Clapham, *African Politics of Survival*, *supra* note 154 at 124 and 203.
[158] *Supra* note 133 at 37602.

destruction of lives and properties, and also to ensure his personal safety."[159] The solitary efforts of ECOWAS[160]continued at its 13th Summit of Heads of States in Banjul, The Gambia on May 28-30 where it resolved to send a peacekeeping force to Liberia.[161] The objective of the peacekeepers was to oversee the cease-fire agreement and bring the civil war to an end.[162] Johnson's INPFL (with it's secure access to the capital city) welcomed the ECOWAS initiative. However, Doe's personal end was drawing near. In a meeting arranged by the ECOWAS Cease-fire Monitoring Group (ECOMOG) with the Johnson led INPFL on September 11, 1990 President Doe was fatally shot and his corpse seized by the INPFL rebels.[163]

The circumstances under which Doe died, till date, remains controversial and radically altered the role, perception and stance of the ECOMOG in the conflict. Although Johnson and his INPFL forces killed Doe, the incident took place in ECOWAS controlled premises. Second, it has remained a mystery how Johnson and his armed escorts, in spite of the presence of ECOMOG security operatives, were allowed to bear arms and attend a meeting uninvited. Moreso, when Doe's military guards had already been disarmed. Third, speculations surround how Johnson, without invitation to the meeting between ECOMOG and Doe got intelligence reports indicating the time and venue of that fatal meeting.[164] The sequence of sloppiness, fuzziness, improbable coincidences and unanswered questions on the exact roles of the parties in the fatal

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[159] *Ibid.*

[160] The Security Council considered the situation in Liberia for the first time on 22 January 1991, a little over a year after the conflict broke out. See, *Yearbook of The United Nations* (1991) (New York: Martinus Nijhoff, 1992) at 132

[161] *Ibid.* The ECOWAS set up a 4,000 strong ECOWAS Cease-fire Monitoring Group (ECOMOG) comprised of soldiers from the Anglophone countries of Nigeria, Ghana, The Gambia and Sierra Leone. Guinea was the only Francophone participant. The peacekeeping group arrived Liberia on August 25, 1990 under the command of General Arnold Quainoo of Ghana.

[162] *Ibid.*

[163] *Supra* note 133 at 37669. Doe's mutilated body was put on display shortly afterwards and although Doe's death effectively removed his grouping from the bid to retain power, a substantial number of troops under the command of the head of the presidential guard emerged on the bloody scene to form the nucleus of another faction ostensibly committed to the protection of the Krahn's and the presidential mansion.

[164] Weller, *supra* note 5 at 98-101.

shooting of Doe, largely fuelled the impression of ECOMOG's complicity in Doe's death. This in turn affected the credibilty of the ECOMOG as an impartial arbiter in the Liberian crisis.

However, contrary to general assumptions that the departure of Doe-dead or alive-would bring peace to beleaguered Liberia, the factions persisted in their fighting, massacring Liberians and foreigners caught in the conflict.[165] While the ECOWAS insisted on a democratic transition, some of the factions, believing that they could win power by force or use their respective degrees of control over Liberian territory as bargaining chips, insisted on prolonging the conflict.[166] Thus, the ULIMO-J and the AFN (Armed Forces of Liberia) having secured access to the presidential mansion believed itself to be in possession of the symbol of power in Liberia. On his part, Charles Taylor of the NPFL, being in effective control of more than eighty per cent of Liberian territory laid claims to the Presidency.[167]Meanwhile, the ECOWAS organized a conference of all leading Liberian politicians during which Amos Sawyer was appointed the Interim President of Liberia.[168] Simultaneously, the NPFL forces restarted its bombardment and shooting of ECOMOG troops in Monrovia.[169]It was under these circumstances that the ECOWAS peacekeepers acting on an enhanced mandate to use "all necessary means"[170]to bring the conflict to an end practically joined the fray as combatants by the deployment and use of military force[171] against the warring factions.[172]

By October 1990, the ECOMOG had taken Monrovia from the rebels and established a buffer zone of 20 kilometres around its perimeter, creating safe havens for

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[165] Weller, *supra* note 5 at 89.
[166] *Supra*, at 88.
[167] *Supra* at 62.
[168] Interim Government of National Unity of Liberia, Final *Communique* of the National Conference of All Liberian Political Parties, Patriotic Fronts, Interest Groups and Concerned Citizens, Banjul, The Gambia, 29 August 1990. Reproduced in Weller, *supra* note 5 at 89-93.
[169] Weller, *ibid.*
[170] Weller, *supra* at 100.
[171] *Supra* note 133 at 37700. General Dogonyaro of Nigeria replaced General Quainoo of Ghana. Weller, *supra* note 5 at 99.
[172] Quoted in Weller, *supra* note 5 at 109.

the mounting number of refugees fleeing the hottest areas of the conflict.[173] Frustrated from seizing the capital, Taylor declared himself President of Liberia, moved into the Liberian hinterlands and established his operational headquarters at Gbarnga, 150 kilometres northeast of the Liberian capital, Monrovia. One of the foreign factors in the conflict betrayed itself when the NPFL insisted to no avail that Libyan troops be added to the ECOMOG contingent. This request was rejected by the Nigerian led ECOMOG as the Libyans had been fingered as one of the major financiers of the NPFL.[174] However, Taylor's intransigence mellowed after a delegation from Nigeria persuaded Libya's Ghaddafi on November 21,1990 to reconsider its support for Taylor.

Similarly, the government of Burkina Faso which had despatched 400 soldiers to help Taylor's NPFL rebellion, was advised by the United States to desist from aiding the NPFL rebels. According to Herman Cohen, "we informed the President of Burkina Faso that we disapproved of his sending arms to the NPFL in transit from Libya.'[175] This cleared the way for further negotiations leading to the Bamako Accord of 28 November 1990 which provided for a cease-fire agreement.[176] However, Taylor's NPFL disagreed with the ECOWAS on the proper status of the Amos Sawyer led interim government. This necessitated further talks at Yamoussoukro, Cote d'Ivoire between all the relevant parties leading to the signing of another peace accord in October, 1991. While the cease-fire agreement held, the disarming aspect failed as the NPFL accused the ECOMOG of supporting the interim government at Monrovia headed by Amos Sawyer.[177]

New factional groups with clearly ethnic agendas soon emerged and one of such,

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[173] Weller, *supra* note 5 at 102.
[174] *Supra* note 133 at 37908.
[175] *Supra* note 132.
[176] "ECOWAS Authority of Heads of State and Government, Decision A/DEC.1/11/90 Relating to the Approval of the Decisions of the Community Standing Mediation Committee Taken During its First Session From 6-7 August 1990, Bamako, Republic of Mali, 28 November 1990." Reproduced in Weller, *supra* note 5 at 111-120.
[177] *Africa South of The Sahara* (1998) 27th ed. (London: Europa Publications Ltd) at 598. See also, *Yearbook of the United Nations 1992* (New York: Martinus Nijhoff Publishers, 1993) at 191.

the United Liberation Movement of Liberia for Democracy (ULIMO)[178] with its base in Sierra Leone launched armed attacks against the NPFL from the northwestern part of Liberia bordering Sierra Leone.[179] The Yamoussoukro Accord finally collapsed when the NPFL executed six Senegalese soldiers of the ECOMOG contingent and committed other atrocities.[180] One of the most shocking acts by the NPFL was the murder of five American nuns in late October 1993.[181]

As the crisis degenerated, the Permanent Representative of Cote d'Ivoire at the United Nations addressed a letter dated 15 January 1991 to the President of the Security Council[182]requesting that body to consider the Liberian crisis in its deliberations and to support the appeal for humanitarian aid to Liberia. The conflict was further spreading to neighbouring countries. On the 10th of April 1991, Sierra Leone wrote to the Security Council detailing the attack on its territory on 23 March 1991 by NPFL "bandits."[183] Sierra Leone warned that "because of the seriousness of and persistence of the attacks she reserved the right to use all necessary means, including assistance from friendly countries, to protect the lives of its people and defend its territorial integrity."[184]

With all these echoes of tragedy and probable prospects of an exacerbated regional crisis, the United Nations only accepted the ECOWAS invitation[185]to participate in and oversee the proposed Yamoussoukro talks on peaceful settlement of the conflict.[186] But the ink on the Yamoussoukro Accord had hardly dried when the rebels took up their

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[178] *Ibid.* The ULIMO split along ethnic lines with ULIMO-K led by Alhaji Koromah supporting and defending Liberian Mandigoes. It was alleged to have strong backing from other Mandingoes in Guinea. The ULIMO-J was a predominantly Krahn army and was alleged to be operating from Sierra Leone.
[179] *Ibid.*
[180] This issue is addressed in chapter two.
[181] *Amnesty International Report* 1993 (Amnesty International Publications, London 1993) 191-192.
[182] *Supra* note 156 at 133. See also "Letter from the Charge d'Affaires a.i of the Permanent Mission of Cote d'Ivoire to the United Nations Addressed to the President of the Security Council, 15 January 1991" Reproduced in Weller, *supra* note 5 at 127.
[183] *Ibid.* See also, Weller, *supra* note 5 at 142.
[184] *Ibid.*
[185] *Ibid.*
[186] Weller, *supra* note 5 at 151.

arms again.[187] Thus, another peace accord concluded in Geneva under the auspices of the UN and ECOWAS was signed in Cotonou, Benin Republic and replaced the Yamoussoukro Accord. It provided for another interim government, reduction of the Nigerian contingent in the ECOMOG and disarmament of the warring factions. Once again, Taylor refused to permit the disarmament of the NPFL troops on the grounds that the Nigerian quota in the ECOMOG had not been reduced.

To reduce the suspicion by the NPFL of the alleged partiality of the ECOMOG in the disarmament process, the ECOWAS, by letter dated 29 July 1992, invited the United Nations to set up an Observer Mission in Liberia (UNOMIL).[188] The UNOMIL was also to co-operate with the ECOWAS and the OAU in supervising the transitional process and overseeing the elections proposed under the Cotonou Accord.[189] Renewed hostilities occurred as another armed faction called Liberia Peace Council (LPC) headed by Dr. George Boley emerged, thus further complicating an already bloody and fractious battlefield. This group was like the ULIMO-J, made up of Krahn speaking Liberians and soon engaged the NPFL in bloody battles in alleged protest against atrocities committed by the NPFL.[190] Another rebel group, the Lofa Defence Force (LDF) also emerged to pursue an ethnic agenda. The Cotonou Peace Accord was partly implemented as an Interim government headed by David Kpomakpor[191]was constituted and troops from Uganda and Tanzania joined the ECOMOG force to reduce the Nigerian contingent in ECOMOG.

By this stage there were six different groups fighting each other in Liberia: the NPFL, ULIMO-J, ULIMO-K, LPC, LDF and the AFL (the remnants of the Liberian Army).[192] Further fighting continued and all the factions were committing atrocities

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[187] *Ibid.* at 173.
[188] *Ibid.* at 273. This aspect of the crisis will be addressed in chapter 5.
[189] *Ibid.*
[190] *Amnesty International Annual Report* 1994 (Amnesty International Publications, London, 1994) at 196-197.
[191] *Keesing's Contemporary Archives* 1994 (Longman Publications, 1994) 39898.
[192] *Ibid.* at 39996.

against the civilian population.[193] Amidst this chaos, some of the rebel groups such as the NPFL suffered further internal crises of leadership.[194]Another peace agreement initiated by President Rawlings of Ghana was signed by the leaders of the NPFL, the AFL and the ULIMO-K at Akosombo, Ghana. The unwillingness of the warring factions to comply with these series of peace agreements wore thin the patience of the UN, the OAU and ECOWAS. Thus, the governments of Ghana and Nigeria[195]declared their readiness to reconsider their participation in the peace process if the rebels persisted in the war. These threats were made good when Ghana and Nigeria ostensibly started to pull out their soldiers from the ECOMOG force and the UNOMIL followed suit by reducing its numerical presence.[196]

The brutalized Liberian civil population rose up to "call on the ECOMOG Peace Keepers to be decisive in enforcing compliance of the factions in heeding cease-fire regulations so as to save the Liberian Peace Process to which they have committed so much in human and material terms from collapse."[197] The rebels then showed a discernible attempt to keep within the terms of the Akosombo Accord.[198] However, reports of further fighting and atrocities continued as the NPFL troops were reported on September 8 1994 to have seized 43 members of the UN observer mission.[199] The last attempt at finding a peaceful settlement to the crisis was in Abuja, Nigeria[200]when all the warring factions agreed to a comprehensive peace plan; but by this time, over 200,000 Liberians had perished in the fratricidal conflict.[201]

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[193] *Amnesty International Annual Report* 1995(Amnesty International Publications, London 1995) at 195-197.

[194] Thomas Woewiyu, led a revolt against Charles Taylor and claimed that Taylor had been removed as the leader of the NPFL. Taylor sought refuge in Cote d' Ivoire but returned to Liberia after the revolt had only succeeded in creating a splinter group called the CRC-NPFL. There were now 7 rebel groups.

[195]*Supra* note 191 , at 40310.

[196] *Supra*, at 40180, *ibid*. Tanzanian soldiers were also leaving Liberia at the same time.

[197] Statement on Developments in the Peace Process. >Online: Africanews http.www.africanews.org .Last modified 8 November 1998.

[198] *Supra* note 191 at 40313.

[199] *Supra*,at 40170

[200] *Keesing's Contemporary Archives* 1995 (London: Longman Publications, 1995) at 40669.

[201] *Amnesty International Annual Report* 1996 (Amnesty International Publications, London, 1996) 210.

Pursuant to the Abuja Accord, a transitional Council of State was inaugurated on September 1, 1995 and the ECOMOG troops were widely distributed in Liberia to oversee the return of Liberians to their war-torn country.[202] The number of Liberian refugees returning from Guinea was put at 410,000, Cote d'Ivoire 305,000 and Ghana 15,000. ECOMOG started disarming the estimated 60,000 troops loyal to the various warring groups[203]as the armed factions were now transforming themselves into political parties to contest the elections slated as part of the peace process. The NPFL transformed into the National Patriotic Party (NPP) and the ULIMO-K transformed into the All Liberian Coalition Party (ALCP).

The peace process gained impetus as the francophone countries in the sub-region now sent 2,300 soldiers to build up the ECOMOG contingent to 13,000. Similarly, the United States and Great Britain sent military aircraft for the airlift of troops from the francophone countries. And as the return to political activities heated up 13 candidates emerged to contest the Liberian presidency. With his stronger organization and finances, Charles Taylor, in spite of allegations of rigging and electoral malpractice, including intimidation of voters, realized his ambition of becoming Liberia's president. He was sworn into office in August 1997 and the Liberian Constitution of 1985 was reinstated.[204]

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[202] *Supra* note 200 at 40856.
[203] *Ibid*, at 41354. See also *Amnesty International Annual Report* 1997 (Amnesty International Publications, London, 1997) 218-220
[204] *Amnesty International Annual Report* 1998 (Amnesty International Publications, London, 1998) at 235.

2.5: THE LEGITIMACY OF EFFECTIVITY AND THE NEW EFFECTIVITY OF LEGITIMACY: THE LIBERIAN CRISIS IN A GLOBAL CONTEXT

> I want my name to be littered over the pages of history as being the man who started out the way it should be started. If I had some chances, I would really start some trouble in this region.[205] Charles Taylor, Gborplay, May 1990.

> The first Liberians to be enlisted by Taylor were a 40-strong group assembled by Cooper Miller, a former soldier who had gradually brought his followers into the Ivory Coast...They were taken to Danane ...from there they took the bus to Ougadougou (Burkina Faso) and were installed at a military base outside the city. From there they were transported by plane to Libya.[206] Mark Huband.

> While in Libya we did military training at Tarjura base supervised by Prince Johnson and Paul B. Harris...then we did commando training, jumping from multi-story buildings and barbed wire training at the seaside base...Taylor wanted to recruit Chadians to fight with them against Doe and some of them did go with Taylor back to Liberia. Samuel Lartor, ex NPFL rebel Commander.[207]

> I, Prince Johnson, the commander of the special forces, have decided to give an order to have all foreign nationals arrested on the ground and kept in my camp. British, Indian, American-I will arrest you all and cause a big regional conflict. Then the world will intervene. We will start with US citizens...they will be held hostage...I want the UN to send a peacekeeping force right away. [208] Prince Yormie Johnson, Leader of the INPFL.

Although the Liberian conflict has been characterized as a purely internal conflict by some observers, it has been observed "every internal war creates a demand for foreign intervention."[209] For diverse reasons, this is certainly the case with Liberia. In appreciating the regional dimensions of the Liberian conflict, regard should be had to the interlocking nature of West African states.[210] In addition, reference should be made to the

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[205] Huband, *supra* note 74 at 205
[206] *Supra* at 52-53.
[207] *Ibid.*
[208] *Ibid.*
[209] Nwafor Azinna, *United Nations Use of Force Armed Forces in Internal War: Conditions for the Maintenance of International Stability* (Doctoral Dissertation, University of Michigan, 1969) at 16.
[210] George Kelly & Linda Miller, *Internal Wars and International Systems: Perspectives on Method* (New

questionable roles of some countries in the sub-region in organizing, encouraging and fueling the conflict. Furthermore, the global factors which catalyzed the unravelling of some African countries; especially Liberia, Zaire and Somalia and the impact of this on regional stability and security ought to receive some consideration. A consideration of the Liberian conflict from these perspectives raises doubt as to the extent of the internal character of the Liberian rebellion. This would probably enable an empathetic examination of the rationale for the intervention. In addition, this approach implicitly questions our contemporary appreciation of the notions of the law on non-intervention in the domestic affairs of states. That is to say, while states purport to keep faithfully with the letter of the law on non-intervention, there is a disturbing impression that state practice, whether by deliberate omission or subtle commission, may in fact be violative of the spirit of the norms on non-intervention.

Prior to the emergence of the Doe military regime, Liberia enjoyed a relatively peaceful co-existence with its immediate neighbours. This state of affairs predated the colonial era. As a matter of fact, the colonial delineation of Africa at the Berlin Conference of 1844 wittingly or otherwise carved out and dispersed homogenized ethnic groups into disparate states.[211] In effect, "almost all Liberian tribes are also found in neighbouring countries."[212] The same goes for virtually all African countries. This is one major potential and actual cause of dispute in Africa. Burkina Faso and Mali have fought three bitter wars in a period of 10 years over disputed colonial boundaries and there are over 103 examples of borders that divide ethnic groups across different African countries.[213]

The Berlin Conference of 1884 was motivated by the European concerns for convenient colonization and economic exploitation of Africa. Little regard was paid to

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York: AMS Press.,1969) at1. [Hereinafter, Kelly & Miller]

[211] Liebenow, *supra* note 22 at 45.

[212] Fraenkel, *supra* note 25 at 27.

[213] Copson, *supra* note 95 at 56. See also, Stedman on Conflicts, in Brown, ed., *supra* note 223 at 236.

the convenience of cultural and ethnic homogeneity of the affected African peoples. While ethnic homogeneity may not be necessary for the creation and sustenance of states, the experiential reality is that it has largely become a controversial instrument for the acquisition and maintenance of power in Africa. This will be explained in due course. This trend has apparently become more pronounced since the eclipse of the ideological divide between the East and the West and the growing sense of ethno-nationalism and geo-political irredentism.

For Liberia and West Africa, the table below illustrates the population spread and division of some of the native ethnic groups in and around Liberia.[214]

	Liberia	Mali	Guinea	S/Leone	C/Ivoire
Bassa	347,000	-	-	5,000	-
Gola	99,300	-	-	8,000	-
Kru	184,000	-	-	8,000	-
Mandingo	33,800	2000	1,816,500	9,000	-
Mende	19,700	-	-	1,240,000	-
Vai	89,500	-	-	15,500	-
Kissi	115,000	-	-	85,000	-
Krahn	47,000	-	-	-	12,200
Dan/Gio	150,000	70,000	-	-	800,000

According to Liebenow, "the majority of the sixteen Liberian ethnic groups straddle the borders between Liberia and the neighbouring states of Sierra Leone, Guinea, and the Ivory Coast. In some cases such as the Mende, the major portion of the tribe

[214] Ethnologue, online:<http//.sil.org/ethnologue/countriers/Liberia/.html . last modified on 1 February 1999.This phenomenon gives rise to irredentism and accusations of subversion. Kwame Nkrumah of Ghana was given to issuing threats to the effect that Ghana would invade Togo so as to unite the Ewes in both countries. Togo accused Ghana of complicity in the assassination of Togolese President, Sylvanius Olympio. See, Copson ,*supra* note 95 at 100. Cote d'Ivoire constantly accused Guinea and Ghana of supporting Camille Adam's irredentist movement in Cote d'Ivoire.

resides across the border...Even today the majority of Liberians identify much more with their ethnic group than they do with the modern state of Liberia."[215] A close study of the table above partly explains why the ULIMO-K (predominantly Mandigo), in the Liberian civil war had considerable support from Mandingoes in neighbouring Guinea. Similarly, the Dan/Gio (mainly in the Nimba County) were alleged to have considerable support from their kith and kin in neighbouring Cote d'Ivoire and Guinea. This tendency also helps to explain the relative ease of the cross border refugee movement in times of humanitarian crisis. Indeed, an outbreak of humanitarian disaster is not necessary to triggger off massive human migration in that part of the world. As Liebenow presciently noted, "artificial and largely unregulated international boundaries have provided no obstacle to Mende, Gola, Kissi, and Vai, who move back and forth to renew old ties with kinsmen in Sierra Leone; to Grebo, Kru, and Krahn who visit their relatives in the Ivory Coast; to Loma, Kpelle, Mandingo, Mano, and Gio who have maintained their economic and social links with kinsmen in Guinea."[216]

This phenomenon of "nations without states" repeats itself across Africa. For instance, the Ibibio nation with its political and spiritual capital in Calabar of present day Nigeria (which had as early as 1472 established formal trading and diplomatic relations with the Portuguese), has 5,200,000 of it's people on the Nigerian side and nearly 900,000 in neighbouring Cameroon.[217] Similarly, the Karembu of the famed Kanem-Bornu empire has 4 million of their people in present day Nigeria and over 3.7 million in the adjacent states of Niger, Chad and Cameroon. Yet, the colonial boundaries made by Britain, France and Germany have not diminished the fervour and passion for their strong cultural links reinforced by traditional festivities such as the *Durbar*.[218] This duality creates a delicate mix of tension and ease and when the former takes precedence

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[215] Liebenow, *supra* note 22 at 31-32.
[216] *Supra* at 36.
[217] Minahan James, *Nations Without States-A Historical Dictionary of Contemporary National Movements* (London: Greenwood Press, 1996) at 99. [Hereinafter, Minahan]
[218] Minahan, *supra* at 273. This is a colurful horse riding ceremony of the Borno people.

especially in times of crisis. A serious strain on the bilateral and multi-lateral relations of the West African states is thus imposed on several occasions by these factors. The tension is heightened by ethnic politics of African leaders who are the most vocal supporters for maintaining inherited colonial boundaries regardless of their inherent problems and contradictions.[219] In fact, absolute respect for the integrity of the colonial boundaries is a fundamental norm of the OAU Charter and state practice in Africa.[220] It is remarkable that of the 53 African countries, only Eritrea has successfully overturned the integrity of a colonial boundary and attained recognition as a sovereign state by breaking away from Ethiopia.[221] Interestingly, many Africans especially the border citizens with kith and kin separated by the Berlin designed borders do not share the same enthusiasm for the juridical state.[222] A combination of some of these factors have led scholars[223]to conclude that they generate internal conflicts[224]and also encourage the internationalization of internal conflicts in Africa.[225] Some of those factors need further elaboration.

First, apart from the problems associated with the Berlin demarcated boundaries, the nascent African states were hardly ready for the demands of statehood. In most African countries, the departing colonialists barely created or sustained those institutions necessary to support a modern state as construed under the dominant Eurocentric paradigm.[226] This is largely attibutable to the clamour for independence and self-

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[219] Robert Jackson, *Quasi-States: Sovereignty, International Relations and the Third Word* (Cambridge: Cambridge University Press., 1990) at 22. [Hereinafter, Jackson, *Quasi-States*]. See also, Clapham, *African Politics of Survival, supra* note 154 at 4.

[220] OAU Charter, Addis Ababa, May 25, 1963. 479 U.N.T.S. 39. See Article 3 (3) and (5).

[221] Christopher Clapham, "The Foreign Policies of Ethiopia and Eritrea" in Stephen Wright, ed., *African Foreign Policies* (Westview Press., Boulder Colorado, 1999) at 84. Similar campaigns labelled as "separatist", "secessionist" and"irredentist" in Sudan,Nigeria/Biafra,Congo/Katanga, Ghana/Ewe/Togo and Somali/Kenya have not been successful.

[222] Asiwaju Anthony, "Borders and Borderlands As Linchpins For Regional Integration In Africa -Lessons of The European Experience." In Schofield Clive, ed., *World Boundaries* Vol.1 (London: 1994) at 57.

[223] Michael Brown, ed., *The International Dimensions of Internal Conflict* (Massachusetts: The MIT Press, 1996) at ix. [Hereinafter, Michael Brown]

[224] Rhoda Howard, "Civil Conflict in Sub-Saharan Africa: Internally Generated Causes" (1995) *International Journal* at 27.

[225] Stephen John Stedman, "Conflict and Conciliation in Sub-Saharan Africa" in *supra* note 223 at 235.

[226] Jackson, *Quasi-States, supra* note 219 at 21-34.

determination of peoples which reached its peak after the defeat of Nazi Germany and caught the colonial powers in Africa and Asia unprepared.[227] Instead of the proposed centuries of colonization,[228]European colonists were compelled by international morality to hand over power in the colonies. The mantle fell on the few native elites who in the absence of strong governmental institutions, with its checks and balances, largely appropriated the inherited power for themselves.[229] In some cases such as Belgian Congo and French Guinea, the departing colonies deliberately looted and impoverished the colonies in contempt of the way local agitators for political independence hurried and harried them out of the country.[230] However, in almost all the cases, the Berlin designated state boundaries with its inherent weaknesses were scrupulously mantained.

Second, the nascent states or "quasi-states", in their ostensible bid to quickly gain the kingdom of economic well-being long denied them by European colonization and exploitation, emphasized the state as the leading engine for economic growth and insisting on national unity at the expense of sub-national ethnic and political identities."[231] In the attempt to enforce state unity at all costs among ethnic groups with "vastly different political values and institutions,"[232]the state became the greatest institution of patronage. The minority elite maintained power and sustained it on that basis. According to Stedman, "the lack of domestic economic capital ensured that states would be important sources of resources and would become the subjects of intense distributional conflicts."[233] In addition, some newly independent African states went on the populist but ill-advised nationalization of foreign industries.[234] This merely provided more avenues for the opportunistic power holders to dispense patronage to a few cronies

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[227] *Ibid.*
[228] *Ibid.*
[229] Jackson, *supra* note 156 at 67.
[230] Jackson, *Quasi-States, supra* note 219 at 18.
[231] Basil Davidson, *The Black Man's Burden* (New York: Times Books, 1993) at 25.
[232] Richard Sandbrook, *The Politics of Africa's Economic Recovery* (Cambridge: Cambridge University Press, 1993) at 93.
[233] *Supra* note 225 at 240.
[234] *Ibid.*

and ethnic jingoists. As Stedman further observes, "office holders appropriated state resources to consolidate their power bases and reward their network of clients. National interests were subordinated to the interests of politicians and their supporters, who viewed public office as private property."[235]

Third, power in West Africa was and to a large extent still is, maintained by a convenient play of the "ethnic card."[236] This is a system of mobilizing ethnic sentiments to colour important issues and deprive them of objectivity. For instance, a call for a constitutional reform may be portayed by government propagandist machinery as a call by the proponent's ethnic group for dismemberment of the state and thus give political advantage to another group. These perversions weakened the internal legitimacy of the African states, rendering them excessively vulnerable to external forces.

In effect, instead of the state becoming an effective mechanism for the articulation of the means and framework in which life, liberty and happiness may be pursued by the citizens, it became engaged in a war with the people. Accordingly, Doe construed criticisms against his government as attempts by other ethnic groups to unseat his own ethnic group from power. He became the champion and Goliath of the Krahn ethnic group and was so perceived by members of the other ethnic groups. To sustain himself in power, it therefore became convenient to mobilize his ethnic group by giving them preference over other groups. The loss of power by a leader like Doe, was thus dramatized as a calamitous loss to his ethnic group. To avert this tragedy, he made his ethnic group, the Krahn, believe that they would face retribution or possible annihilation from and by the other ethnic groups.[237]

To further compound this dreaded scenario, he, like most other African dictators of his ilk, maintained his power by divide-and-rule tactics pitting his Krahn and the

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[235] *Ibid.* See also, Clapham on *African Politics of Survival, supra* note 154 at 187.
[236] Donald Rothschild, "Ethnic Bargaining and State Breakdown in Africa" (1995) 5 *Nationalism and Ethnic Politics* at 54-72.
[237] *Amnesty International Annual Report* 1992 (Amnesty International Publications, London, 1992) at 173.

Mandingoes against the other ethnic groups. In the course of the subsequent crisis, the factions naturally split along ethnic lines, which of course, ran deep into the territories of other neighbouring states. Where coercion and coaxion failed, recourse was had to brute force. In effect, the unity of several West African states like Liberia has been sustained on a peculiar mixture of force, coaxion, ethnic patronage, respect for colonial boundaries, and the prevailing international morality on the notions of sovereignty. The consent of the governed has been of little relevance. These inequities and iniquities in the African states largely went ignored for at least three reasons.

First, the new African states were creatures of a world order fashioned on the Westphalian paradigm with its excessive deference to the canons of non-intervention in internal affairs of other states. Second, the notion of statehood being largely juridical, especially for post-colonial Africa, threw up empty shells like Chad and Niger as states. These sparsely populated territories with little or no institutional structure of governance or reasonable degree of effectiveness over their arid and expansive territories, by virtue of the prevailing order, have attained recognition as states, at least juridically.[238] Third, prior to the end of the Cold War, the notion of collective security did not encompass "the development of human dignity and basic rights."[239] Although, it was embedded in the United Nations Charter, of which later, peace and collective security were interchangeable with the absence of war. The Cold War/Westphalian notions of state sovereignty ensured that whatever went on within the borders of such countries was not the legitimate subject for external concern.[240]

For African rulers who had effective control over their territories, it was a license to pillage the state and oppress their peoples as Cold War imperatives afforded ample shield and external distraction. It was a triumph of legitimacy of effectivity instead of the

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[238] James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press., 1979) at 230.
[239] E.K.Quashigah, "Protection of Human Rights in the Changing International Scene: Prospects in Sub-Saharan Africa" (1994) 6 *A.J.I.C.L.* 93 at 95 [Hereinafter, Quashigah, Protection of Human Rights].
[240] Robert Jackson, *Quasi-States, supra* note 219 at 21.

effectivity of legitimacy. In effect, most of those juridical states, regardless of their absence or poverty of internal legitimacy in governance, survived at the sufferance of the prevailing world order and morality. The Westphalian doctrine of "*cuius regio, eius religio*" was in Africa, read to mean that the prince (change President) was free to do as he liked within the boundaries of the juridical state. Most African states thus became synonymous with the persona of those who ruled them; hence Nkrumah's Ghana, Kenyatta's Kenya, Banda's Malawi, Eyadema's Togo, Boigny's Cote d'Ivoire, Mobutu's Zaire, Mengistu's/Selassie's Ethiopia, Keita's Mali, Kerekou's Benin, Sekuo Toure's Guinea, Nyerere's Tanzania, Kaunda's Zambia. The juridical state in Africa was merged and synonymous with its ruler.

The crisis of legitimacy in governance was occasionaly resisted by boiling popular discontent, riots, strikes and popular demonstrations but violent forms of discontent, ethno-nationalism, self-determination and warlordism remained largely subdued. This state of affairs spanning almost three decades survived because of the bi-polarization of global politics and the prevailing regime of strict juridical statehood and sovereignty. In addition, that global regime enabled some African states to assert some geo-plotical relevance, get funding from the superpowers and Western dominated international financial institutions without questions on political and economic accountability. Thus, rulers of states like Liberia, Zaire and Somalia (among others), being of strategic geo-political importance to the United States and the defunct Soviet Union, survived on American or Soviet patronage and protection. It is here that the global community is indicted for its complicity in the reign of terror and bastardization of governance inflicted on the people of Africa and indeed on all developing nations.

Under the old regime, effective controllers over the capital cities of the African countries and possessors of the keys to the presidential villas were feted, feasted and hugged in the Kremlin, Bonn, the White House, the Elysee palace and other centres of global power and legitimation. According to Clapham, this was the regime of "letter-box

sovereignty."[241] Whoever happened to be the occupant of the presidential mansion was entitled to regard himself as the Head of State of that country. It helped a lot if that occupant of the presidential mansion served an economic or geo-political purpose agreeable to any of the contending superpowers. Their means of occupation of the respective presidential mansions and sustenance of that occupation were internal matters which their oppressed peoples should sort out by themselves. It was the classical age of the politics of patrimony in Africa.

Thus, by an adroit mixture of coercion and corruption of the domestic order and deft manipulation of the international security paradigm, a host of African rulers held sway in their respective presidential mansions for decades.[242] The notion of collective security excluded an activist, progressive and cosmopolitan perception of justice and respect for human rights in the plenitude of its contemporary expanding ramifications. In this withered conception of collective security and preoccupation with the nuances of the Cold War, Mobutu of Zaire who fronted as a bulwark against communism, with the support of the United States, ruled and ruined his country with an iron fist for 32 years.[243] The great powers always despatched foreign troops to save Mobutu each time an attempt was made to forcefully unseat him.[244] However, Mobutu's political relevance to the U.S, France and Belgium expired with the end of the Cold War and he shortly fell from power, died in exile in Morocco and left his country embroiled in a chronic civil war. His personal fortune in European banks was estimated in 1982 at about $5 billion, the

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[241] Clapham, *African Politics of Survival*, *supra* note 154 at 20.
[242] *Ibid.* The indulgence included substantial economic and military aid. See also, Thomas Callaghy, "Africa and the World Economy: Caught Between the Rock and Hard Place," in John Harbeson & Donald Rothschild, eds., *Africa in the World Politics* (Colorado: Westview, 1991) at 56.
[243] Zaire Fact Book. Online>http://www/africanews.no/Congo-Zaire/html. Last modified on 10 March 1999. Another pathetic case is that of the Central African Republic under the regime of Marcias Nguema. According to an observer for the International Commission of Jurists, "the funds of the state had become totally confused with those of Marcias Nguema...Marcias as Head of State, took the national treasury to his palace at Nzeny-Ayeng...he administered the funds of the state from his house." Quoted in Richard Kiwanuka, "The Meaning of 'People' in the African Charter on Human Rights" (1988) 82 *A.J.I.L* at 98.
[244] Quashigah, "Protection of Human Rights", *supra* note 239 at 103.

equivalent of Zaire's external debt.[245] Bernard Kouchnev, the French Minister for Humanitarian Affairs scornfully described Mobutu as a "walking bank account in a Leopard skin hat."[246] Yet, he was most welcome at the Elysee Palace.

Similarly, Mengistu Haile Mariam of Ethiopia and Siad Barre of Somalia sided with Socialism's political agenda and received Soviet military and economic support which allowed them to tyrannize their countries for 17 and 22 years respectively.[247] According to Kofi Quashigah, "in their (the superpower) relationships with the African nations other determinants, such as morality and justice often played very minimal roles. The human rights implications of their policies in Africa were not often of prime consideration in the policies of the developed nations."[248] As contemporary events such as the Liberian crisis indicate, this regime undermined and stultified the emergence in Africa of a legitimate system of governance which probably would have avoided its internecine conflicts threatening collective security of the entire continent.

Another aspect of the Cold War rivalry in Africa which impacted heavily on global collective security was "the massive export of weapons to Africa which the archetypal authoritarian regimes used to prop themselves up."[249] To maintain the balance of terror all over the world, governments in Africa, irrespective of their degrees of illegitimacy were substantially bolstered with arms by the superpowers in preparation for any eventual global showdown. Liberia alone received well over $500 million in military aid. For a country that has never engaged in an inter-state conflict and had reasonably

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[245] Africa Now, March 1982. See also, Quashigah, "Protection of Human Rights" *supra* note 239 at 103. The Zairean economy was reputed to be controlled by five men including Mobutu himself.

[246] *West Africa* 4-10 November 1983 at 17. Houghouet Boigny of Cote d'Ivore who never did any private work or business but serve his country openly admitted having some billions stashed away in foreign banks. See Quashigah, "Protection of Human Rights" *supra* note 239 at 105.

[247] Online>http://www.ci/org/country/ethiopia/html. Last modified on 10 March 1999. It is a notorious fact that many African rulers maintained personal rule for upwards of 20 years. Hougheout-Boigny of Cote d'Ivoire ruled for 28 years, Kenyatta died in office after 18 years, Moi of Kenya has already ruled for 21 years. Mugabe of Zimbabwe has spent 19 years in office and Eyadema of Togo has clocked 31 years in office.

[248] Quashigah, *supra* note 239 at 96.

[249] *Ibid.*

good relationships with its immediate neighbours, those guns and bombs were used on Liberians. This point has been corroborated by Congressman Ted Weiss in his speech on the Liberian crisis in the US Congress.[250] According to the Congressman,

> [T]he United States certainly did not cause the current crisis in Liberia; this is a conflict between Liberian people over Liberian grievances. But as a result of the Administration's long silence, the United States must share some of the responsibility. Our Government failed to publicly demonstrate a commitment to protect human rights in Liberia. More importantly, we turned a blind eye to the aspirations of the Liberian people themselves, who should have been able to depend on the United States to speak out in defense of democracy and human rights.[251]

However, the regime of internal illegitimacy and external legitimacy was not to last forever. The end of the Cold War[252]inspired a movement towards political and economic accountability in Africa. This movement which has been hailed in some quarters as the dawn of a Grotian Moment,[253]a juridical revolution,[254]is still unfolding and its impact on the collective security and stability of West African states deserve some close consideration.

Orphaned by the end of the Cold War, these types of governments whose geo-political relevance had just expired, were confronted with the imperatives of legitimizing themselves with their people. It was a demand and necessity strange to them. Some of them who had used the universal preoccupation with the Cold War as a shield to cover atrocities perpetrated against their own people[255]were faced with the "pay back"

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[250] U.S House of Representatives, Subcommittee on Africa of the Committee on Foreign Affairs, 101st Congress, 2nd Session, Hearing on U.S. Policy and the Crisis in Liberia, 19 June 1990. Reproduced in Weller, *supra* note 5 at 43.
[251] *Ibid*, at 45 (emphasis supplied)
[252] *Ibid.*
[253]Ezetah, *supra* note 2 at 71.
[254] Richard Falk, " A New Paradigm For International Legal Studies: Prospects and Proposals " in Falk & Kratochwill, eds., *International Law: A Contemporary Perspective* (Boulder and London: Westview Press, 1985) at 651-702.
[255] According to Baroness Lynda Chalker "errant governments can no longer cloak their authoritarian tendencies in Marxist jargons or look to a superpower to bail them out." See Quashigah, "Protection of Human Human Rights" *supra* note 239 at 96.

syndrome. The people hitherto oppressed did not only seek economic/ political liberation but craved vengeance. The demand for this historical indebtedness, in the form of warlordism and other forms of militaristic dissent, came at a critical time. The Soviet Union's *Perestroika* and *Glasnost* and the United States' domestic problems did not warrant superpower concern in Africa's perennial conflict. Accordingly most of the African governments had few resources available to douse the flames of discontent.[256]

Support at the international fora and the flow of military and economic aid were no longer to be taken for granted merely because the affected regime espoused capitalist or communist doctrines or served a geo-political purpose. Aid came with conditionalities of economic policies or political changes. In the latter case, explicit demands for a higher degree of internal legitimacy from the aspiring recipients of aid have become the rule. This new attitude, christened "La Boulle Doctrine,"[257]apparently gave vent to diverse forces within the polity of many African countries and is cause for the ubiquity of democractic changes in Africa. Hence, Doe contrived a democratic election in 1986. Similar events took place in Kenya, Benin Republic, Zambia, Tanzania, Malawi, Cote d'Ivoire, to mention a few.[258] The one-party states yielded to multi-party politics.

A considerable number of these democratizations were fake and hence activist revolts against the old order. In some cases, this took the form of militaristic rebellion and warlordism. In this context Liberia presents a paradigm. It is also in the recognition of the consequences of the Berlin borders that that the anxiety of Liberia's neighbouring states may be appreciated.[259] The era of overbearing illegitimate governments sustained by fictional respect for juridical statehood stood in grave danger. Although the challenge

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[256] *Supra* note 223 at 244.
[257] At the 1990 Franco-African Summit at La Boulle, France in June 1990, the late President Mitterand of France, ostensibly speaking for the Western world articulated the policy that future aid to African states will be tied to "good governance," see Quashigah, "Protection of Human Rights" *supra* note 239 at 97.
[258] Jona Rono, "The Foreign Policy of Kenya" in Stephen Wright, ed., *African Foreign Policies* (Westview Press., Boulder Colorado, 1999) at 106-109.
[259] Stedman, "On Conflict and Conciliation" *supra* note 225 at 204.

was not welcomed by the old order,[260] it was irresistible. On the other hand, the growing marginality of Africa in the emerging dispensation[261]had created a vacuum which stronger states like Nigeria,[262]South Africa, Zimbabwe ostensibly sought to fill in those crises which ostensibly threatened regional security. As this template shift unravelled some African countries,[263]its consequences became more pronounced for two reasons. The first relates to that continent's chronic political instability[264] and the second is a function of the Berlin partitioning of Africa and the complications of cross-border ethno-nationalism.[265]

Accordingly, the success of a militaristic challenge to the old order is not limited to the particular municipal forum where its success has been recorded but extends to neighbouring states sharing same ethnic identity. Secondly, it affords a strong precedent for similar ideas and sentiments in neighbouring states. As the saying in West Africa goes, "when Ghana sneezes, Nigeria catches cold." Hence, President Jawara of Gambia lamented (three months before he was removed by a *coup d'etat*), "if Charles Taylor with the support of what I may call mercenaries from other countries of the sub-region were to come into power, one can imagine the implications it would have for regional stability."[266] During the Biafran secession bid in Nigeria, the leaders of the Ewe nation (straddling Ghana and Togo) indicated their readiness to declare their statehood if the Biafrans succeeded or if the Biafrans were supported by the Ghanaian government.[267]

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[260] Anne Shepherd, "The Economics of Democracy" *African Report*, March-April, 1992 at 29.
[261] Supra note 155 at 127.
[262] Nwachukwu Ike, ed., *Nigeria and the ECOWAS Since 1985-Towards A Dynamic Regional Integration* (Enugu: Fourth Dimension Publishers, 1985) at 105..
[263] Quashigah, "Protection of Democracy" *supra* note 239 at 93. However, one cannot be too careful in explaining every crisis on this basis.
[264] Copson, *supra* note 95 at 86. Empirical surveys indicate that given its number of countries, the West African sub-region has the highest number of *coup d'etats* in the world and is also the most politically unstable region in the world.
[265] Richard Falk, "The Grotian Moment: Unfulfilled Promise, Harmless Fantasy, Missed Opportunity" (1997) *International Insights*, 1 at 11.
[266] *Supra* note 260 at 13.
[267] Minahan, *supra* note 217 at 572; Paul Szasz, "The Rise of Nationalism and the Breakup of States: The Fragmentation of Yugoslavia" (1994) *A.S.I.L. Proceedings* 33 at 38. Of all the African states, few such as Somalia, Botswana and Lesotho approximate to a nation; with common history of nomadic expansion,

The combination of these factors in the Liberian crisis became an explosive mix capable of destabilizing[268]other governments in the sub-region.[269] It is in this context that the argument by the West Africans states that the Liberian crisis posed a danger to their territorial integrity of West African states rings politically true.

It is now important to comment on the questionable roles of some West African states in encouraging and fuelling the rebellion by Charles Taylor. Inasmuch as the Liberian conflict has been depicted as a Liberian affair, there is some evidence to support the opinion that from the conception of the rebellion and it's execution, it was more than that. For various reasons, the neighbouring states were hardly disinterested observers. First, the original batch of 24 NPFL rebels had some sprinkling of Gambian, Ghanaian and Sierra Leonean nationals.[270] It is remarkable that among them was Foday Sankoh, the head of the contemporary rebel movement in Sierra Leone.[271]

The pertinent question is why these people of disparate nationalities should band together. While some sit-tight West African leaders as Dauda Jawara of the Gambia and Mathew Kerekou of Benin, who have between them spent nearly fifty years in office, were content to dismiss the rebels as "mercenaries,"[272]it seems that money was not the only factor. Some of them were ideologues disgusted[273]with the political decadence in West Africa, as symbolized by the Doe regime in Liberia. In their view, the Charles Taylor led rebellion was a "revolution" against the old order represented by Doe.[274] Secondly, it is also probable that given the regime wherein successful rebellions has its

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common language and culture and common religion. See Souadia Toural, *Somali Nationalism* (Cambridge: Harvard University Press, 1963) 24-25. It is remarkable that Siad Barre of Somali, in spite of the relative homogeneity of the Somalis played the clans against themselves in order to sustain his personal rule over Somalia. See Clapham, *African Politics of Survival, supra* note 154 at 150.

[268] Stedman, "On Conflict and Conciliation" *supra* note 225 at 248.

[269] *Amnesty International Annual Report* 1991 (Amnesty International Publications, London, 1991) at145.

[270] Huband, *supra* note 74 at 140.

[271] *Ibid.*

[272] *Supra* note 136.

[273] Quashigah, "Protection of Human Rights" *supra* note 239 at 93.

[274] Stephen Ellis, "Liberia 1989-1994: A Study of Ethnic and Spiritual Violence" (1995) 94 *African Affairs*, at 168.

material and political rewards in Africa, those dissidents had ample precedents to believe that their success would translate into economicaly lucrative political offices.

However, prior to the invasion, Taylor [275] had travelled within the West African sub-region organizing dissidents and exiles from Doe's tyranny.[276] Taylor's personal charisma and superb abilities as a fundraiser and organizer yielded results. Doe's tyranny had created many enemies and previous attempts to unseat him by coup d'etats and democratic elections had been ruthlessly frustrated by him. With the notable exception of Nigeria (President Babangida), Doe had become a pariah in regional political circles. Liberia's relevance in the Cold War had expired and increased Doe's isolation. Thus, the new international order, regional ostracism, Doe's appalling record and the conviction that only an armed invasion could rid Liberia of Doe were decisive factors favouring the rebellion.

Although externally funded armed invasions of African states have been recorded, Kwesi Aning observes that the "Liberian instance represents an entirely new dimension. For the first time neighbouring states advanced patronage to a well-orchestrated act of insurrection with strong support among the states of the region."[277] Similar observations have been made by Emeka Nwokedi who notes that the Liberian conflict marked "the first large-scale and sustained civilian campaign from an extra-territorial base against a government in West Africa."[278] Regarding Ghana, Doe's coup of April 1980 and its excesses had strained their relations. Repeated Liberian allegations of subversion by

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[275] The charge of corruption was dropped as part of the peace process.

[276] Aning Kwesi "The International Dimensions of Internal Conflict: The Case of Liberia and West Africa" Online>http://www.cdr.dk/wp-97-4. Last modified on 5 January 1990[Hereinafter, Aning]

[277] Aning, *supra* at 7. The United States' State Department further confirmed Burkina Faso/Libyan support for the rebels of the NPFL. "The Danger in Liberia" *The International Herald Tribune*, 10 November 1992.

[278] Cited in Aning, *supra* note 276. Ghana has always had the reputation in African politics of being virulently opposed to conservative tyranny. In the Congo crisis, Ghana's Kwame Nkrumah in denouncing Congolese leader Moise Tsombe for inviting Belgium to intervene in the crisis had written: "...you have assembled in your support the foremost advocates of imperialism and colonialism in Africa and the most determined opponents of African freedom. How can you, an African, do this? See Ali Mazrui, *Towards A Pax Africana* (Chicago: University of Chicago Press, 1967) at 38

Ghana led to the mutual occasional recall of ambassadors.[279] There is no doubt that Ghana initially extended some degree of patronage to Charles Taylor when the latter was planning the rebellion against Doe.[280] However, it appeared that this romance did not last long as Taylor's recruitment of rebels in Ghana became a security concern to Ghanaian authorities and he was consequently detained twice.[281] Taylor had become a problem.[282] Quoting a Ghanaian intelligence officer, Aning notes that "there were a number of Ghanaian dissidents willing to fight alongside Taylor in Liberia."[283]

It was not only Ghana that inadvertently or otherwise contributed to the creation of the NPFL. Byron Tarr asserts that "in 1987, Taylor approached the embassy of Burkina Faso in Accra and requested assistance to overthrow Doe...Madame Mamouna Quattara, a client of Captain Blaise Compaore [the Burkinabe President] received Taylor's written proposal."[284] Taylor eventually gained access to the Burkinabes and thence to Ghaddafi of Libya who had financed the Thomas Sankara/Compaore revolution in Burkina Faso.[285] Stedman is thus emphatic that "...Burkina Faso, Cote d'Ivoire and Libya provided military assistance to Charles Taylor's forces in Liberia." It is equally instructive that the Burkinabe government at the 27th Summit of the Organization of African Unity convened in Abuja, gave some assurances to the "Interim Government in Liberia that Mr. Taylor would no longer enjoy their support."[286]

At the start of the rebellion, the government of Burkina Faso despatched 400 of it's troops to Charles Taylor and justified this as "moral support."[287] According to Mark

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[279] Aning, *supra* at 7. Doe accused Ghana of sponsoring the Quiwonkpa coup attempt of November 1985.
[280] *Ibid.* As already indicated, this is not unusual in Africa. For instance, the Somali government in Somalia sought to justify it's support for the Somali's of Kenya by arguing that "...it is completely impossible for the Somali government to abandon the work they have been undertaking, which is that of liberating Somalians trapped in Kenya..." See Copson, *supra* note 95 at 145.
[281] *Ibid.*
[282] *Ibid.*
[283] *Ibid.*
[284] Tarr Byron M. "The ECOMOG Initiative in Liberia: A Liberian Perspective" 49 *Journal of Opinion* at 6.
[285] *Ibid.*
[286] Weller, *supra* note 5 at 151. See also, Osisioma Nwolise, " The Internationalization of the Liberian Crisis and its Effects on West Africa" in Vogts, ed., *supra* note 41 at .58
[287] Candy Shiner, "Peacekeepers Caught up in Renewed War in Liberia" *Christian Science Monitor*, 12

Huband,

> [I]n early 1991, the Nigerians confirmed that Taylor visited the Burkina Faso capital of Ougadougou and was developing plans to train mercenaries at the Po military base south of the city. The force included nationals from Liberia, Burkina Faso, Ivory Coast and Guinea and was being trained as new weapons were transported across Ivory Coast into Liberia.[288]

As for Libya, its meddling in sub-Saharan African affairs is notorious.[289] A significant number of the first batch of the NPFL rebels were Burkinabe[290] and or trained in Burkina Faso[291]and in Libyan military camps.[292] Indeed, one of the reasons given by Yormie Johnson for splitting with the NPFL to found the INPFL was that there were improprieties in disbursing "Libyan finances."[293] He also alleged excessive Libyan influence over the NPFL. Similarly in February 1992, the Liberian Interim President, Amos Sawyer led a delegation to the Libyan leader, Muammar Ghadafi, in an effort to persuade him to stop supporting Taylor's NPFL. According to Amos Sawyer, "Ghadafi told me that he made a mistake in supporting Charles Taylor because he (Charles Taylor) was now a tool of French imperialism, to whom he had stopped supplying weapons in December 1991."[294]

This welter of evidence is further confirmed by Mr. Herman Cohen, the then US

October 1991 at1. See also, Weller, *supra* note 5 at 312.

[288] Huband, *supra* note 74 at 212.

[289] Ofuatey-Kodjoe W, "Regional Organizations and the Resolution of Internal Conflict: The ECOWAS Intervention in Liberia" (1994) *International Peacekeeping* at 272. Similarly, ideological persuasions are known to have motivated support for intra-state rebellion in Africa. During the Congo crisis, Burundi was a transit route of arms supply to the Katangese rebels but with a change of government, the arms shipment dried up. Sudan was also another notorious pipeline for the flow of arms to the Katangese rebels. The pertinent regimes aided the rebels on ideological grounds as the rebels had professed socialism. See Copson, *supra* note 95 at 160-161.

[290] Huband Mark, "The Power Vacuum" (1991) *Africa Report* [January-February] at 27.

[291] Nwolise, *supra* note 286 at 57.

[292] Yeebo Zaya, *Ghana: The Struggle For Power-Rawlings, Saviour or Demagogue* (London: New Beacon Books, 1991) at 56.

[293] Aning, *supra* note 276 at 15. As President Kerekou of Benin Republic presciently argued in 1992, "today it is Liberia, tomorrow it could be any of the countries represented here today. Indeed the canker we are fighting against is already showing itself in Sierra Leone and in other parts of the subregion."

[294] Huband, *supra* note 74 at 212. Note that French engineers were in the NPFL territory installing a powerful transmitter for the NPFL radio.

Assistant Secretary of State for African Affairs. In his testimony before the U.S. Congress, he asserted that "we do have some evidence that about 50 of those people (the NPFL) rebels were trained in Libya and armed by Libya."[295] The Burkinabe/Libyan/Cote d'Ivoire support for the NPFL[296]is further evidenced by their initial strong refusal to contribute forces to ECOMOG. In addition, they persuaded other West African states not to support the intervention. During the crisis, ECOMOG jet-bombers strafed the supply lines linking the rebels to their supply bases in Burkina Faso and Cote d'Ivoire. This support had economic, ideological, military, ethnic and personal motives.[297]

As Croft and Treacher notes,

> Liberia was the stage for a bitter struggle for dominance within the ECOWAS; the organization was fissured along Anglophone and Francophone lines. The Peace process was subsumed by the respective regional interests and the personal ambitions of the political leaders. Each state had a different agenda for the Liberian crisis. Above all, Nigeria saw the war as a test of what it perceived to be its regional hegemony, for it was determined that Liberia would not succumb to the NPFL and then join the francophone bloc inside ECOWAS.[298]

Nigerian support for the Doe regime has never been substantially rebutted by that country. Nigeria took over the repayment of the $50million African Development debt owed by Liberia in May 1990, and it was widely alleged that the embattled President Doe during his visit to Nigeria requested for 2,000 Nigerian troops to counter the NPFL rebellion.[299] It was common knowledge that the Nigerian government headed by General

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[295]Weller, *supra* note 5 at 52. Note also that the U.S in protest recalled its ambassador to Burkina Faso.
[296] Aning,*supra* note 276 at 10.
[297] *Ibid.* The late Ivorian President was also father in-law to President Compaore of Burkina Faso. Similarly, because of the ideological and personal relationship between Kwame Nkrumah of Ghana and Sekou Toure of Guinea, the latter occasionally threatened to invade Ghana so as to re-install the former after he had been overthrown. In 1963, Sawaba ethnic dissidents had aided their kith and kin in Togo to launch an assassination attempt on President Hamani Diori of Niger republic. It is common knowledge that the radical government of Kwame Nkrumah of Ghana harboured dissidents and socialist minded rebels in Africa who were fleeing their respective states. On this, see Immanuel Wallerstein, *Africa: The Politics of Unity* (New York: Random House, 1965) 101-108.
[298] Stuart Croft & Adrian Treacher, "Aspects of Intervention in the South" in Andrew Dorman & Thomas Otte, eds., *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention* (Aldershot: Dartmouth Publishing Company; 1995) 147.
[299] Huband, *supra* 74 at 103-104.

Babangida was particularly close to the Doe regime in Liberia.[300]The Nigerian factor was quite crucial and decisive in influencing and resolving the Liberian crisis. In addition, it marked the height of the competition for influence between France and Nigeria.[301]

Another international aspect of the Liberian conflict is discernible from the hostage taking policies of the rebel groups.[302]This policy was adopted for various motives. While the NPFL targeted Nigerians, Guineans and Ghanaians and kidnapped and killed them for their government's support for the ECOMOG, Yormie Johnson's INPFL justified its preference for Americans, British, Lebanese and Indian civilians in order to provoke international intervention in the crisis.[303] This strategy worked in varying degrees[304]and eventually elicited some response from the international community.

It is equally pertinent that the field of conflict was not limited or restricted to Liberian territory. Apart from the traditional support which rebel movements usually get from some neighbouring countries/ethnic groups sympathetic to their struggle for Liberia, the field of conflict was not restricted to Liberia alone.[305] For instance, the NPFL rebels on 23 March 1991 attacked two towns in Sierra Leone killing "two senior military

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[300] Clapham, *supra* note 154 at 238.

[301] Jibrin Ibrahim, "Towards a Nigerian Perspective on the French Problematic in Africa" in Haruna Jacob & Massoud Omar, eds., *France and Nigeria: Issues in Comparative Studies* (Ibadan: Credu Niger Press., 1992) at 67. Note that the recognition of Biafra by France during the civil war in Nigeria (1967-70) was generally construed by the Nigerian government as an attempt to balkanize Nigeria and reduce its influence in West Africa. See Femi Otubanjo & Seye Davies, "Nigeria and France: The Struggle for Regional Hegemony" in B. Akinyemi & F. Otubanjo, eds., *Nigeria Since Independence* (Ife: University of Ife Press., 1994) at 73-86.

[302] Aning, *supra* note 276 at 16. There were 250,000 Guineans, 200,000 Ghanaians and 5,000 Nigerians in Liberia shortly before the crisis. The rebels were seizing and at times executing foreigners for diverse reasons.

[303] *Ibid.* See also, Nwolise, *supra* note 286 at 59. Some Nigerian journalists were killed by the NPFL in cold blood.

[304] *Ibid.* Ghana warned on July 2, 1990 that it would no longer tolerate the violence against its citizens.

[305] Stedman on "Conflict and Conciliation" *supra* note 225 at 252. Thus, even in the absence of state support for the rebellion, border-citizens separated by the Berlin boundaries extend help and support for rebels. The help may come in diverse ways; ranging from the provision of shelter from pursuing government troops and serving as a conduit pipe for the flow of arms. In addition, cross border raids by the rebels and government troops were rampant during the Liberian crisis.

officers and eleven civilians."[306] According to the Sierra Leonean letter to the United Nations Security Council, "Sierra Leonean military were sent there and after an intense engagement...repelled the invaders."[307]

This invasion which enabled the rebels secure transit for the flow of arms into Liberia ultimately led to the downfall of the government of Momoh.[308] In addition, one of the Sierra Leoneans trained in Libya for the NPFL invasion of Liberia, Corporal Fodeh Sankoh founded the Revolutionary United Front (RUF) which has since 1990 been waging a fratricidal war in Sierra Leone.[309] As at July 1999, the RUF rebellion has killed over 50,000 Sierra Leoneans, mutilated over 100,000, pushed over 500,000 into neighbouring states as refugess and internally displaced over 2 million Sierra Leoneans (half of the population).[310] According to the Secretary-General of the Commonwealth,

> Sierra Leone faces a tragedy unprecedented in its history and horrendous even by the standards of a world increasingly inured to the brutalities of war. The entire population of Sierra Leone, without exception, is at the mercy of a murderous rebel war machine which makes no distinction between women and children on the one hand and combatants on the other. The escalation in the amputation of limbs and other bestialities, to say nothing of the almost random mass killings of defenceless civilians, point to a Dark Age threatening to overtake Sierra Leone. The vaunted scorched-earth policy launched by the RUF has left Sierra Leone's infrastructure in ruins and thousands of homes in Freetown and elsewhere in the country burnt and razed to the ground...in Sierra Leone, no less than in Kosovo, the sentience of the world community faces its sternest test.[311]

The impact of the Liberian crisis on Sierra Leone indeed formed the substance of the

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[306] *Supra* note 160 at 133.
[307] *Ibid.*
[308] The coup led by Valentine Strasser was justified on the grounds that the Momoh regime had proved incapable of curtailing the NPFL seizure of Sierra Leonean territory and Foday Sankoh's rebellion. See Huband, *supra* note 74 at 206-7.
[309] *Ibid.* See also, "Commander Culpable for Invasion of Freetown, Says Khobe" Online, ngrguardiannews.com/features/ft7359.htm accessed on 10/02/99.
[310] "Sierra Leone Peace Deal Agreed" Online, News.BBC.co.UK accessed on 7/7/99. See also "Commonwealth Secretary-General calls for Urgent International Action to Save Sierra Leone" Commonwealth News Release 2 February 1999.
[311] *Ibid.*

deliberations of the United Nations General Assembly at its 86th Plenary meeting held on the 21st of December 1993.[312] The subsequent Resolution passed by that body made the following findings,

- that the spill over effect of the Liberian crisis had caused serious destruction and devastation of the productive areas of the territory of Sierra Leone and of its economy as a whole,[313]
- the conflict in Liberia had "devastated lives and properties in the eastern and southern provinces of Sierra Leone,[314] causing a "massive outflows of refugees and displaced persons."[315]

These factors imposed an astronomical cost to the government of Sierra Leone which had to battle to protect its territory and people from the "spill over effect of the conflict in Liberia."[316] For a country that was included by the General Assembly in its Resolution 37/133 of December 17 1982 as one of the "least developed countries in the world,"[317] the tragedy was and still remains harrowing. It was not only Sierra Leone that bore the brunt of the spreading conflict. Taylor's forces also plundered parts of Guinea[318] and the war equally spilt over into Cote d'Ivoire.[319]

Scholars are divided on the motives for this internationalization of the Liberian conflict, especially with respect to Sierra Leone. According to William Reno, the NPFL invaded the diamond mines of Sierra Leone to finance it's rebellion.[320] However, apart from the economic interpretation, political cum military meanings have been read into the

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[312] International Assistance to Sierra Leone, G.A. Res.48/196, U.N.GAOR Supp. (No. 49) at 171, U.N Doc. A/48/49 (1993).
[313] Paragraph 5, *ibid.*
[314] Paragraph 6, *ibid.*
[315] *Ibid.* Note also that in addition to other Resolutions of the General Assembly, Resolution 49 of 1994 appealed to the world community to aid the states around Liberia contend with the refugee crisis. See G.A. Res. 49/26, 49 U.N. GAOR Supp. (No. 49) U.N.Doc.A/49/49 (1994).
[316] *Ibid.*
[317] *Ibid.* The General Assembly Resolution contains a rather pathetic call for international aid and assistance to Sierra Leone.
[318] Stedman, on "Conflict and Conciliation" , *supra* note 225 at 252.
[319] "Liberia's War is Said to Spill Into Ivory Coast" *New York Times*, 5 September 1993, at A21.
[320] Stedman on " Conflict and Conciliation", *supra* note 225.

NPFL invasion of Sierra Leone, moreso as the NPFL invasion "sparked off another civil war in Sierra Leone."[321]The civil war in Sierra Leone as provoked and sustained by Taylor's NPFL has thus been construed as Taylor's "punishment for Sierra Leone's participation in the ECOWAS led intervention in Liberia.[322] Whatever the motives, the reality is that since the instigation of rebellion in Sierra Leone by the NPFL rebellion in Liberia, that country has become one of the most dangerous places in the world with a mounting refugee crisis threatening to "destabilize the subregion."[323]

Similarly, some of the rebel groups in Liberia such as the United Liberation Movement of Liberia for Democracy (ULIMO) and the Lofa Defence Force (LDF) were formed in Sierra Leone and Guinea and it was for the above reasons that the United Nations' Security Council unequivocally determined that the deteriorating situation in Liberia constituted "a threat to international peace and security, particularly West Africa as a whole."[324] Another aspect which probably lends credence to the destabilizing ability of the Liberian crisis was the ease of flow of arms within the sub-region which has been acknowledged as being at the root of the intractable nature of the on-going civil war in Sierra Leone. As Stedman noted,

> Africa's wars have created a booming cross-border traffic in small arms. This leads to political instability in several ways. The availability of arms and the porousness of borders will intensify civil conflicts in several African states where dictators have fanned ethnic hatred in order to stay in power. Countries that are trying to manage democratic transitions find that disgruntled groups have access to weapons and can challenge the viability of new governments[325]

In an ostensible attempt to curtail this ugly trend, the United Nations Security Council in

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[321] William Reno, "Reinvention of an African State" (1995) 16 *Third World Quarterly* at 110.
[322] Stedman, on " Conflict and Conciliation" *supra* note 225 at 170.
[323] *Yearbook of the United Nations* 1995 (New York: Martinus Nijhoff Publishers, 1995) at 396.
[324] U.N.Doc. S/Res/788 (1992) [hereinafter, Resolution 788 of 1992] On the formation of the ULIMO and LDF in Sierra Leone, see Peter Da Costa, "Diversionary Tactics?" *West Africa*, April 29-May 5, 1991 at 650.
[325] Stedman, on " Conflict and Conciliation" *supra* note 225 at 246.

Resolution 788 of 1992 imposed a complete arms embargo on Liberia and called on all "member states to exercise self-restraint in their relations with all parties to the Liberian conflict and to refrain from taking any action that would be inimical to the peace process."[326] Apparently this exhortation fell on deaf ears. According to the United Nations Report for 1995, "factions continued to acquire arms across the borders" and this was attributed to the "the inability of ECOMOG to deploy troops at the major points across the borders of Liberia in accordance with the Cotonou Accord."[327]

The Security Council was thus compelled to note with concern that "in violation of Resolution 788 of 1992, arms continue to be imported into Liberia, exacerbating the conflict."[328] In addition to reaffirming the embargo on the supply of arms to the rebels, the Security Council took a further step by establishing an arms monitoring committee of the Council to "seek from all states, and in particular all neighbouring states action taken by them concerning the effective implementation of the arms embargo...And to recommend appropriate measures in response to violations of the embargo imposed by Resolution 788 of 1992."[329]

Havir.g examined those internal contradictions and weaknesses in the Liberia polity which rendered it very vulnerable to external factors giving impetus to the rebellion, it is now necessary to draw some conclusions. First, the absence of a resilient institutional structure in the municipal polity and the subsequent subsumation of the state in individuals was an enterprise fraught with grave risks. Its view of collective security and peace as the absence of war was short sighted. Second, illegitimacy of governance lasted so long principally because the prevailing international order tolerated and in some cases supported and sustained it. On the other hand, the redefinition of collective security to include concepts hitherto excluded imposed a severe strain on most illegitimate

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[326] *Supra* note 323.
[327] *Supra* at 352.
[328] U.N. Doc. S/Res/985 (1995) [Hereinafter, Resolution 985 of 1995]
[329] *Ibid.*

regimes. Third, the West African states connived at and in some cases collaborated with different factions and camps in Liberia and this impacted on the duration and spread of the crisis. While the complicity of some West Africab states in the Liberian crisis may not meet the austere standards set by the Court in the *Nicaragua Case* regarding state responsibility for support of rebellions (of which, later), the facts at least show that they were not innocent or disinterested by-standers.

Further, the refugee crisis created by the crisis was a threat to the collective security of the sub-region. According to Michael Brown, "at a minimum, refugees impose heavy economic burdens on host states, and they pose political and security problems as well."[330] In the Rwandan crisis, 250,000 Rwandans fled into Tanzania in a single day.[331] In the Liberian crisis, over 1.7 million people out of its estimated population of 2 million were internally and externally displaced.[332] The important point here is that until recently, internal conflicts which created high numbers of internally displaced persons have been largely ignored by the international community and as such, were not necessarily construed as threats to international peace. It is in the evaluation of the process of this change and expansion of the meaning of the concept of collective security that chapter three finds its relevance in this thesis. Chapter three seeks to articulate the history and contemporary features of the notion of collective security and the impact of this trend on the determination by the Security Council that the Liberian crisis was a threat to international peace and security.

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[330] Michael Brown, *supra* note 223.
[331] Julia Preston, "250,000 Rwandans flee To Tanzania in One Day" *Boston Globe*, April 30 1994, at 1.
[332] *Keesing's* 1980, *supra* note 66.

CHAPTER THREE

COLLECTIVE SECURITY: DIALECTICS AND PRACTICE

> I have made a ceaseless effort not to ridicule, not to bewail human actions, but to try and understand them. Benedict de Spinoza.[333]

3.1: INTRODUCTION

This chapter examines the theory and practice of collective security as applicable to the Liberian crisis. In theory and practice, collective security has not been static, rather it has reflected the necessities, aspirations, and anxieties of the times. This chapter is divided into three sections of which section 3.1 is only introductory. Section 3.2 examines the origins and practice of collective security in the gobal order and the evolution of the norms regulating its practice. This section also evaluates the changing content of collective security from being merely defined as the absence of war to its contemporary comosition of legitimate concerns for the security implications of economic underdevelopment, environmental degradation, democratization of oppressive polities, population explosion and mass migration. The limits of legitimate concern by neighbouring states of regrettable events in other states are considered.

Section 3.3 examines the origins, constitutional structure and juridical nature of the ECOWAS. The sub-regional politics and vestiges of colonial influence on ECOWAS and its constitutive instrument regarding ollective security in the sub-region are also examined. The reasons for the ECOWAS intervention in Liberia and the criticisms thereto are enumerated for subsequent analysis in chapter four. Chapter three is concerned with collective security in the contemporary global order.

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[333] E. Luard, ed., *The IInternational Regulation of Civil Wars* (New York: N.Y.Univ. Press, 1972) at 188.

3.2: THE CLASSICAL NOTION OF COLLECTIVE SECURITY

> Domestic interests are no longer defined as belonging to a sphere separate from that of international interests; rather, they are seen as existing in relation to transnational, regional and global spheres. The space of international law is becoming increasingly international, as opposed to inter-statal, and the state is no longer capable of serving as the sole locus of international law's legitimacy.[334]

In spite of the ubiquitous character of the notion of collective security and its common currency in international law, it is in fact one of the most elusive ideas.[335] Consider for instance, the United Nations. It is supposed to be the manifestation and realization of the immensity of the doctrine of collective security yet nowhere in its Charter does the term "collective security" appear. It is not only in this type of great omission that the concept of collective security betrays it's strange familiarity; teachings by publicists and the behaviour of states, as will be demonstrated, have not lent much clarity to its precepts.

This state of affairs is perhaps traceable to its intrinsically fluid and organic nature and to the confusion by its earliest proponents who were battling with political realities of their times and thus propounded a doctrine heavily dependent on the whims of their respective national interests. Where the political wind blew them affected their perception and conception of the doctrine. Thus, President Woodrow Wilson, reputed to be the father of collective security, was himself steeped in confusion on the issue. From his first idea of a "universal government of all states" which is central to the concept of collective security, he tumbled to the slippery and parochial doctrine of balance of power.[336] However, in fairness to him, at the Peace Conference of 1919 convened shortly after the

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[334] Jaye Ellis, "The Regime as a Locus of Legitimacy in International Law" (1997) *International Insights* at 116.

[335] *Ibid.*

[336] M.V.Naidu, *Collective Security and the United Nations-A Definition of the UN Security System* (New York: St. Martins Press.,1974) at 4. [Hereinafter, Naidu] The doctrine of balance of power had failed to avert the First World War. Consequently, the League of Nations was set up.

First World War, he persuaded the Conference to accept that "collective security requires the creation of a global apparatus capable of giving institutional expression to its basic principles."[337]

It was not only President Wilson who engaged in conceptual somersaults on the question of collective security. To other politicians, allegiance to the concept of collective security was a function of national self-interest. For instance, in 1936 when Italian troops invaded Ethiopia, exposing the impotence of the League of Nations and its dubious relevance to global security, the Canadian Prime Minister, Mackenzie King dismissed calls for a collective restraint of Italy. In his view, the concept of collective security was "a hypothetical argument, bearing no relation to the actualities of the day."[338] It was probably safe for him to say so since Canada was not facing any direct threat from Mussolini's escapades in Ethiopia. Three years later when Mussolini in collaboration with the awesome Nazi war machine was mowing down modern civilization and knocking on Canadian doors, Prime Minister King ate his words. In a conceptual apostasy, he lamented that "if Britain goes down, if France goes down, the whole business of isolation will prove to have been a myth."[339]

With the concept of collective security hostage to swinging national interests, it took a combination of Adolf Hitler's policies of a German *lebensraum/* final solution, and the American explosion of two nuclear devices in Japan, for the world to perceivce of collective securty as a global issue.[340] Purporting to have learnt profound lessons from the

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[337] Otto Pick & Julian Critchley, *Collective Security* (London: Macmillan., 1974) at 15. [Hereinafter, Otto and Critchley] In spite of this impressive intention to actualize collective security in its purity, President Wilson could not sell the idea to the American Congress, especially the Senate. The American Senate refused to ratify the Covenant of the League of Nations. The United States never joined the League. Thus, the ideal yielded to a cruder version of the convenient. Like the Concert of Europe, the truncation of the concept and the half-hearted attempts to enforce it's diluted version sounded its death knell. From its mealy-mouthed response to the Japanese aggression in Manchuria to a half hearted reaction to Mussolini's grave pretensions in Ethiopia, it stumbled and wobbled to death.

[338] Grant Dexter, *Canada and the Building of Peace* (Toronto: Canadian Institute of International Affairs, 1944) at 141.

[339] Naidu, *supra* note 336 at 5.

[340] *Supra* note 209 at 125.

disaster of the Second World War, humanity denounced aggression and embraced an enhanced concept of collective security.[341] With this new lease on life, the concept of collective security emerged in the post war discourse as the Holy Grail to perpetual peace. Statesmen and politicians were literally falling over themselves extolling its virtues as the ultimate antidote to global suicide.[342]

The concept of collective security is premised on the theory that "peace is universal and indivisible."[343] This notion, it seems, attains its greatest popularity among states after the dissipation of blood and life in expensive warfare. In its classical theory, it thrives on the practical supposition that "a world wide combination of all states against all potential aggressors would create a global system of collective security."[344] Indeed, the history of inter-state relationships confirms the abiding notion that states find security in combining with other states which on the whole share some of their values and most of their interests.[345] No state has yet admitted that peace is not a universally shared value. It is upon this seemingly trite principle that the whole edifice of global collective security encompassing the elaborateness of the United Nations and the ubiquitous nature of its agencies is built.

As a doctrine, collective securuty assumes that any aberrant aggression in the face of communal devotion to peace and unanimity of strength would be unprofitable, if not suicidal. It affirms that human societies (here identified as states) are not suicide clubs.[346]

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[341] Otto & Critchley, *supra* note 337 at 27. In spite of Soviet enthusiasm in 1934 to revive the concept of collective security and thus contain Hitlerite expansionism and aggression, the League woefully failed and Stalin in despair, "continued to promote his country's national interest by his own means." *Ibid.* Save for providing a forum for minimal multi-lateral contacts, the League was a failure as an instrument of collective security.

[342] *Supra* at 16.

[343] R.A. Akindele, *The Organization and Promotion of World Peace –A Study of Universal-Regional Relationships* (Toronto: University of Toronto Press, 1976) at 3.

[344] *Ibid.* Among the Igbo's of Nigeria, this philosophy is summarized in the pithy saying that no one can finish a meal prepared by the entire community and that no matter the size of the pot and the dexterity of the skill, no single person can gorge the entire community with food for too long

[345] Hans Kelsen, *Collective Security at International Law* (Washington: United States Govt.Printing Office., 1957) at 3. [Hereinafter, Kelsen on *Collective Security*]

[346] H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press., 1961) at 89.

As such, no state would in the circumstances, be inclined towards aggression knowing that such a course of action will ultimately lead to its defeat and possible destruction. Kelsen[347]analogized the rationale for collective security to the individual experiences at municipal law. He thus argued that as individual attempts at security in municipal law are futile, so are individual state attempts at international law. In his words, "security can only be collective, security is a pleonastic term."[348]

Scholars such as Otto and Critchley have asked the question which strikes at the very root of the principle of collective security. In their view, if peace is manifestly desirable, an absolute good and of universal value, why do we need collective institutionalization and maximization of the means of coercion to secure it?[349] Henry Kissinger offers a rather pragmatic answer. In his view, in spite of the touted rationality of humanity, the practice of states in the course of history, confirms that where peace is premised upon mere gentle persuasions of its inherent goodness, humanity has always been at the mercy of the most ruthless dictator of the international community.[350]

While there is merit in Otto and Crichley's argument, there is a danger in assuming that collective security depends solely on maximum unification of the international means of coercion. First, collective security is not about military alliances *per se*. Just as the coercive instrument in the state goes beyond the police and other awesome institutions of force and enforced obedience, the concept of collective security goes beyond a global machinery for enforced compliance with international law. Collective security includes the knowledge and consciousness that acts of states which disturb international peace are prohibited in the conduct of inter-state relations, save where justified at international law. It confesses the existence of certain universal values which states are obliged to obey, not necessarily by compulsion or force but by a

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[347] Kelsen on *Collective Security*, *supra* note 345 at 8.
[348] *Ibid.*
[349] Otto and Critchley, *supra* note 337 at 16.
[350] Henry Kissinger, *A World Restored* (New York:Grosset & Dunlap,1964) at 11. Collective security affirms the inherent rationality of humanity but does not close its eyes to human conduct and history.

recognition of their legitimacy and rationality. It invokes legality in the behaviour of states and rewards it accordingly. Towards this end, collective security includes the spirit or notion of international justice and rule of law. It acknowledges that internal stability of states and global insecurity interact continuously.[351]

In practice, collective security has not always been the examplar of global consensus and rationality. The same inconsistency is apparent in its post Second World War theory. The theoretical dissonance is to be examined first. Some scholars like Hans Kelsen argue that the concept of collective security may be compatible with devolution of the mechanism of international coercion to regional bodies.[352] Others such as Naidu[353]and Inis Claude[354]argue otherwise. Claude and Naidu prefer the more idealistic and classical view of collective security. In their (Claude and Innis) view, universal collectivity is the means and security is the end. That is to say, security of all states, by all states and for all states.[355] In this context, absolute centralization and universalization of global morality and means of coercion are the fundamental characteristics of collective security. Unlike Kelsen's compromise, there are no half measures. There is either a universal and centralized security system or nothing. In this pure theory of collective security, which approximates to a world government, there is no "aggression" by states *per se* as there is a world order. Delicts by states will thus rank as illegal use of force necessitating global police action.

The intellectual rigour and purity posited by Claude and Naidu is a far cry from state practice. In spite of the clamour for the ideal, the practice of states since the end of the Second World War until the late eighties shows a bifurcation of the world order along the lines of the Soviet and American led race for arms supremacy. In effect, universality

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[351] Otto and Critchley, *supra* note 337 at 17.
[352] Kelsen, *supra* note 345 at 25.
[353] Naidu, *supra* note 336 at 15.
[354] Professor Inis Claude is generally regarded as having undertaken the most definitive work on the subject. See Inis Claude, *Swords into Ploughshares* 3rd ed.(New York: Random House, 1964) at 32. [Hereinafter, Claude]
[355] This may be said to be a form of Lincolnian democracy of collective security.

lost out and the concept of collective security became a hostage of the Cold War politics. Although the development of security alliances (fashioned along the lines of the Cold War conflict) as the active engine room for the maintenance of international peace is hardly unprecedented,[356] it's consequences are no less worrying.[357] Some scholars trace the origin and spread of the practice of regional security outfits in the post Second World War era to Soviet hegemonic tendencies.[358] As the Soviet Union imposed its will in East Europe in apparent preparation for the Marxist prophesied showdown between capitalism and socialism, the Western world took note and responded accordingly.

However, with the proliferation and optimization of the dreadful capabilities of thermonuclear devices, it probably dawned on all[359] that no one, including the most comradely communist and the supposedly rapacious capitalist, would survive a thermonuclear holocaust.[360] To the contrary, the conflict will wipe away the entire humanity several times over. Tempered by this sobering reality but yielding to the dubious historical imperatives of securing its problematic eastern flank, Soviet Russia proceeded to establish satellite states. In response, the United States encouraged the immediate re-arming of the Federal Republic of Germany and the creation of the North

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[356] Otto & Critchley, *supra* note 337 at 21. The ancient Greek city-states who combined against aggression from Sparta and Athens almost always broke up their alliance no sooner than the common enemy was routed.

[357] Nwafor, *supra* note 209 at 2. Those "marriages of convenience" collapsed as soon as the common enemy was defeated. Similar tendencies were apparent in medieval Europe.

[358] Otto & Critchley, *supra* note 337 at 38. This tendency was enhanced by auspicious circumstances and Russia's obsession with it's history. The Teutonic invasions of the 13th century, the Polish/Lithuanian attack of the 17th century , the Swedish invasion of 1709, the Napoleonic invasion of 1812 and Hitler's *Operation Barbarossa* had all conspired to persuade the Russians that it's survival depended on the security of it's European borders. Witness the contemporary Russian anxiety in the NATO bombings of Yugoslavia. The argument here is that Soviet expansionism was at once traditional and ideological. The ideology in Marxism of the inevitability of a conflict between socialism and capitalism persuaded the Soviet communists to maximize it's military might and size in preparation for the eventual showdown. This ideological motive was further fueled by the vacuum created by the defeat of Germany in the Second World War. Moscow could thus march deep into Europe and install "client states" which could act as plates of shield to protect it from it's weak European flanks.

[359] Paul Butuex, *The Politics of Nuclear Consultation in NATO Since 1965-1980* (London: Cambridge University Press, 1983) at 34.

[360] John K. Gailbraith & Stanislav Menshikov, *Capitalism, Communism and Coexistence* (Boston: Houghton Mifflin Company, 1988) at 2. See also Alastair Buchan, *Change Without War* (London: Chatto & Windus, 1974) at 22.

Atlantic Treaty Organization (NATO).[361] In a counter-response, the Soviet Union and it's client-states of Poland, the German Democratic Republic, Czechoslovakia, Romania, Bulgaria, Hungary and Albania formed a formal regional security arrangement under the Treaty of Friendship, Cooperation and Mutual Assistance signed at Warsaw, Poland.[362] With these arrangements, the arms race between both systems/regions began. In this race, the obvious loser was the cosmopolitan definition of collective security. Such was the complete triumph of the truncated version of collective that for nearly fifty years after the end of the Second World War, the globe was preoccupied with the intrigues, machinations and politics of the Cold War.[363] Peace and collective security thus became negatively defined and circumscribed as the absence of war.

While this truncated concept of collective security, evidenced by the rise of regional security arrangements and peace of the graveyard may have marked a triumph for politics, Quincy Wright opines that it was a loss to international law.[364] He argues that while the trend probably produced a balance of power, it failed to create a legally restrained world community. In the harsher judgment of Naidu, the trend was "a diffused and demented version of the collective security envisaged by the United Nations Charter."[365] In his view, regionalism runs counter to collective security as it means

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[361] James Golden, *et al* ed., *NATO At Forty- Change, Continuity and Prospects* (London: Westview Press, 1989) at 22.

[362] Christopher Jones, *Soviet Influence in Eastern Europe: Political Autonomy and the Warsaw Pact* (Brooklyn, New York: Praeger, 1981) at 6-8. Both regional security arrangements, like the ECOWAS PMAD embody the concept that an aggression on one member is aggression on all other members.

[363] Regional arrangements appear to be the compromise. Defenders of this watered down substitute contend that it is a partial realization of the grander vision of the pure concept of collective security; a peculiar state of being "slightly pregnant." This limited vision of collective security and its defence by Lester Pearson, arguably cost him the job of United Nations' Secretary Generel, a job which he was otherwise eminently qualified for. See Krishna Menon, *India and World Politics-Krishna Menon's View of the World* (Toronto: Oxford University Press 1968) at 107.

[364] Quincy Wright, *International Law and the United Nations* (New York: Publishing House.,1960) at 15. On his part, Claude bemoans the situation and asserts that the "mountainous resolve" by states at the close of the Second World War to establish a universal collective security shrank to a "mousy commitment. See Innis Claude, "The United Nations and the Use of Force" (1961) *International Conciliation* at 338.

[365] Naidu, *supra* note 336 at 3. But see Wolfgang Friedman, " The United States Policy and the Crisis of International Law" 59 *A.J.I.L.* 857. He makes the argument that since 1956, there is a prevailing regime of "limited use of force" and that states take particular interest in justifying their actions before the United Nations. In his view, these two factors show that the doctrine of collective security system is alive and well.

security for some and not for all.[366] However, such arrangements represented by the NATO and WARSAW treaties and pacts, are distiguishable from the Protocol on Mutual Assistance on Defence (PMAD) of the ECOWAS.[367] The difference in both regimes is that unlike NATO and similar organizations which are aimed at deterring inter-state aggression, the PMAD encompasses intra-state conflicts which threaten regional security.

Be that as it may, the discussion above shows that the notion of collection security was primarily focused on peace and the avoidance of war. In recent times, the concept of collective security has assumed a more globalized content. It now includes legitimate concerns for the security implications of such diverse issues as nuclear weapons,[368]environmental degradation, mass migration, democratization process, sea and water pollution, ozone layer depletion, and a myriad of issues hitherto construed as being within the exclusisve domain of state sovereignty. It is therefore important at this stage to comment on the changing content of collective security vis-à-vis state sovereignty.

The Westphalian notion of state sovereignty acknowledges the boundaries of the state as that sphere of a peopled territory with an effective government within which the institutions of governance are not accountable or answerable to external entities.[369] In the relationship of one state with another, the idea of statehood,[370]the juridical means of its attainment, and its overall features, a strong preference for pragmatism in its jurisprudence was manifest.[371] As earlier argued, this regime emerged from the decay and

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[366]Naidu, *ibid.* See also, Kelsen on *Collective Security*, *supra* note 345 at 259.

[367] Kelsen, *ibid* at 29. It seems that the Charter of the United Nations itself contemplated the present position as Chapter 8 provides for the exercise of certain functions which in an effective international collective security system, would have been an absolute prerogative of the United Nations itself. This aspect of collective security and its impact on the concept of collective security will be examined in chapter five.

[368] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996 [1996] I.C.J.Reports at 226. [Hereinafter, Nuclear Weapons Case]

[369] Gene Lyons & Michael Mastanduno, "State Sovereignty and International Intervention" in Gene Lyons & Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University Press., 1995) at 250.

[370] Crawford, *supra* note 238 at 11.

[371] Thomas Weiss & Jarat Chopra, "Sovereignty Under Siege" in Gene Lyons & Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University Press., 1995) at 87.

collapse of papal authority in temporal matters and the supplanting of the church in political matters by the state. Anxious to blunt the edges of extreme nationalism, the inherent inequality of states and dangers of absolute sovereignty, the nascent states at the famous Peace of Westphalia[372](1648) evolved a policy of juridical equality of all states and qualified state sovereignty in the domestic terrain. It was this emerging order, especially the central role of States in the new dispensation that Hugo Grotius ably foretold and articulated in his groundbreaking work entitled *De Jure Belli ac Pacis.*[373]

The emergent *Grotian* age, as it came to be known, was marked by a system of balance of power, settlement of disputes by mediation, growth of diplomacy and development of international law.[374] The Westphalian[375] and *Grotian* conceptions of sovereignty hinged on equality of states and supremacy of the sovereign in the state. Although the sovereign in most States, most often the royalty, had near-absolute discretion in fixing the boundaries for the expression of human interests in their domain, the state sovereignty has never been absolute but qualified. It is useful to note that the Treaty of Onasbruck and similar international agreements provided for the humane treatment of minorities within states.[376]

However, the basic unit of international discourse and interaction was the state and the regime of collective security and the means for its securement was by restraining inter-state aggression. Collective security meant the absence of war and whoever held the mantle of power in the state and maintained a peace of the graveyard was the recognized head of that country. Apparently, the carnage of the Second World War contributed to further entrenchment of the view that collective security was the mere absence of war.

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[372] *Ibid.*
[373] H. Grotius, *De Jure Belli ac Pacis* (1646) (Carnegie trans.1925) at 112.
[374] Frederick Kratochwil, "Sovereignty as Dominium" in Gene Lyons and Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University Press., 1995) at 23-30.
[375] The Peace of Westphalia was among the series of international agreements reaffirming the inviolability and sovereignty of the emerging states.
[376] *Supra* note 374.

However, the UN Charter acknowledged the relationship of respect for human dignity and the overall earth space as components of collective security but this was to remain covered and obscured by the politics and intrigues of the Cold War. Abuses of human rights were routinely dismissed, especially in Africa, as matters within the domestic competence of the respective states which other states had no legitimate right to address. It was under this regime that most states with chronic legitimacy deficits[377]in the municipal forum, relied on the international order fashioned on the relative indifference inherent in fixation with juridical statehood to ride rough on their peoples.

The Courts too were not left out in reflecting the values of this regime of near-absolute state sovereignty and narrow conception of collective security. Thus, the Privy Council in the case of *Mitchell and Others v. DPP* held that "the issue as to whether *de jure* recognition was to be given to a revolutionary regime was a matter of municipal law in the State, and not international law."[378] This regime continued until late into the eighties.[379] However, the concept of collective security has shown resilience and an organic disposition as it now seems to import concerns for social justice, ozone layer depletion and climate change, mass migration, chronic and violent ethno-nationalism, water pollution, soil and groundwater pollution, nuclear weaponry and arms race, democratization, and a host of other aspects of collective security.[380]These changes which appear most manifest since the end of the Cold War have wrought changes on our contemporary understanding of the limits of state sovereignty, environmental aspects of

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[377] Obiora Okafor, "Is There a Legitimacy Deficit in International Legal Scholarship and Practice? (1997) *International Insights*, at 91.

[378] *Mitchell and Others v. DPP* (Law Reports of the Commonwealth 1986) [Const. and Admin. L.R.] at 155. On the impact of this trend on municipal law, see Roderick MacDonald, "Metaphors of Multiplicity: Civil Society, Regimes, and Legal Pluralism" (1998) 15 *Ariz. J. Int'l. L* at 74-75.

[379] Karsten Nowrot & Emily Schabada "The Use of Force to Restore Democracy: International Implications of the ECOWAS intervention in Sierra Leone" (1998) *A.J.I.L* 1-55.

[380] *Supra* note 379 at 55. See also, Jost Dulbreck, "Globalization of Law, Politics, and Markets: Implication for Local Law-A European Perspective (1993) 1 *Indiana J. of Global Legal Studies* 9 at 36. These changes have also found expression in several treaties and conventions on the climate, ozone layer protection, ecological trade and so on.

global security and cosmopolitan nature of humanitarian law and human rights law.[381] By the recurrent nature of both international discourse on these issues and number of states participating in the conferences which yield these conventions and declarations, the notion of an emeging holistic conception of collective security cannot be denied. Needless, to say, these conventions are binding on the state parties thereto but the crucial point to note here is that, they evidence a normative shift in the conception of collective security.

As the Court observed in the *Nuclear Weapons Case*, even though some of the resolutions of the General Assembly on these issues may not be binding, depending on their circumstances, they do also have some normative value.[382] In the context of an emerging holistic concept of collective security, the series of international declarations and conferences drawing a direct link between democratization, sustainable use of the environment, population control, refugee problems, et cetera to collective security show an evolving global consensus on the point.[383] The expansion of the notion of collective security and the celebrated move towards an international society[384]may not so much be an affirmation of our common humanity as it is probably a pragmatic recognition that some supposedly state problems know no artificial boundaries.[385] They simply do not respect the boundaries between states. This emerging trend may arguably be moving from the North of the globe to the South. Hence, it has been queried whether the phenomenon is really a case of genuine globalization[386]or in fact, a "globalization" of

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[381] International Covenant on Civil and Political Rights, (1966) 999 U.N.T.S.171. See also, David Luban, "Just War and Human Rights" (1990) 9 *Philosophy and Public Affairs Journal*, at 166-81

[382] *Supra* note 368 at 234.

[383] *Ibid.* On the nature of new customary interntional law, see the *North Sea Continental Cases* (1969) *I.C.J. Reports* 3 at 44. On the expanding concept of security on sustainable development, see Gregory Tzeutschler, "Growing Security: Land Rights and Agricultural Development in Northern Senegal" (1999) 43 *Journal of African Law* 36.

[384] Mark Zacker, "The Decaying Pillars of the Westphalian Temple" in James Rosenau ed. *Governance Without Government* (New York: Cambridge University Press, 1992) at 58.

[385] Robert Jackson, "International Community Beyond the Cold War" in Gene Lyons & Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University Press., 1995) at 59.

[386] Dulbreck, *supra* note 380 at 10.

Western concerns, anxieties and interests.

According to Quashigah, the emerging order "is definitely not due to a change in moral or humanistic values of the Western states in their relation to the south, it is simply change in security interests brought about by the break up of the Soviet Union."[387] Be that as it may, threats to global collective security posed by issues outside the actual existence of warfare and answers thereto are matters which can hardly be pursued from a statist viewpoint. They are global problems and accordingly, must be resolved by a global approach. It is not completely correct to assert that the emerging holistic approach to collective security is a purely recent phenomenon. To the contrary, it is also seeded in the provisions of the United Nations Charter.[388]

As the "focal point"[389]of state practice at international law, the Charter, inspite of its state-centric perception of collective security and its means of securement contains a cluster of values of human rights and seeds of an expansive concept of collective security. The symbiotic linkage among democracy, human rights and peace[390]finds anchor in the Charter. Its eloquent preamble speaks of the determination to "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be mainatained."[391] It also reaffirms its faith in fundamental human rights and promotion of social progress and better standards of life in larger freedom.[392] Its Article 1 affirms the inter-relationship of enlarged human freedom to global peace and collective security and Article 103 of the Charter makes the pre-eminence of the Charter obligations clear. While these auspicious aspects of international law were almost subsumed in the Cold War intrigues, recent multi-lateral treaties, conventions and declarations re-affirm a holistic conception of collective security and

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[387] Quashigah, *supra* note 239 at at 96.
[388] Charter of the United Nations, 26 June 1945 . 892 *U.N.T.S* 1973. [hereinafter, The UN Charter]
[389] Rosalyn Higgins, *The Development of International Law Through the Political Organs of the United Nations* (Cambridge: Cambridge University Press., 1963) at 2.[Hereinafter, Higgins]
[390] Thomas Franck, "The Emerging Right to Democratic Governance" (1992) 86 *A.J.I.L.* at 81.
[391] UN Charter, *supra* note 388.
[392] *Ibid.*

accord it deserved priority.

The Conference on Security and Cooperation in Europe (CSCE) at it's Conference on The Human Dimension of Security held in Geneva in early 1991, unanimously declared that "issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective state. [393] This confirmation of a cosmoplitan nature of collective security[394]is further buttressed by the Santiago Commitment to Democracy, adopted by the General Assembly of the Organization of American States (OAS) in June 1991.[395] This Declaration re-echoes the CSCE commitment stated above. The CSCE declaration at its conference of Geneva 1991 was further elaborated in its Copenhagen Meeting on the Human Dimension of the Conference on Security and Cooperation.[396] The import of these developments, as the Court noted in the *Libya-Malta Continental Shelf Case* is that they "have an important role to play in recording and defining rules deriving therefrom, or indeed in developing them."[397]

Although these developments are arguably inspired from the Western part of the globe, their impact have been felt in Africa, a continent known for it's rigid insistence on the near-absolute principles of state sovereignty and parochial conception of collective security. The Secretary General of the OAU, Salim A. Salim in applauding the ECOWAS action in Liberia, rejected the claim that the ECOWAS action constituted a violation of the OAU Charter prohibition on intervention in the internal affairs of other countries. In his words:

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[393] Lori Fisler Damrosch, ed., *Enforcing Restraint: Collective Intervention in Internal Affairs* (New York: Council on Foreign Relations Press, 1993) at 502.[Hereinafter, *Enforcing Restraint*]
[394] E.Y.Benneh, "Review of the Law on Non-Intervention" (1995) 7 *A.J.I.C.L* at 155.
[395]Stephen Schnably, "The Santiago Commitment as a Call to Democracy in the United States: Evaluating The OAS Role in Haiti, Peru, and Guatemala" (1994) 25 *U. of Miami Int. Law Review* at 393.
[396] 29 I.L.M 1305 (1990)
[397] *Libya-Malta Continental Shelf Case*, [1985] ICJ Reports at 29.

> [N]on-interference should not be taken to mean indifference...For an African Government to have the right to kill it's citizens or let it's citizens be killed, I believe there is no clause in the Charter that allows this...To tell the truth, the Charter was created to preserve the humanity, dignity, and the rights of the African. You cannot use a clause of the Charter to oppress the African and say that you are implementing the OAU Charter. What has happened is that people have interpreted the Charter as if to mean that what happens in the next house is not one's concern. This does not accord with the reality of the world.[398]

In addition, the Harare Declaration[399] on the situation in South Africa elaborates and affirms this notion. In the fifth paragraph to its Preamble, the African States avowed that they recognized the reality that permanent peace and stability in Southern Africa can only be achieved when the system of apartheid in South Africa has been liquidated and South Africa transformed into a united, democratic and non-racial country. Thus, the direct relationship between regional security, respect for human rights and legitimacy of governance, not only in South Africa but for Southern Africa was affirmed. The Harare Declaration demonstrates that the inequities and iniquities in South Africa was a threat to peace in *Southern Africa* and not merely in South Africa alone. The African states in paragraph 9 of the Declaration affirmed their continued support, politically and militarily for all those fighting apartheid in South Africa.

The Liberian conflict, as already noted, caused the death of over 200,000 people and exiled over a million to various countries in the sub-region. Given the inter-locking nature of the ethnic configuration of Liberia with its neighbours and the ethnicization of the conflict, the field of conflict rapidly spread to neighbouring states. In view of these factors, it cannot be seriously argued that the Liberian conflict, on its face and in the

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[398] As reproduced in "*Enforcing Restraint, supra* note 393 at 193.

[399] Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa, Harare, Zimbabwe, August 21, 1989. See Gino Naldi, ed., *Documents of the OAU* (London: Mansel Publishing Co., 1992) at 79. This Declaration was unanimously endorsed by the Movement of Non-Aligned States at it's Summit Meeting in Belgrade and formed the basis for the "Declaration on Apartheid and it's Destructive Consequence in Southern Africa" adopted by the U.N General Assembly on December 14, 1989.

overall context of the emerging holistic concept of collective security, was not a matter of legitimate concern for neighbouring countries. Intra-state ethnic warlordism is problematic, and when such a conflict occurs in a region like West Africa, where ethnic groups traverse the frontiers of state boundaries, such a conflict is intrinsically international in character.

Further, given the events in Sierra Leone and Haiti,[400] where interventions were undertaken to remove illegitimate governments disturbing the tranquility of neighbouring states, a change in the concept of state sovereignty and recognition of the relationship between illegitimate governance and collective security can hardly be denied.[401] In the circumstances, Kampelman's thesis that "there is a shifting dividing line between internal affairs to be protected against intervention and the responsibility of the international community to intervene in order to preserve peace and important human values"[402] probably holds true, especially for African countries. In sum, the question whether the Liberian civil war constituted, *prima facie*, a legitimate subject of concern to neighbouring states must be answered in the affirmative. However, that does not mean that *ipso facto*, neighbouring states may join the fray or intervene militarily in the character of knights errant. To the contrary, the pertinent question ought to be the scope of action ECOWAS could lawfully take in arresting the situation in Liberia. This question raises issues of the legality of the invitation by President Doe to ECOWAS to intervene, the principle of collective self defence, and the legality of the Security Council ratification of the measures taken by ECOWAS in respect of the Liberian crisis. Before evaluating these issues, the next section will examine the constitutional structure of ECOWAS and its juridical status. Attention will also focus on the legal arguments on collective security made by ECOWAS and its critics.

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[400] Domingo Acevedo, "The Haitian Crisis and the OAS Response: A Test of Effectiveness in Protecting Democracy" in *Enforcing Restraint*, supra note note 393 at 119. [Hereinafter, Acevedo]
[401] *Enforcing Restraint, supra* note 393 at ix.
[402] *Ibid.*

3.3: ECOWAS AND COLLECTIVE SECURITY

At the thirteenth ECOWAS Summit in Banjul, the Gambia, the (ECOWAS) Standing Mediation Committee[403] decided[404] to establish an ECOWAS Cease-fire Monitoring Group (ECOMOG) with the mandate to "keep peace, restore law and order and ensure that a cease-fire agreed to by the warring factions in Liberia was respected."[405] This unprecedented action was anchored *inter alia* on the ECOWAS' findings that

> [T]he failure of the warring parties to cease hostilities has led to the massive destruction of property and the massacre by all the parties of thousands of innocent civilians including foreign nationals, women and children, some of whom had sought sanctuary in churches, hospitals, diplomatic missions and under Red Cross protection, contrary to all civilized behaviour...the civil war has also trapped thousands of foreign nationals, including ECOWAS citizens without any means of escape or protection...the result of all this is a state of anarchy and the total breakdown of law and order in Liberia. Presently, there is a government in Liberia which cannot govern and contending factions which are holding the entire population as hostage, depriving them of food, health facilities and other basic necessities of life...these developments have traumatized the Liberian population and greatly shocked the people of the sub-region and the rest of the international community. They have also led to hundreds of thousands of Liberians being displaced and made refugees in neighbouring countries, and the spilling of hostilities into neighbouring countries. [406]

On this broad mandate, the ECOMOG troops numbering 3,000 arrived Liberia on 25 August 1990.[407] Prior to this bold initiative, the ECOWAS had adopted a diplomatic

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[403] The Standing Mediation Committee was set up by the *Authority* (of which, later) and was made up of Gambia, Ghana, Mali, Nigeria and Togo. See, *Extract from the Final Communique of the ECOWAS Authority of Heads of States and Government Meeting*, Banjul, 30 May 1990. Reproduced in Weller, *supra* note 5 at 39.

[404] *Ibid.*

[405] Report of the Secretary-General on the Question of Liberia, UN Doc.S/25402, 12 March 1993, para 12.

[406] *Supra* note 403.

[407] Ero Comfort, "ECOWAS and the Subregional Peacekeeping in Liberia" (1995) *Journal of Humanitarian Assistance* at 1.

approach[408] in which representatives of the major rebel group, the NPFL had held discussions on a peaceful settlement of the conflict. These diplomatic efforts failed as neither the Doe regime nor the rebels were willing to yield on the question of how and when Doe should vacate his office as the President of Liberia. It is important at this stage to examine the juridical basis and structure of ECOWAS.

The Economic Community of West African States (ECOWAS) is a regional alliance of sixteen states.[409] Geographically, the West African sub-region is conventionally delimited as the area bounded by the Atlantic and lying south of the Sahara and west of Cameroon.[410] The Treaty[411] establishing the organization makes it clear that the ECOWAS was originally designed to accelerate regional economic development and integration.[412] This ambition was not novel. Prior to the appearance on the global scene of the West African states with the Berlin-designed boundaries, close economic activities (and internecine rivalries) had existed amongst the various peoples of the region.[413]

Although the formation process of the ECOWAS was long and checkered,[414] its formation has been acknowledged as the most significant West African effort at integrating. It is also ironic that the idea of an economic entity in the nature of the ECOWAS was first mooted by late President Tolbert of Liberia.[415] Sequel to Tolbert's

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[408] Kufour, *supra* note 136 at 527. As earlier indicated, the rebels rejected the peace proposals.
[409] Douglas Rimmer, *The Economies of West Africa* (New York: St Martins Press, 1985) at 2 .[Hereinafter, Rimmer]. At its formation, ECOWAS had fifteen members namely: Benin, Burkina Faso, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. Cape Verde, the sixteenth member joined in 1977.
[410] *Supra* at 1. Between 1844 and 1966, the entire area save for Liberia was subject to French, British, Portuguese and German colonial rule.
[411] Treaty of the Economic Community of West African States (ECOWAS) 28 May 1975. XIV I.L.M. 1200. [Hereinafter, ECOWAS Treaty]
[412] See the Preambles and Article 12 of the ECOWAS treaty. *Ibid,* at 1200-12001.
[413] Rimmer, *supra* note 409 at 3. See also, Stephen Wright, "The Changing Context of African Foreign Policies" in Stepeh Wright ed., *African Foreign Policies* (Boulder, Colorado: Westview Press., 1999) at 16. The trade was far flung and not merely restricted to the sub-region. The traditional caps for Igbo chiefs of Nigeria are made in Fez, Morocco.
[414] Julius Okolo, "The Development and Structure of ECOWAS" in Julius Okolo, ed., *West African Regional Cooperation and Development* (Oxford: Westview Press., 1990) at 20.
[415] Ralph Onwuka, *Development and Integration in West Africa: The Case of the Economic Community of*

suggestion, a series of meetings and negotiations led to the launching of the organization by Nigeria's General Yakubu Gowon in Lome, Togo on April 1972.[416] The ECOWAS Treaty was adopted by a ministerial meeting and signed by the original fifteen members at Lagos, Nigeria on 28 May 1975.[417] The creation of ECOWAS was a diplomatic feat for states in a region notorious for inter-state rivalry, suspicion and mutual hostility. According to Julius Okolo, ECOWAS was created out of the teeth of "the perennial frontier disputes between Cote d' Ivoire and Ghana and between Benin and Nigeria...the irredentist movement among Ghana's Ewes; Togo's suspicions of Ghana since the assassination of President Sylvanus Olympio in 1963, the long standing suspicion of Nigeria by Cote d'Ivoire...the rivalry between Senegal and Mali."[418] The recurrent suspicion of Nigerian motives in the sub-region is as old as the history of colonialism in that region and deserves some consideration.

Following the colonization of Africa and its consequent balkanization at the Berlin conference of 1844, the British Nigeria was an outstanding possession. First, the territory called Nigeria had (and still has) a population larger than all other West Africa states combined. Its southern state of Lagos with a population of over 10 million people (Nigeria has thirty-six states), is twice that of the Republic of Benin and greater than the combined population of the French-speaking Republics of Togo and Benin.[419] Similarly, the population of Nigeria's northern city of Kano (bigger than Lagos) is greater than the combined population of the French speaking republics of Niger and Chad bordering it on the north. Nigeria has half of the entire West African economic market.[420] In addition, it is the richest country in the sub-region, accounting for a sixth of the entire global supply

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West Africa (ECOWAS) (Ile-Ife: University of Ife Press, 1982) at 53.

[416] Olatunde Ojo, "Nigeria and the Formation of ECOWAS" (1980) 34 *International Organization* at 571.

[417] *Supra* note 414 at 22. The first five protocols annexed to the treaty were signed at Lome, Togo on 5 November 1975.

[418] *Supra*, at 25.

[419] John Heilbrunn, "The Flea on Nigeria's Back: The Foreign Policy of Benin" in Stephen Wright, ed., *African Foreign Policies* (Boulder, Colorado: Westview Press., 1999) at 43.

[420] Stephen Wright and Julius Okolo, "Nigeria: Aspirations of a Regional Power", *supra* note 413 at 43.

of crude oil.[421]

Although these riches and potential have been largely squandered as a result of chronic corrupt military rule in that country, the consciousness of its wealth and its huge and mobile population, combine to imbue its citizenry and government with what some commentators aptly call a sense of "manifest destiny"[422]in the continent of Africa. This is the feeling that the country is destined to lead the West African region, if not the entire African continent. This attitude raises serious doubts about its real motives whenever it dabbles into regional politics. The gross disparity in wealth and size between anglophone West Africa led by Nigeria and the relatively less endowed French speaking countries in the sub-region has been observed by some publicists as fueling French suspicion of Nigeria in West Africa. It should be noted that France has a long policy of construing its freed colonies as cultural heirs of mainland France. Accordingly, France is always perceived of as sabotaging British West African dominance of the sub-region by its encouragement of divisions and dissent within the ECOWAS.[423]During talks for the formation of the ECOWAS (which dragged on for 15 years), President Georg Pompidou of France counseled French West Africa to boycott the "British West African led proposal for the ECOWAS and form a French West African economic alliance to isolate and weaken rival influence poles as Ghana and Nigeria."[424]

This division was manifested in the nature of support by ECOWAS countries for the various factions in the Liberian conflict and in the overall French attitude to the Nigerian led attempt to resolve the crisis. While most of the French West African countries supported or at least were indifferent to the rebellion by Taylor, the Anglophone countries were vocal and active in their condemnation of Taylor's rebellion and support for the ECOMOG effort.

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[421] *Ibid.*
[422] Clapham on *African Politics of Survival*, *supra* note 154 at 18.
[423] Daniel Bach "Franco-phone Regional Organizations and ECOWAS" in Julius Okolo ed., *West African Regional Cooperation and Development* (Oxford: Westview Press.,1990) at 54.
[424] *Ibid.*. See also, Clapham on *African Politics of Survival*, *supra* note 154, at 64-89.

It is perhaps pertinent to address the question of the constitutional structure of ECOWAS. The ECOWAS has several organs engaged in the daily running of the organization. The organs established by the Charter of the organization are the Authority of the Heads of States and Government, the Council of Ministers, the Executive Secretariat, a Tribunal and several technical and specialized Commissions. The Authority of Heads of States and Government which is established by Article 5 of the ECOWAS Treaty is the "principal governing institution"[425] of the organization. It is made up of the various leaders of the member-states. It meets at least once a year, directs and controls all the executive functions of the ECOWAS and its decisions are "binding on all institutions" of the West African Community.[426] It may delegate its functions to a group of members chosen from its fold. It did this in the Liberian case when it constituted among itself a Standing Mediation Committee to fashion ways of dealing with the Liberian problem. However, the Authority of Heads of States and Governments acts on the advice of the Council of Ministers of the ECOWAS. However, a careful reading of the entire treaty leaves no doubt that no organ of the organization, has any powers to intervene in matters solely within the domestic competence of a member state.[427]

The Council of Ministers consists of two representatives of each member state and its responsibility includes the giving of directions to all other subordinate institutions of the organization.[428] In addition, it advises the Authority of Heads of States and Governments on matters of policy aimed at achieving the goals of the organization. Like the Authority of the Heads of States and Government, its decisions are binding on the other organs of the organization subordinate to it.[429] The bureaucratic hub of the organization is the Executive Secretariat of the organization, headquartered in Abuja, the capital of Nigeria. This organ is charged with the actual implementation of decisions

[425] Article 5 (1) of ECOWAS Treaty, *supra* note 411, *ibid.*
[426] Articles 5 (2) and (3), *ibid.*
[427] Weller, *supra* note 5 at xx.
[428] Article 6 of ECOWAS Treaty, *supra* note 411.
[429] *Ibid.*

reached by the Authority of Heads of State or the Council of Ministers.[430] Although Article 11 of the ECOWAS Treaty provides for a judicial Tribunal which would ensure "the observance of law and justice in the interpretation of the provisions of the ECOWAS Treaty,"[431] no such organ has been put in place. In addition to the above mentioned organs of the ECOWAS, the Treaty of ECOWAS provides for the creation of specialized Commissions to deal with such diverse issues as trade, customs, immigrations, industry, transport, telecommunications, et cetera. Indeed, the ECOWAS Treaty empowers the Authority of Heads of States to establish other Commissions from "time to time"[432] as the need for them arises.

In recognition of the indispensability of peace and security to the attainment of its economic goals, ECOWAS expanded the scope of its competence beyond the confines of commerce and economic integration. The extra-economic character of the ECOWAS is discernible from the organization's Protocol on Non-Aggression concluded on 22 April 1978.[433] The ECOWAS Non-Aggression Pact obliges all member states to uphold international norms forbidding the resort to military settlement of disputes.[434] In addition, the Non-Aggression Pact imposes a duty on member states to desist from subverting or allowing foreign elements to use their territories to subvert the authority of member states.[435] This is one fundamental difference between the ECOWAS Non-Aggression Pact and other collective security pacts like that of the NATO[436] and the defunct WARSAW.[437]

The ECOWAS Protocol on Non-Aggression was subsequently supplemented by

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[430] Articles 8 and 9, *ibid.*
[431] *Ibid.*
[432] *Ibid.*
[433] ECOWAS Protocol on Non-Aggression, 22 April 1978. Reproduced in Weller, *supra* note 5 at 18. [Hereinafater, ECOWAS Non-Aggression Pact]
[434] Articles 1 and 2, *supra.*
[435] Articles 3-5, *ibid.*
[436] Phil Williams, *North Atlantic Treaty Organization* (London: Transaction Publishers., 1994) at 4.
[437] Neil Fodor, *The Warsaw Treaty Organization-A Political and Organizational Analysis* (London: MacMillan.,1990) at 16.

the 1981 Protocol on Mutual Assistance on Defence (PMAD). This latter Protocol, with a contextualized view on collective security, is remarkable for its adaptive response to conflicts of peculiarly African character.[438] It is arguable that the PMAD was primarily aimed at plugging the loopholes existing in the Non-Aggression Pact. Unlike the Non-Aggression Pact, the PMAD has provisions to deter and deal with "external aggression and externally supported domestic insurrection and revolt which constitute major threats to stability in the community."[439]

In spite of these provisions, the question has been raised whether the ECOWAS is a regional body as contemplated by the United Nations Charter.[440] Scholars such as Hans Kelsen[441] and Naidu[442]have proposed some tests for determining when a grouping of states may for the purposes of Chapter 8 of the United Nations Charter, be construed as a regional body. These tests must be cumulatively answered in the affirmative. They are as follows: (a) that their membership includes almost all the states within the region, (b) it has a permanent and centralized authority and (c) it guarantees the security of one state against another.[443]

The preamble of the ECOWAS Treaty and the implicit language of the PMAD show that the ECOWAS is a regional body. Its membership encompasses all the states in the sub-region and as already elaborated, has a permanent and centralized authority. It also has assurances of mutual and collecticve security. It is equally significant that Resolution 813 of 1993 passed by the Security Council[444] and other Security Council resolutions on the Liberian crisis were made pursuant to chapters 7 and 8 of the United

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[438] ECOWAS Protocol Relating To Mutual Assistance On Defence, 29 May 1981.[Hereinafter, PMAD] Reproduced in Weller, *supra* note 5 at 19-22.
[439] *Ibid.* Article 4. This provision and similar obligations in the PMAD will be examined in subsequent pages when considering the probable applicability of the right of collective self defence.
[440] Ofodile, *supra* note 135 at 357. See also chapters 7-8 of the United Nations Charter, of which later.
[441] Kelsen, *Collective Security, supra* note 345 at 43.
[442] Naidu, *Collective Security, supra* note 336 at 63.
[443] David Brown, "The Role of Regional Organization in Stopping Civil Wars" (1996-7) 41 *Airforce Law Review* at 235.
[444] The United Nations itself recognizes and addresses the ECOWAS as a regional body. See S.C.Res. 813, U.N.SCOR, 48th Sess., 3187th mtg. at 1, U.N. Doc. S/Res/813 (1993).

Nations Charter. These contain provisions for regulating the relationship between regional bodies and the Security Council in the maintenance of global peace. Upon the foregoing, it follows that ECOWAS is a regional organization. Having examined the origins, structure and juridical status[445]of the ECOWAS, it is necessary to revisit the reasons it gave for the intervention in Liberia. This is important because its (ECOWAS) altruism in intervention has not only been doubted[446]but the reasons raise some controversial points of international law.

Several rationales and justifications centred on collective security of the region have been advanced by the ECOWAS as justification for its action in Liberia. General Ibrahim Babangida, then President of Nigeria justified the ECOWAS action on the ground that the Liberian conflict "had a destabilizing effect on the West African sub-region."[447] In his words, "if events are such that have the potential to threaten the stability, peace and security in this sub-region, Nigeria in collaboration with others in this sub-region, was duty bound to react or respond in appropriate manner necessary to either avert the disaster or to take adequate measures to ensure peace, tranquility and security."[448] As this argument appeared unconvincing to critics of the intervention, he queried, "should Nigeria and other responsible countries in this sub-region stand by and watch the whole of Liberia turned into one mass graveyard?"[449]

From New York, the Head of Nigerian Legation at the United Nations, Ibrahim Gambari in a letter to the Security Council argued that the ECOWAS stepped in "to prevent the situation in Liberia degenerating into a situation likely to constitute a real

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[445] Hilaire McCoubrey & Nigel White, *International Organizations and Civil War* (Aldershot: Dartmouth Publishing Co, 1995) at 31.
[446] Robert Jackson, "The Grotian Moment in World Jurisprudence" (1997) *International Insights* at 42.
[447] Kuffour, *supra* note 136 at 528.
[448] Ibrahim Babangida, "The Imperative Features of Nigeria's Foreign Policy and the Crisis in Liberia" at *supra* note 260, at 105.
[449] *Supra* at 160, *ibid.* It is interesting to observe that similar arguments but of a humanitarian nature were made by NATO in its bombing of Yugoslavia. See Bruno Simma, "NATO, the UN and the Use of Force: Legal Aspects" (1998) 10 *E.J.I.L.* No. 1 at 1-54. [Hereinafter, Simma on "Kosovo Bombings"] To those who still remained unconvinced by this humanist argument, he dismissed them as engaging in "false historical comparisons, intellectual intoxication and phantom analysis"!

threat to international peace and security and that the goals of the community had received endorsement from all the leaders of the West African sub-region as well as from the OAU."[450] Further, the Secretary General of ECOWAS contended on behalf of ECOWAS, that the intervention was in "collective self defence" of the sub-region. President Babangida of Nigeria, who at the material time was the Chairman of the ECOWAS and the moving spirit behind the intervention, offered yet another legal justification. He argued: " we have heard of the legality of the intervention ...people who raise the issue of legality should promptly look at Article 52 of the Charter of the United Nations for the appropriate and expected role of the ECOMOG and other sub-regional organizations world-wide."[451] In sum, the intervening members of the ECOWAS, declared unequivocally that "the reasons for our dynamic but positive action in the Liberian crisis are not mysterious...they are to ensure collective security ...of our peoples."[452]

The justifications tendered by ECOWAS have not blunted the edge of the criticisms against the intervention. The criticisms have largely dwelt on the contention that the intervention flouted norms of international law forbidding intervention in domestic conflicts. It is important to summarize the case of the critics before examining their merits in international law and as they relate to the issue of collective security in the sub-region.[453]Critics of the ECOWAS action invoke the customary international law principle of non-intervention[454]in the internal affairs of a sovereign state. The rule against intervention is so sacrosanct that even the Charter of the United Nations[455]in Article 2(7)

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[450] UN Doc.S/PV.2974, 22 January 1991, p.8.
[451] *Supra* at 106.
[452] *Supra* note 448 at 109.
[453]Louis Henkin, *How Nations Behave: Law and Foreign Policy* 2nd ed., (New York: Columbia University Press, 1979) at 155. [Hereinafter,Henkin, *How Nations Behave*]
[454] The principle of international law forbidding the use of force and intervention in inter-state relations is well established and confirmed by treaty law at least since the Treaty of Westphalia in 1648. See Subhas Khare, *Use of Force Under the United Nations Charter* (New Delhi: Metropolitan Book Co., 1985) at 132. [Hereinafter, Subhas Khare]
[455] *Supra* note 388.

forbids the United Nations itself from intervening "in matters that are essentially within the domestic jurisdiction of any state."[456] The principle of non-intervention is a fundamental principle of customary international law and is also affirmed and reiterated in the United Nations Charter, international conventions and treaties. It is also evidenced by state practice and espoused in judicial decisions and various United Nations declarations.[457]These varied manifestations of international law undoubtedly reflect and restate its fundamental character as a basic component of state sovereignty.[458] As a corollary to the prohibition on the use of force by states, which is a rule of *ius cogens*, its radical character is hardly debatable and it is on this formidable pillar that the criticism against the ECOWAS action in Liberia partly rests.[459]

The case of the critics[460]is also anchored on subsidiary sources of international law such as the opinion of writers.[461] Similarly, decisions of the Court in the *Nicaragua Case*[462] and the *Corfu Channel Case*[463] on use of force by states and the doctrine of non-intervention have been called in aid. These arguments are apparently well founded. The Court in the *Nicaragua Case* reiterated that the prohibition of military intervention without valid invitation is a necessary and constitutive part of every state's right to

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[456] *Ibid.* It has been argued that no state can insist on this right if the right to non-intervention will cause disproportionate injury to the community of nations. See H.Lauterpacht, *The Function of Law in the International Community* (Oxford: Clarendon Press,1933) at 286.

[457] For example, *Declaration on the Inadmissibility of Intervention Into the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, G.A Res 2131, U.NGAOR,20th Sess.,Supp.No.14,at 11, U.N. Doc.A/6014 (1965) [Hereinafter, Inadmissibility Declaration]; *Declaration On Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With The Charter of the United Nations*, G.A. Res.2625, U.N.GAOR, 25th Sess.,Supp.No. 28, at 121, U.N.Doc.A/8028 (1970)[hereinafter, Declaration on Friendly Relations; Definition of Aggression, G.A.Res.3314, U.N. GAOR, 29th Sess.,Supp.No.31, at 142, U.N. Doc.A/9631 (1974); Charter of the OAU, *supra* note 220 at 766-775

[458] *Supra* note 136 at 530. But note that the duty not to intervene under customary international law is not absolute but appears qualified by the concern for international security. Thus, "rigths which have been given for the common good of all states may not be exercised by states to menace international security." See also, A. Roxburgh, "The Sanction of International Law" (1920) 14 *A.J.I.L.*at 26.

[459] *Supra* notes 135 and 136.

[460] *Supra* note 135 at 532.

[461] *Ibid.*

[462] *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Merits) Nicaragua v. United States, Judgment of 27 June [1986] I.C.J Reports 1986 at 14. [Hereinafter, *Nicaragua Case*]

[463] *The Corfu Channel Case* (Merits) *I.C.J. Judgments, Advisory Opinions And Orders*, [1949] at 4.

sovereignty, territorial integrity and political independence. Similarly, virtually every multilateral treaty of importance on inter-state concourse provides for the right of non-intervention. The critics conclude on this point that " the existence in the *opinio juris* of states to the existence of the principle of non-intervention is backed by substantial and established state practice."[464]

There is hardly any doubt that international law in its primary and subsidiary manifestations forbids the intervention by one state or a group of states in the internal affairs of another state militarily or otherwise. For the avoidance of doubt, the "internal affairs" forming the subject of state sovereignty in which other states are debarred from intervening are those matters which each state is permitted, by the principles of sovereignty, to decide freely.[465] However, is this fundamental norm of international law absolute?[466] Critics of the intervention in Liberia have made the important distinction that the ECOWAS action would have been lawful if the effective government of Liberia had invited ECOWAS to intervene in the conflict.[467] In effect, the critics concede that at international law, a state or a group of states may be excepted from the prohibition on external intervention in domestic affairs of a sovereign state if the effective government in the troubled state invites the intervention.[468]

This is a very interesting point, especially as the critics of the intervention further

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[464] *Supra* note 136 at 532.

[465] Implicit in this observation as made by the Court in the *Nicaragua Case* is that sovereignty and non-intervention are not absolute positions or principles. As already noted, states may not in their insistence on sovereignty menace other states or engage in acts which constitute a direct threat to other states even if the acts or omissions are perpetrated within the borders of that state asserting the claims to non-intervention. Secondly, the doctrine of non-intervention also presumes the existence of a "state" and that the state asserting the right is engaged in acts in which states are permitted by international law to "decide freely." The advances in telecommunications and information have significantly affected these values. As the globe shrinks, the "domestic" concerns of states especially in human rights issues now assume the toga of international subject.

[466] Gene Lyons & Michael Mastanduno, "International Intervention, State Sovereignty, and the Future of International Society" in Gene Lyons & Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University Press., 1995) at 9.

[467] *Supra* note 136 at 543.

[468] *Ibid.* It is thus argued that the UN interventions in Congo and Cyprus in the 1960s were at the invitation of the respective states.

opine that the ECOWAS ought to have assembled the various heads of the warring factions to obtain their consent before intervening in Liberia. With this golden rod as it were, the waters of (il)legality in external interventions are parted.[469] Thus, in the absence of a collective consent by the warlords, the critics argue that the proper intervening body is the UN. On this second aspect, the critics argue that only the United Nations has the legal mandate to receive and act upon an invitation for intervention by a troubled incumbent government. They have thus likened the ECOWAS intervention in Liberia to the unilateral intervention of the United States of America in the tiny Caribbean republic of Grenada[470]and Soviet intervention in Czechoslovakia[471]which all received universal condemnations. These arguments by the critics of the ECOWAS action are finally spiced with liberal references to the United Nations General Assembly Declaration on the Definition of Aggression[472]which arguably defines aggression to include the ECOWAS intervention in Liberia.[473]

For the above reasons, the ECOWAS action, the critics argue, constituted "enforcement action" under Chapter 8 of the United Nations and since it was effected without prior authorization of the Security Council, it was unlawful. This thesis will shortly examine the merits of these arguments, but before doing so, it is pertinent to examine the history of multi-lateral interventions in the pre-Charter era.[474]The discussion is to afford a historical background for subsequent analysis of the contemporary regime as it affects the Liberian case on the question of collective security as presently

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[469] *Supra* note 135 at 386. See also *supra* note 136 at 533.
[470] This intervention was condemned by the General Assembly in a Resolution. See General Assembly Resolution 38/7 2nd Nov. 1983, 43rd Plenary Meeting , reprinted in William Gilmore *The Grenada Intervention: Analysis and Documentation* (London: Mansell Publishin, 1984) 107-108. The purported invitation to intervene was largely dismissed as the authority to make the invitation was in grave doubt.
[471] This intervention was condemned in a Security Council draft Resolution which failed by the Soviet veto. See 1442nd Meeting, Security Council Official Records 22nd August 1968, p.34. Note also that the purported invitation to intervene in this case and in the case of Hungary were dismissed as they were patently manufactured and or coerced.
[472] Annex to General Assembly Resolution 3314 (XXIX) 14th December 1974.
[473] But note that the United Nations Secretary General had observed that the ECOWAS did not need the UN prior authorization. See Ofodile, *supra* note 135 at 414.
[474] Akindele, *supra* note 343 at 54-84.

understood.[475]

Historically,[476]the concept of non-intervention is no stranger to imprecision.[477] This state of affairs is probably a function of the manifold aspects of intervention in domestic affairs of other states. Oppenheim has defined intervention in terms of a "dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual condition of things."[478] This is a classical definition but in the context of the subject of this thesis it must be restricted to military interventions.[479]Although the doctrine of non-intervention is a well established principle of international law, scholars have done well to remind us that "it did not spring full blown."[480] Rather, its contemporary features have their roots deeply embedded in the practice of states spanning over five centuries.[481] To locate the earliest scholarly articulation of its norms, historians have referred to the writings of Wolff and Vattel.[482] These writings probably afforded intellectual clarity for the dissonant practice of states on the issue. Reasons for this historical practice range from the genuine fear of internal conflicts destabilizing an entire region to the reactionary escapades of fatally threatened regimes such as the Holy Alliance, of which later.

In 1823, England, France and Russia militarily intervened in Greece on the ostensible ground that the Greek civil war threatened the security of Europe.[483] Similarly, between 1875 and 1876, Europe was upset by the recurrent Turkish outrages which threatened European security. It intervened by force of arms.[484] Further, the revolts in

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[475] Henkin, *supra* note 453 at 160
[476] Ann Thomas & A.Thomas, *Non Intervention* (Dallas:Southern Methodist University Press, 1956) at 3. [Hereinafter, Thomas]
[477] Richard Little, *Intervention: External Involvement In Civil Wars* (London:1975) at 2.
[478] Ernest Oppenheim, *International Law*, H.Lauterpacht ed., Vol. 9 (London: Longman,1992) at 432.
[479] Richard Connaughton, *Military Intervention in the 1990s* (New York: Routledge; 1992) at ix.
[480]Thomas, *supra* note 476 at 3.
[481] Ellery Stowell, *Intervention in International Law* (Washington, D.C,: John Byrne &Co,1921) at 47.
[482] Vattel has been quoted as positing that "to intermeddle in the domestic affairs of another nation or to undertake to restrain its councils is to do it an injury. See, Thomas,, *supra* note 476 at 14.
[483] Dr.F.X. De Lima, *Intervention in International Law* (Netherlands: The Hague, 1971) at 126.
[484]*Ibid.* Further, Russia and Saxony had by their armed intervention in Poland in 1733-63 placed the Saxon king on the throne of Poland.

Bosnia and Herzegovina against Turkish misrule and atrocities persuaded the imperial courts in Russia and Austria to adopt the Berlin Memorandum.[485] These cases show that it was not unusual for states to agree to put a tottering neighbouring state in order. However, it appears that the intervening states were obliged to show that the problem in the troubled state was of such magnitude and character as to endanger the general security of the region or of neighbouring states.

As such, it was not every outrage or conflict in neighbouring states that rose to the level of threat to the security of the region and therefore, an acceptable basis for collective military action. For instance, although the trouble in Belgrade in 1903[486]shocked Europe and was wholly condemned, it was not enough to compel the European states to intervene. The atrocities had shocked and outraged the entirety of Europe and left in its wake very severe diplomatic consequences for the usurpers in Belgrade. However, as Admiral Morin of Italy observed "...though this feeling dominates all other impressions in the presence of this terrible tragedy, the government must remember that the events which took place at Belgrade relate to internal affairs."[487]

In spite of this restraint and rationalization which was to distinguish collective actions for collective security from unilateral interventions, the Holy Alliance[488]emerged

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[485] *Ibid.* The Berlin Memorandum was an international instrument which imposed certain obligations on Turkey on how she was to administer her tottering empire. Needless to say, this was a clear act of "intervention" in a domestic problem. Although England did not accede to the Memorandum, France, Italy and Russia acceded to it. When the Turks could not control their empire from imploding and threatening European security, Russia purporting to act in behalf of Europe militarily intervened.

[486] On the night of 10th June 1903, an atrocious military uprising against the royal house in Belgrade earned the King 40 deep cuts and the Queen 65. Other members of the royal house and ruling class received similar acts of savagery. However, some early writers insisted that the right to non-intervention yields to the duty to intervene when non-intervention gives rise to disproportionate injury to the neighbouring states. See H. Lauterpacht, *supra* note 456 at 286.[

[487] Lauterpacht, *supra*, at 141. Similarly, the British condemned the intervention by the Holy Alliance in the republican uprising in Naples which had deposed the monarchy and instituted a popular parliament. The British foreign minister argued that such as intervention could only be justified "...if dangers from such internal affairs constitute clear, grave, and imminent and actual danger; military in character to neighbouring states."

[488] In spite of its grand name, this was a reactionary group of Monarchists determined to crush by force of arms, the rising wave of republicanism in Europe. It appointed itself to combine force of arms for the restoration to the throne of expired Monarchs. See, Hannis Taylor, *A Treatise on Public International Law* (Chicago: Callaghan and Co., 1901) at 140.

to stretch the emerging state practice. The European Monarchy, on its way to obsolescence hastened by the rising wave of republicanism, did not yield without a whimper. The monarchists saw the spreading wave of republicanism, as a raging conflagration which must be put out. As the "conflagration"[489]swept Europe, the Holy Alliance felt itself persuaded to intervene and contain the spreading "contagion of revolution."[490] In addition to the contempt with which most states in Europe held the objectives of the Holy Alliance, the contagion doctrine and its variants were destitute of respect among publicists.[491]Little wonder its limited life span as a legal justification for external intervention in domestic affairs.

In arguing against the Holy Alliance's intervention in Spain, Britain distinguished its earlier intervention in the French polity. According to Lord Castlereagh, British intervention in Napoleonic France (unlike the Spanish case) was because France "attempted to propagate first her principles and then her domain (of Europe) by the sword."[492]Thus, contrary to the presumptions of the Holy Alliance, there was an

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[489] The Holy Alliance under Metternich attempted to enforce the "contagion theory" by militarily suppressing revolutionary movements in the European states which had overthrown their monarchies. It was argued by the Monarchists that the spread of republicanism was like a raging conflagration which would consume and destroy Europe. Thus, in the preliminary Protocol of Troppau, the Holy Alliance declared that "states which have undergone a change of government due to revolution, the result of which threatens other states, the Princes bind themselves by peaceful means or if need be by arms to bring back the guilty state into the bosom of the Great Alliance." The spread of republicanism in Europe which the blue blooded princes of the Holy Alliance construed as a "conflagration" was roundly rebutted by a witty French woman. She reminded the agitated Royalty that "what you believe to be a conflagration is only an illumination." See Stowel *supra* note 449 at 387.

[490] At the Conference of Verona in 1822, British opposition to the presumptions of the Holy Alliance was brushed aside when they (the Holy Alliance) authorized Imperial France to militarily intervene in Spain to restore the deposed Spanish King Ferdinand VII to the throne. Spanish monarchical institutions were successfully restored. Great Britain in vain argued that "no proof was produced ...on the part of Spanish government to invade the territory of France...or any project to undermine her political institutions; and so long as the troubles and disturbances of Spain should be confined within her own territory, they could not be admitted by the British Government to afford a plea for foreign interference." Stowell, *ibid.*

[491] According to Bowett, "as long as what is going on in your neighbour's house does not directly concern you, there cannot be that pressing call for self defence which the plea assumes."Stowell,*supra* note 481 at 386. This concept is not as simple as it looks. Those making the determination of whether the "internal" problem has become international rely on fluid factors of geo-politics to make their judgments.

[492] Stowell, *supra* note 481 at 10. This distinction appeared to lay the test upon which legality of interventions was judged for over one century. See Thomas, *supra* note 476 at 20. Lord Castlereagh dismissed the Holy Alliance as "sublime mysticism and nonsense" and Lord Metternich of Austria later ridiculed it as " a loud sounding nothing." See Baron De Savigny, *Metternich and His Times*(London: Longman, 1962) at 129. It is equally remarkable that the presumptions of the Holy Alliance did not stop the

emerging opinion among states that the mere existence of a pernicious institution in a neighbouring state does not warrant or justify external intervention. Here, it seems that the crux of the matter turned on finding the test with which "illuminations" may be distinguished from "conflagrations." While "illuminations" were strictly out of bounds for foreign states, it was emerging as acceptable and admissible in international law that states who had a centralized and objective framework for determining the existence of raging "conflagrations" might act collectively to put out the inferno without breaching the norm on interventions. The latter action came to be known as "collective action."[493]

Regarding this regime, it was writers such as Von Martens who distilled from the practice of states, coherent principles of legality for multilateral actions.[494] During the days of the Holy Alliance and for long thereafter, the determination of the legality or otherwise of multilateral military interventions largely depended on third party perception of the motive of the intervenors.[495] This chaotic regime[496]lacking appreciable scientific order, was thus largely articulated and clarified by other observers such as Gericke.[497]

Shortly before the emergence of the United Nations Charter, (of which later) the following factors and tests marked out collective actions from unilateral interventions. According to the findings of the Inter-American Jurists,[498]the distinctions include that collective actions, unlike unilateral interventions, are usually undertaken by states in a

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spread of the contagion of republicanism which was actively supported by Immanuel Kant in his "Philosophical Essays on Perpetual Peace (1795). See De Lima, *supra* note 483 at 14.

[493] Robert Jennings & Arthur Watts., eds., *Oppenheim's International Law*, 9th ed., (London: Longman, 1992) at 447.[Hereinafter, Jennings &Watts]

[494] P.H Winfield, "The History of Intervention in International Law" (1922-3) *B.Y.I.L.* 130 at 138. Between 1820-1832, there were at least seven multilateral interventions in Europe of varying consequences.

[495] Winfield, *supra* at 133.

[496] Winfield lamented that "the non-intervention rule appears to be a patent consequence of independence with a host of disorderly exceptions fastened upon it."

[497] Winfield, *supra* , at 137. He had already exhibited his despair when he lamented that "the subject of intervention is one of the vaguest branches of international law. We are told it is a right; that it is a crime; that it is the exception; that it is never permissible at all. A reader, after perusing Phillimore's chapter upon intervention, might close the book with the impression that intervention might be anything from a speech of Lord Palmerston's in the House of Commons to the Partition of Poland."

[498] *Differences Between Intervention and Collective Action*, Inter-American Juridical Committee. OAS Official RecordOOEA/Ser.1 /VI.2 (Pan American Union, General Secretatriat, OAS, Washington, D.C, 1996)

treaty based or clearly defined relationship. Second, while unilateral interventions disregard the fundamental rights of states, collective action always tend to restore the violated right. Third, while unilateral intervention is arbitrary and is for certain interests, collective action defends all the member states of the organization. Fourth, while intervention signifies an attitude that exceeds the competence of a state, collective action is exercised within the framework of the multi-lateral body.[499]Sir Ivor Jennings has acknowledged the work of Murdoch[500]on the subject as being decisive.[501] It is equally interesting to note that Murdoch's conclusions are similar to[502]those of the Inter-American Jurists. However, the pre-Charter regime marked by its reliance on ad-hoc conferences[503]for the maintenance of collective security has been supervened by the provisions of the United Nations Charter. [504]

However, the Liberian crisis is probably a "hard case"[505]as it questions an intervention by a regional organization and the extent to which the provisions of the United Nations Charter (primarily designed to regulate inter-state conflicts)[506]may be adapted in justifying the legal problems posed by the crisis and consequent intervention by ECOWAS.[507] The importance of this is further underscored by the increasing number of such crises, a phenomenon which Luard, aptly notes as "unique in history."[508] If as

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[499] *Ibid.*
[500] James Oliver Murdoch, "Collective Security Distinguished from Intervention" (1962) 56 *A.J.I.L.* at 500.
[501] Oppenheim's *International Law, supra* note 478 at 448.
[502] *Supra* note 500.
[503] F. Kirgis, *International Organizations in Their Legal Setting* (Minn: West Publishing Co.1993) at 2.
[504] Ian Brownlie, *International Law and the Use of Force* (Oxford: Clarendon Press, 1963) at 345.[Hereinafter, Brownlie]
[505] Roger Shiner, *Norm and Nature: The Movements of Legal Thought* (Oxford: Clarendon Press, 1992) at 187.
[506] Anthony Clark., "The United Nations, Regional Organizations and Military Operations: The Past and The Present" (1996) 7 *Duke J. of Comp. & Int. Law* at 3. [Hereinafter, Clark]
[507] Provisions of Chapter 8 of the U.N Chapter refer mainly to inter-state aggression. However, since the adoption of the Charter, " a new type of military operation has developed, which has become known as peacekeeping." *ibid.* See also, William Durch., *Evolution of U.N. Peacekeping: Case Studies and Comparative Analysis* (New York: St. Martins Press, 1993) at the introduction.
[508] *Supra* note 333 at 8. Scholars have dubbed conflicts like the Liberian war, "mixed conflicts." These are civil wars with substantial but indirect external intervention. See John Norton Moore "Toward an Applied Theory for the Regulation of Intervention" in John Norton Moore ed., *Law and Civil War In The Modern World* (Baltimore: John Hopkins Press.,1974) at 3.

Luard argues, " the drafters of the UN Charter do not seem to have envisaged that the UN would have any role at all to play"[509]in such types of conflict, under what regime of laws would the legitimacy of the ECOWAS intervention to be evaluated? In answering this question, the issue of the legality of Doe's invitation to ECOWAS and the applicability of the principles of collective self defence to the Liberian problem will be explored in the next chapter. Thereafter, the legality of the Security Council ratification of the ECOWAS intervention will be addressed in Chapter five.

[509] Luard, *supra* note 333 at 22.

CHAPTER FOUR

INTERVENTION BY INVITATION AND COLLECTIVE SELF DEFENCE

4.1: INTRODUCTION

In examining the legal arguments on collective security made by ECOWAS and critics of the intervention, this chapter seeks to ascertain the applicability of the pertinent legal defences raised by ECOWAS in the Liberian case. The arguments here are decidedly nuanced and located within the security peculiarities of the West African sub-region. This chapter is divided into five sections. While section one is introductory, section two examines Doe's authority to invite ECOWAS intervention and the scope of activities ECOWAS could lawfully undertake in Liberia on the basis of that invitation by Doe. This issue also dwells on the capacity of the ECOWAS to act on such invitation. Secondly, even if Doe could not invite external intervention, the question still remains whether ECOWAS acting under the the principles of its Protocol on Mutual Assistance in Defence (PMAD) and the traditional principles of the right of collective self defence was entitled to intervene.

In this context, section three traces the origins, elements and character of the doctrine of collective self-defence as a rule of customary international law. From its early appearances in the *Perpetual Peace* of 1292 between the Swiss Forest Communities, the right of collective self-defence is traced to its contemporary character. Section four examines the impact, if any, of the UN Charter on the customary international right of collective self-defence. Attention is also paid to its doctrinal modification and adaptation in the ECOWAS Protocol on Mutual Assistance in Defence (PMAD). The characteristics

of the PMAD, which in addition to the traditional preoccupation with problems of external aggression, has provisions relating to mutual assistance on externally supported internal rebellion, are examined.

Section five explores such questions as whether the PMAD provisions afford legal justification for ECOWAS intervention in Liberia, the impact of PMAD on the general notions on collective security vis-à-vis the question of what constitutes internal or domestic matter in an increasingly shrinking globe. Further the suitability of such agreements as the PMAD for developing states like Liberia caught in the grips of a dictatorship is evaluated. How would the UN security system cope with the growing regional assertiveness in the enforcement of peace? This section and the entirety of chapter four teases out these questions and explores the nuances of the issues raised. It concludes that the ECOWAS action in Liberia is defensible both under the authority of President Doe to invite ECOWAS and the principles of collective self defence as adapted under under the PMAD.

4.2: INTERVENTION AT THE INVITATION OF THE GOVERNMENT

In section 3.2, Kuffour and Offodile, the critics of the intervention by ECOWAS in Liberia have made the distinction that the ECOWAS action would have been lawful at the invitation of the effective government of Liberia, they have argued that Doe lacked effectiveness and secondly, that the proper intervening body is the UN. On the foregoing grounds, the ECOWAS intervention in Liberia is likened to the intervention of the United States of America in the tiny Caribbean republic of Grenada and the Soviet intervention in Czechoslovakia.[510] The critics also argue that the intervention by ECOWAS constituted "enforcement action" under Chapter 8 of the United Nations and without the prior authorization of the Security Council, it was unlawful.

Kuffour[511] and Ofodile[512]have further argued that once a conflict such as the Liberian crisis degenerates into a civil war, intervention is illegal without the consent of the warring parties. On the first leg, it has been urged that the intervention by the ECOWAS without the unanimous consent and invitation of the warring factions in Liberia, was not only a violation of the sovereignty of Liberia but an unlawful abridgment of the right of Liberian peoples to self determination.[513] Kuffuor further argues that the ECOWAS decision to intervene lacks legitimacy because it was "not based on a consensus amongst the member states of the Community."[514] In effect, it is argued that since the ECOWAS treaty adopts the "unanimity rule"[515]in arriving at it's decisions, the decision to intervene, taken in the teeth of opposition by two member

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[510] This intervention was condemned in a Security Council draft Resolution which failed by the Soviet veto. See 1442nd Meeting, Security Council Official Records 22nd August 1968, p.34. Note also that the purported invitation to intervene in this case and in the case of Hungary were dismissed as patently manufactured and or coerced.

[511] *Supra* note 136 at 549.

[512] *Supra* note 135 at 407.

[513] Heather Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford: Clarendon Press, 1988) at 7.[Hereinafter, Wilson]

[514] *Ibid.* This is a curious argument. The two countries (Burkina Faso and Cote d'Ivoire) which initially opposed the intervention, were acknowledged to have financed and equipped the rebels.

[515] H.G Schermers, *International Institutional Law* (The Hague: Alphen & Noordorf, 1980) at 391.

states,[516]was fatally defective. The critics therefore query "whether the decision to intervene was one by the Community itself or rather, by a number of Member states acting under the guise of the Community's authority."[517] This section examines the merits of these arguments.

The question of the legal validity of military intervention by invitation of the government[518]is one that may be answered by specific reference to two issues. The first is the relevant international norms. The second is the factual scenario on effectiveness of the incumbent regime as at the material time an invitation to intervene is made. In the context of the Liberian crisis, the issue may be framed as follows: whether having regard to the material circumstances in Liberia, President Doe had the authority to invite ECOWAS intervention. The second, whether the ECOWAS had the legal capacity to act on the invitation by Doe. The third is on the extent of the powers of ECOWAS in responding to the invitation. In addressing these issues, this section will attempt to re-state the law on military intervention by invitation of the government, examine the factual scenario in Liberia at the material time of the invitation and by applying the former to the latter, argue that the ECOWAS action was lawful. It will also examine the scope of lawful measures ECOWAS's ECOMOG, as a peacekeeping body, could undertake in Liberia in its resolution of the crisis.

International law recognizes the validity of a state or a group of states sending troops to another state upon invitation for certain limited operation.[519] Indeed, Article 3 of the General Assembly Resolution 3314 on the Defintion of Aggression,[520]albeit

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[516] Burkina Faso and Cote d'Ivoire. Although the activities of these two states may not meet the austere requirements posed by the *Nicaragua Case*, of which later, these two countries, for diverse reasons, supported the NPFL.

[517] *Supra* note 136 at 539. Note that Burkina Faso and Cote d'Ivoire changed their minds and supported the intervention when they alleged the discovery of "NPFL sponsored attempts to destabilize" their own countries. See Ofodile, *supra* note 135 at 384.

[518] Louise Doswald-Beck "The Legal Validity of Military Intervention by the Invitation of the Government" (1985) 56 *B.Y.I.L.* 189.[Hereinafter, Doswald-Beck]

[519] *Ibid.*

[520] Definition of Aggression, G.A.Res.3314, U.N. GAOR, 29th Sess.,Supp.No.31, at 142, U.N. Doc.A/9631 (1974). See also *supra* note 457.

negatively, excepts invited military intervention from its definition of what constitutes international acts of aggression. Such limited operations have been recognized to include use of peacekeeping forces which do not become involved in the internal affairs,[521] certain rescue missions and quelling of minor internal disturbances.[522] When a government is in effective control of most of the state, this principle also affords "a clear alternative to Security Council authorization as a basis for justifying external intervention."[523] Provided the consent to external intervention is clear, voluntary and from the effective authority in the state, its legal validity is hardly a matter of controversy.[524]

According to Roberto Ago (then Special Rapporteur), the rationale for this is that consent to intervention acts as a form of bilateral agreement between the intervening and consenting states and this suspends the normal operation of the legal rules that would otherwise govern their relationship.[525] Moreover, it is an expression of a state's sovereign right to choose its mode of bilateral or multi-lateral relations with other states within the bounds of international law. Oftentimes, this finds expression in treaties on mutual defence but is not limited to that. Although states are abstract entities, international law presumes that when a government exercises effective control over the territory and its population, the government of that state possesses the exclusive authority to express the will of the state.[526] This is borne out by the consistent practice of states. As Farer observes, there is a virtual "uniform practice in international relations of treating any group of nationals in effective control of their state as constituting its legitimate government."[527] This supposition has little reference to how that group of persons in

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[521] Doswald-Beck, *supra* note 518, *ibid.*

[522] *Ibid.* In 1964, Britain intervened in Tanganyika, Uganda and Kenya to help incumbent governments quell internal mutinies. France has intervened more than a dozen times in African states to help beleaguered governments regain control in the face of attempted miliatry coup d'etats.

[523] David Wippman, "Military Intervention, Regional Organizations, and Host-State Consent" (1996) 7 *Duke J. of Comp. & Int'l Law* 209 at 228. [Hereinafter, Wippman on *Consent*]

[524] Rein Mullerson, "Intervention by Invitation" in L.Damrosch & D. Scheffer, eds., *Law and Force in the New International Order* (New York: Council on Foreign Relations., 1991) at 128-9.

[525] *Eighth Report on State Resposibility*, (1979) 2 *Y.B.I.L.Comm'n* 35-36. [Hereinafter, Roberto Ago]

[526] Wipman on "Consent", *supra* note 523 at 212.

[527] Tom Farer, "Panama: Beyond the Charter Paradigm" (1990) 84 *A.J.I.L.*510 at 513. See also, Ian

effective control of their state acquired the power [528]and is probably derived from both practical and theoretical considerations.[529]

States thus accept this position as the only viable means of conducting their relations and by extension, accord legitimacy to interventions by invitation made by the effective regime. However, the legality of the invitation becomes questionable when the alleged invitation is tainted with certain vitiating elements such as error, fraud, violence or corruption.[530] Similarly, the presumption of effectiveness of governments and the right to invite intervention becomes problematic when the government is very shaky. The question may revolve on who is entitled to express the will of the state in inviting external intervention.[531] This scenario arises when the government's authority to represent the state is in issue. The global outrage over the Soviet intervention in Hungary (1956), Czechoslovakia (1968) and Afghanistan (1979) are in point.[532] Similar disapproval greeted United States' intervention in Grenada (1983) and in the Dominican Republic (1965).[533] In those cases, what was questioned was not the validity of the principle of the legality of intervention by invitation, but the validity of the purported invitations. This issue will be revisited anon.

As an aside, the Cold War created a situation of near absolute state sovereignty and this was in turn translated to mean unbridged support for "effective" governments fighting for their lives.[534]In the African context, control of the capital city and the presidentilal mansion seemed enough to create the right for a president of a state to speak for the state and request external intervention when necessary. According to Clapham,

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Browlie, *supra* note 504 at 327.
[528] See Doswald-Beck, *supra* note 518 at 193.
[529] Wippman, on "Consent", *supra* note 523 at 212. For non-democratic states, this is fictitious.
[530] Robero Ago, *supra* note 525 at 36.
[531] Quincy Wright, "United States Intervention in the Lebanon" (1959) 53 *A.J.I.L.*112 at 120.
[532] On Hungary, see U.N.SCOR, 14th Sess., 746th Mtg at 4, U.N.Doc.S/PV (1956). On Czechoslovakia, see U.N.Doc. S/PV.1441 (1968). On Afghanistan, see U.N.Doc. S/PV.2185 (1980).
[533] Doswald-Beck, *supra* note 518 at 228-237.
[534] David Wippman, "Change and Continuity in Legal Justifications for Military Interventions in Internal Conflicts" (1996) 27 *Colum. Human Rights Rev.* at 435.

> [S]ave for occasional and exceptional circumstances,...the international community tacitly adopted the rule that the government of a state consisted of that group of people who controlled the most important buildings in the national capital. This may be described as 'letterbox sovereignty', in the sense that whoever opened the letters in the presidential palace received the invitation to represent the state concerned in the United Nations and other international bodies.[535]

It goes without saying that such occupant of the presidential mansion in control of the capital city, even if he was dictatorial in character and suffered huge deficits of legitimacy in governance, could lawfully invite external aid to assert his authority.[536] Conversely, even if the opposing or rebelling forces espoused freedom and respect for human dignity, aid to them was perceived as a violation of the principle of non-intervention.[537]

As the Court held in the *Nicaragua Case,* the principle of non-intervention "would certainly lose its effectiveness ...if intervention were to be justified by a mere request for assistance by an opposition group in another state."[538] Accordingly, in that case, aid by the U.S. Government to the rebels seeking the overthrow of the effective Nicaraguan government was held illegal.[539] In addition, the Court reaffirmed unequivocally that intervention is generally "allowable...at the request of the government of a State."[540]

Subsidiary sources of international law such as the writings of publicists[541]

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[535] Clapham on *African Politics of Survival, supra* note 154 at 20.
[536] Tom Farer, "A Paradigm of Legitimate Intervention" in *Enforcing Restraint, supra* note 393 at 316-341.
[537] Wippman on "Consent", *supra* note 523 at 213.
[538] *Nicaragua Case, supra* note 462 at 126.
[539] *Ibid.* Note that although the U.S intervention in Panama ousted a dictatorial regime, it was widely condemned as "a flagrant violation of international law." See G.A Res. 44/240, U.N.GAOR, 44th Sess.,Supp. No.49, 88th plen. Mtg. At 52. (1989). See also, Louis Henkin, "The Invasion of Panama Under International Law: A Gross Violation" (1991) 29 *Colum. J. Transnat'l L.* at 293.
[540] *Ibid.*
[541] Article 38 of the Statute of the International Court of Justice. Reproduced in Kindred, *infra* note 932

confirm the legality of an effective government inviting external intervention in the domestic polity. According to Henkin, "upon authentic invitation, a state may introduce military forces into the territory of another to assist the government for various purposes, including maintaining internal order."[542] A caveat must be entered here. That is, an "effective government may not authorize external intervention against a national liberation movement opposing racist or colonial domination."[543] This is a direct application of the general principle that a state may not lawfully authorize another state to take any action which would be illegal under international law if undertaken by the authorizing state itself. Since the prohibition on racial discrimination and the right to self determination of peoples have the character of *ius cogens*,[544]which are non-derogable rights save when altered by a principle of similar character,[545]this exception seems to strengthen the rule.[546]

The practice of states, especially in Africa, confirms that an incumbent government, even when it has lost control of a substantial portion of the state, may lawfully invite external intervention, provided it retains control over the capital city and is not in immediate danger of collapse.[547] Similarly, states and international organizations are slow to withdraw recognition from an incumbent government, even when the government has lost control of much of the state.[548] Premature withdrawal of recognition

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(supplement) at 33.See also, *The Paquete Habana Case* 175 U.S 677. Reproduced in *extenso* in Eric Heinz & Malgosia Fitzmaurice, eds., *Landmark Cases in Internatinal Law* (Hague: Kluwer International., 1998) at 23.

[542] Louis Henkin, "Use of Force: Law and U.S Policy" in Louis Henkin, ed., *Right v. Might: International Law and the Use of Force* (New York: Council on Foreign Relations, 1991) at 67.

[543] Wippman on "Consent" supra note 523 at 215.

[544] (1966) *Y.B.I.L.C.* at 247-9.

[545] Article 53, Vienna Convention on the Law of Treaties (1969) 1155 U.N.T.S.33 in force, 1980.

[546] *Western Sahara Case*, Advisory Opinion of 16 October 1975 [1975] I.C.J.Reports 12. See also, Heather Wilson, *supra* note 513 at 91.

[547] *Supra* note 154 at 20. See also, Doswald-Beck, *supra* note 518 at 197-8.

[548] Wippman, on "Consent" *supra* note 523 at 223. The Chadian situation, of which later, is in point. The

may even be construed as illicit support for the rebels.[549] The disposition to lawfully aid the beleaguered government is further strengthened when it is obvious that the opposing forces are receiving substantial aid and assistance from third states. In the circumstsnces, aid to the incumbent may be perceived as counter-intervention,[550]if not an exercise of the right of collective self-defence. Given the austere conditions required for a valid exercise of the right of collective self-defence as judicially expoused in the *Nicaragua Case* and the surreptitious and secretive nature of third-state support for insurrections, the latter claim of right may be more difficult to sustain.

However, it is interesting to note that this regime, especially under the Cold War era, worked in favour of incumbents who acted "as if they have a virtually unlimited right to obtain help from third states in seeking to suppress internal rebellions."[551] Save for the exceptional cases of Hungary,[552] the Dominican Republic,[553] Afghanistan,[554] and Grenada,[555] the legality of a request for external intervention by beleaguered regimes has been surprisingly consistent at customary international law. [556] The invitation of the UN by the beleaguered governments in Lebanon (in 1958) which had control of a part of the capital city and small pieces of the territory is in point. In addition, invited external interventions in Oman in 1957,[557] Chad (of which, later), Zambia,[558] Lebanon, Ethiopia,

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inviting government collapsed soon after the invitation was made to the OAU.
[549] *Oppenheims International Law, supra* note 478 at 74.
[550] John Perkins, "The Right of Counterintervention" (1986) 17 *Ga. J.Int;l & Comp. L.* at 171. See also, Henkin, *supra* note 542 at 64.
[551] Wippman, *supra* note 523 at 221.
[552] Doswald-Beck, *supra* note 518 at 222.
[553] *Supra* at 226.
[554] *Supra* at 230.
[555] *Supra* at 234.
[556] Security Council Resolution 387 of 1976 reaffirms this principle by acknowledging "the inherent and lawful right of every State, in the exercise of its sovereignty to request assistance from any other state or group of states."
[557] *UK Contemporary Practice*, (1958) *I.C.L.Q.* at 99-102.
[558] (1964) *BPIL* at 22-3.

Congo, and other countries at the behest of beleaguered regimes bears out this customary international law.

Notwithstanding the formidable array of opinion in favour of the right of a beleaguered government to invite external intervention, some scholars like Hall,[559]Thomas,[560]and Quincy Wright[561]have forcefully argued to the contrary. In their view, the existence of widespread rebellion against a government evidences its loss of de facto control and hence, the right to invite external intervention. This aspect of their argument needs qualification as the right to invite external intervention as demonstrated in the Kuwaiti, Haitian, Sierra Leonean situations may indeed remain extant and subsist notwithstanding the contrary pretensions of the usurpers. Hall, Thomas and Quincy Wright further argue in the above-mentioned texts that such a state of affairs as widespread rebellion against the incumbent government will ultimately abridge the right to self-determination if the right to invite external intervention in the circumstances were extant. This connection of their argument to the right to self determination is formidable since the right is anchored in ius cogens.

The right to self determination of peoples probably finds its most eloquent exposition in the United Nations General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Amongst States.[562] Paragraph 7 of the elaboration of the Declaration stipulates that "every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle on equal rights and self determination of their right to self determination

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[559] Hall, *A Treatise on International Law* (8th edn., 1924) at 347.
[560] *Supra* note 476 at 94.
[561] *Supra* note 531 at 112.
[562] *Supra* note , *ibid.*

and freedom and independence."[563] Although Higgins has alluded to the doubt in some quarters over which "self" the right of self-determination applies to,[564] the norms of the right to self-determination, as summarized below do not allow for such doubts in the circumstsnces of the Liberian conflict.[565]The Liberian case cannot be regarded as a battle for self-determination because international law as evidenced in the Geneva Protocol 1 of 1977[566]defines struggles for self-determination in the context of fights against colonial and alien occupation and racist regimes. The Liberian crisis was not such a type of conflict. It was not a secessionist war of independence nor a struggle by the Liberian peoples against alien domination.

Secondly, unlike recognized national liberation movements, fractious struggles for power such as the warring Liberian factions or their Somali counterparts, have no legal personality at international law and it would be difficult to argue that third states owe them a duty not to intervene against them. Therefore, arguments on the legality or otherwise of foreign intervention in the Liberian scenario may be more useful within the framework of the law on non-interference as opposd to inapposite references to and reliance on the norms of self determination of peoples.[567] In this context, the law on belligerency may be explored briefly.[568] This is not an easy regime to apply to the Liberian case. In the first place, the status of belligerency which obligates third states to

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[563] *Ibid.*
[564] Rosalyn Higgins, "International Law and Civil Conflict" in Luard ed., *The International Regulation of Civil Wars* (New York: New York University Press, 1972), *supra* note 333 at 186.
[565] *Western Sahara,Case, supra* note 546 at 31-3.
[566] Article 1 U.N. Human Rights Covenants 1966; Article 1 (4) of Geneva Protocol I 1977 Additional to the Geneva Conventions of 1949. 75 U.N.T.S (1950) at 85. In construing the Declaration on Friendly Relations and State Coperation, regard should be had to its travaux preparatoires. When this is done, it becomes obvious that the principle of self determination relates to anti-colonialism, struggle against alien domination and racist regimes and has little relevance to fractious struggle for power in a sovereign state already free from colonialism, alien domination or racist rule.
[567] Doswald-Beck, *supra* note 518 at 209.
[568] *Oppenheims*, *supra* note 478 at 298.

be neutral in cases of civil wars is not attained merely by the spread of violence in a civil war[569]but upon the fulfilment of four conditions. The conditions include the existence of war and hostilities, occupation and a measure of orderly administation of a substantial part of the national territory by the insurgent, observance of the rules of warfare on the part of the insurgents and a practical necessity for third states to define their attitude.[570] While the warring factions in Liberia may scale the first two hurdles, they will probably fail the last two tests.

In addition to the obligation of neutrality imposed on third states, a juridical value in according a rebel organization recognition as a belligerent force, and as the de facto government over territories held by it, is to bring it within the ambits of the law of conflicts. Thus by Article 3 of the 1949 Geneva Conventions[571] and Protocol 2 concluded in Geneva in 1977,[572] belligerent forces are obliged to uphold certain humanitarian rules of war.[573] However, before coming to a definitive view on the legality of Doe's invitation to ECOWAS and whether the warring factions were recognized as belligerent forces, it is useful to recapitulate the factual scenario surrounding the invitation to ECOWAS by Doe and the means and methods adopted by the warring factions in their prosecution of the rebellion.

The initial impression created by the Liberian government in international circles was that the rebellion was a "thwarted *coup d'etat*[574]which had been brought under control. However, within one week of the rebellion, over 10,000 Liberian refugees had

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[569] Jennings & Watts, *supra* note 493 at 166.
[570] *Ibid.*
[571] *U.N.T.S* 75 at 31.
[572] (1977) 16 *I.L.M.* 1442.
[573] Oswald-Beck, *supra* note 518 at 197. It should be noted that since the end of American Civil War, recognition of belligerency has not been given. There are doubts whether it has not fallen into disuse.
[574] Weller, *supra* note 5 at 32. However, the Liberian government recalled it's ambassador to Cote d'Ivoire

fled to the neighbouring Cote d' Ivoire and[575]government troops (dominated by Doe's ethnic Krahn) sent to Nimba to quell the rebellion, were engaged in genocide[576]of the Gio/Mano of the Nimba County. The atrocities by the government troops further polarized the Liberian polity and pushed the Gio/Mano to support the rebellion.[577]As Doe's control waned, his futile plea to Liberians to "get their cutlasses, single barreled guns and get in the bush in pursuit of the rebels"[578]fell on deaf ears.

It was at this point that the ECOWAS, realizing the immensity of the problem, set up a Standing Mediation Committee to look into the Liberian crisis. The rampaging rebels seized over seventy percent of Liberian territory. Doe's supporters and cronies were deserting him and fleeing the country. Foreign nationals in Liberia were also leaving in droves. On 6 June 1990, the embattled Doe, wrote the United States President asking for assistance "to crush the rebels."[579] As the rebels advanced on Monrovia, they asked for Doe's resignation.[580] According to the rebel NPFL's chief negotiator, Tom Woewiyu[581]"Doe is the source of all problems in Liberia...We are not calling for the total

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for "consultations" and imposed a dusk to dawn curfew on the Nimba County.

[575] *Ibid.*

[576] Article 11 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide which enterred into force in 1951 defines genocide to mean the intentional destruction in whole or in part, national, racial, ethnic or religious groups. See J.G.Starke, *Introduction to International Law* (london: Butterworths; 184) at 60-61. [Hereinafter, Starke]

[577] Weller, *supra* note 5 at 35. "...Numerous reports from refugees in Cote d'Ivoire allege that government soldiers had massacred many Gio and Mano inhabitants..." See also, 101st United States Congress, 2nd Session, House of Representatives Resolution 345, 7 March 1900. Paragraph 8 thereof notes that "...media reports and international reports...have estimated that at least 200 people, primarily members of the Gio and Mano ethnic groups have been killed by troops of the government of Liberia." Reproduced in Weller, *ibid.*. On the other hand, the rebels were "killing members of Samuel Doe's Krahn tribe." *Ibid* at 56.

[578] *Ibid.*

[579] *Ibid.*

[580] *Ibid.* "...the one thing that is clear is that they (the rebels) cannot reach any agreement with the Government unless there is a commitment for President Doe to resign. They are holding fast to this negotiating position."

[581] Recall that this same Tom Woewiyu attempted to depose Charles Taylor. When this rebellion-within-a-rebellion failed, he formed his own rebel group.

dissolution of the Liberian government but for the resignation of Doe."[582] As the rebels negotiated with the Liberian government, President Doe declared his readiness to "welcome any peacekeeping force from the USA, the OAU, ECOWAS or the UN."[583] Meanwhile, Yormie Johnson, alleging excessive Libyan control over the NPFL and financial irregularities, broke away from the NPFL and formed his own rebel group with the objective of stopping Charles Taylor from taking Monrovia and becoming President of Liberia.[584]

The government forces were "greatly reduced due to desertion and losses...down to about 1,000 men to defend Monrovia."[585] In the pithy words of Congressman Burton of the United States, "he (Charles Taylor) has got the guy (Doe) by the short hair right now."[586] Within the capital city Monrovia, "opposition parties and professionals mobilized civil demands for Doe's immediate resignation."[587] The situation got more desperate.[588] Hence, Wippman's contention that the Doe government had not only lost control of a substantial portion of the state but that the "government's international (formal) legitimacy was otherwise subject to doubt."[589] However, the capital city refused to yield to the NPFL rebels. This was because the breakaway INPFL and Doe's truncated Armed Forces of Liberia (A.F.L) maintained their vice like grip on the capital city of

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[582] Weller, *supra* note 5 at 57.
[583] *Ibid.*
[584] Weller, *ibid.* at 61. Having frustrated Taylor's desired conquest of Monrovia, the embattled Taylor, on a radio announcement, purportedly "dissolved" Doe's government and declared himself President of Liberia under the "National Patriotic Reconstruction Assembly." Further, Taylor "suspended" various provisions of the Liberian Constitution and "appointed" his "ministers."
[585] *Ibid.*
[586] *Supra* at 53. The refugee crisis did not fare any better as over 200,000 Liberians fled to Guinea and Cote d'Ivoire.
[587] *Ibid.* at 57-59.
[588] Weller, *ibid* at 58. On the legal consequences of *de facto* and *de jure* recognition of governements, see *Haile Selassie v Cable and Wireless Ltd* (No 2) [1939] Ch. 182.
[589] David Wippman, "Enforcing the Peace: ECOWAS and The Liberian Crisis" in *Enforcing Restraint*, *supra* note 523 at 210. [Hereinafter Wippman on Liberia]

Monrovia and the presidential palace. The result was a deadlock. In the words of Wippman,

> [A]lthough most observers assumed the rebel forces would quickly vanquish the AFL and drive Doe from his fortified mansion, the rebels proved unable to do so. The conflict settled into a military stalemate. The result was anarchy. Each warring faction exercised a slight measure of "de facto executive and judicial power" in it's particular area of control, but for the most part, all semblance of civilian authority was gone.[590]

The atrocities against the Liberian civil populace continued.[591] It was at this stage that Doe extended an invitation to the ECOWAS asking that organization to intervene in Liberia.[592] According to the beleaguered President,

> ...[I]t is with profound appreciation that I convey to your Excellencies compliments and goodwill of the Government and people of Liberia...As you may no doubt be aware, since the crisis in our country, I have done everything possible to resolve the situation and restore peace to our motherland...I wish to bring to your attention that our iterative accession to peaceful process has only been rewarded by continuing positions of intransigence and bellicosity on the part of Mr. Taylor and the NPFL...They (the NPFL) continue to create more turmoil and tension in the people of Liberia. Right now in the suburbs of Monrovia thousands have been displaced by the NPFL forces, homes have been destroyed, hundreds slaughtered, even before their victory is achieved. I am therefore concerned that the fighting could accelerate in Monrovia and thus inflame the suffering of the people of Liberia. Consistent with my oath of office to protect and defend the Government and people of Liberia, I cannot countenance Taylor's continued mission to destroy Liberia and it's inhabitants because of his inordinate greed to become President...any attempt to subvert the process of democracy by displacing the Constitution through force of arms would lead to an endless succession of armed insurrection, bring more deaths and destruction, as well as disrupt the socio-political and economic tranquility not

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[590] *Supra.*
[591] Weller, *supra* note 5 at 52.
[592] Letter Addressed by President Samuel Kanyon Doe to The Chairman And Members of the Ministerial Meeting of the ECOWAS Mediation Committee, 14 July 1990. Reproduced in Weller, *supra* note 5 at 60.

> only of Liberia, but also the sub-region of the ECOWAS as a whole...to avert the wanton destruction of lives and properties...It would seem most expedient at this time to introduce an ECOWAS Peace-keeping Force into Liberia to forestall increasing terror and tension and to assure a peaceful transitional environment. While assuring you of my fullest co-operation, I remain...
>
> Samuel Kanyon Doe (President of Liberia)[593]

ECOWAS, weighing the regional dimensions of the crisis[594] drew the attention of the OAU to the crisis and considered imposing a mandatory cease-fire in Liberia to stop the carnage.[595] The Liberian Representative at the United Nations unsuccessfully tried to place the crisis on the agenda of the Security Council and[596]at the ECOWAS meeting in Banjul, The Gambia, ECOWAS decided to intervene.[597] The facts above represent the circumstances under which Doe invited ECOWAS and it is within this background that its legality will be examined.

In examining the legality of Doe's invitation to ECOWAS, it has to be re-affirmed

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[593] *Ibid.* [Underlining supplied]

[594] Weller, *ibid.* at 63.

[595] Weller, *ibid.* From the moment the idea was mooted, Charles Taylor opposed it arguing that it amounted to a breach of Liberian sovereignty and the right of the Liberian peoples to self determination. He threatened that his forces would kill any interventionist forces. The NPFL rebels made good their threat as they now engaged in private acts of reprisals against citizens of ECOWAS countries that supported the intervention.

[596] U.N. GAOR, 45th Sess.,27th Mtg. At 61, U.N Doc. A/45/PV.27 (1990). The African members of the Security Council (Ethiopia and Zaire) for their self-serving reasons frustrated the attempts to place the crisis on the agenda of the Security Council.

[597] ECOWAS Standing Mediation Committee, Decision A/DEC.1/8/90, on the Cease-fire and Establishment of an ECOWAS Monitoring Group for Liberia, Banjul, Republic of Gambia, 7 August 1990. Reproduced in Weller, *supra* note 5 at 69. In spite of the opposition of the NPFL to the ECOMOG intervention, President Lansana Conte of Guinea speaking for the ECOWAS insisted that "...we do not need the permission of any party involved in the conflict to implement the decisions reached in Banjul. So with or without the agreement of any of the parties, ECOWAS troops will be in Liberia." See Weller, *supra* at 66. Yormie Johnson of the INPFL welcomed the intervention saying that he was "ready to die to make the Monrovia port conducive for ECOWAS landing." Initially, President Doe, holed inside the Presidential Villa was dilatory as his envisaged plan to use the intervention as a shield and recover his position failed. Contrary to Doe's expectation, the ECOWAS decided to set up an Interim Government independent of him and the rebels. However, he noted his "happiness with the ECOWAS intervention...but hoped that it (the ECOMOG) would not take sides." See Weller, *supra* at 88

that state practice[598]strongly supports the right of an effective government to invite external intervention in the event of an uprisisng in the state. In the absence of vitiating elements including fraud and coercison, the test of legality of such invitation is a function of the effectiveness of the government making the invitatio.[599] The human rights record of the effective regime does not affect the legality of the invitation but may influence the scope and quality of response such invitations may get. Accordingly, Doe's miserable deficiency in legitimacy and good governance are of little consequence in examining his capacity to invite external intervention. The facts of the Liberian case show that the government of Doe was the *de jure* government of Liberia and in appreciable control of the capital city and the presidential mansion. All insignia of office were still with him at the moment of making the invitation.

The argument that the Liberians were fighting for self determination mistakes a fratricidal struggle for power with wars of national liberation where the leaders of such movements may indeed lawfully request help from the international community.[600] The Liberian crisis was neither a war against a racist regime nor an anti-colonial struggle or war against alien domination which characterizes struggles for self determination.[601] It was simply a brutal and personalized struggle for power inspired by the excesses of a decadent polity and permitted by a redefined global security order. On the question of belligerency, none of the warring factions in Liberia, unlike recognized movements for

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[598] Mark Weisburd, *Use of Force-The Practice of States Since World War 2* (Pennsylvania: The Pennsylvania University Press, 1997) at 2 [Hereinafter, Weisburd on *Use of Force*]
[599] *Supra* at note 598 at 222-224.
[600] Malcolm Shaw, "The International Status of National Liberation Movements" in Frederick Snyder and Surakiart Sathirathai, eds., *Third World Attitudes to International Law-An Introduction* (Dordretch: Martinus Nijhoff, 1987) at 150.
[601] Edward Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application* (The Netherlands: Martinus Nijhoff Publishers, 1992) at 50-51. See also, Georges Abi-Saab, 'Wars of National Liberation and the Laws of War" in *supra* note 600 at 125-128.

national liberation, were seised of legal personality at international law. Therefore, they could not be the bearers of legal duties of non-intervention by third states. Second, virtually all the resolutions passed by the United Nations on the Liberian situation clearly identified them as warring factions pursuing the narrow agendas of their respective leaders at the expense of the average Liberian. They were thus not accorded recognition as belligerent forces. Accordingly, the contention that the rebels' consent was necessary for the legality of the ECOWAS intervention is at best, a matter of prudence, not law. According to Christine Gray, "the consent of other parties involved in the conflict is important as a matter of practical necessity. The peacekeeping force would not be able to function without the cooperation of the parties on the ground."[602] As a matter of law, the Liberian rebels could not have consented to the ECOWAS action in Liberia.

Returning to the question of whether the rebels could have attained the status of belligerency,[603] it is argued that they had no respect for established international norms on armed conflicts and this weighed against them. According to Mr. Cohen, the US Assistant Secretary of State for African Affairs, "when we talk of troops (rebels), we are talking of young kids, 14 to 17 years of age, who are running around with Kalashnikovs."[604]The prevalence of "child soldiers" in the Liberian crisis is a notorious fact. According to a United Nations report,

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[602] Christine Gray, "Host-State Consent and United Nations Peacekeeping in Yugoslavia" (1996) 7 *Duke J. Comp.& & Int'l. Law* at 241. (underlining supplied) Similar consensus was reached in the cases of Namibia, Cambodia, and Mozambique. But these wars were of a totally different character from the Liberian war. See also, Milan Sahovic, "Non-Aligned Countries and the Current Regulation on the Use of Force" in Cassese ed., *The Current Legal Regulation on the Use of Force* (Dordretch, The Netherlands: Martinus Nijhoff, 1986) at 479. [Hereinafter, Cassesse] But see, Lori Fisler Damroch, in *Enforcing Restraint*, *supra* note 393 at 10.

[603] On belligerency and insurgency, the Spanish civil war presents fertile ground for legal analysis. See Crawford, *supra* note 238 at 268-9.

[604] Weller, *supra* note 5 at 49. See also Jeffrey Goldberg, "A War Without Purpose in a Country Without Identity" *New York Times Magazine*, Jan. 22 1995 at 37.

> [O]f the approximately 1.4 million children now living in Liberia, it is believed that 15,000 served as child soldiers in the civil war. The majority of fighters demobilized at the end of the war were between fifteen and twenty-eight years old. Of those aged seventeen and under, the majority-69 percent-were fifteen to seventeen years old, and had served an average of four years. 27 per cent of the remaining fighters under 17 were between the ages of twelve and fourteen years old...Many of these children were forced to become soldiers by combatants desperate for able bodies of any age to augment their ranks...Some became practiced killers, and most were exposed to atrocities on a daily basis...The youngest combatants were six years.[605]

In the testimony of one of the child soldiers, "I was given pills that made me crazy. I beat people and hurt them until they bled."[606] These atrocities were committed by all the warring factions. In addition, cannibalism was encouraged by the rebel leaders as a means of warfare.[607]

Acts of genocide carried out by the various factions probably reached its height with the massacre of over 600 Gio/Manos seeking refuge in a church. According to one of the few survivors of that war crime, "...over 600 people were killed. There are still blood stains on the altar; they had placed small children there and made them scream, 'there is no God,' as they (the rebels) cut their throats."[608] An hysterical woman telling of how rebels troops at road blocks would take bets on the sex of an unborn children lamented that, "they would slice the women open to pull out the fetus with a bayonet to

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[605] Megan Mckenna, "The Reintegration of Child Soldiers in Liberia" >online http://www.unicefusa.org/issues98/nov98/Liberia-jump.html , last modified on 14 March, 1999. See also, Bianerfer Nowrojee, *supra* note 86 at 133.

[606] Human Rights Watch Interview. >Online http://www.org/rcampaign/crp/voices/html last modified on 14 March 1999. See also Yael Daneli., *et al* eds., *International Response to Traumatic Stress* (New York: Bayword Publishing Corporation., 1998) at 334.

[607] Human Skull, Monrovia, Liberia.Online>http://www.lifewater.ca/skull.htm. last modified on 14 March 1999. According to a child-soldier,"you know we ate people during the war; not because we were hungry, but because we were scared, and to eat your enemy makes you strong. That was what they told us." The rebels, particularly the NPFL, turned their base at the Spriggs-Payne Airport into a convenient cemetery for the burial of those who were unwilling to join them in "the liberation of Liberia." According to independent sources, "there were 20,000 skulls at the end of the runway at Spriggs-Payne airport in May 1992." *Ibid.*

[608] *Ibid.*

realize who had won the bet."[609]In the summative language of Lori Damrosch, "the savagery of Liberia's civil war is almost unimaginable."[610] These are hardly the kind of behaviour capable of encouraging third-state recognition of the rebels as belligerent forces and impose on third states the obligation of neutrality in the conflict.

It is equally important to note that even though Doe had the right to invite ECOWAS or any other external State or organization to intervene, the ECOWAS intervention was not to his advantage. The ECOWAS did not intervene for Doe.[611] In addition, owing to the interference of several states in the Liberian conflict, ECOWAS intervention may also be construed as counter-intervention. Although probative proof of external interference in the Liberian conflict may not meet the austere requirements as articulated in the *Nicaragua Case*,[612]it has been demonstrated in section 5 of chapter two that most states in the sub-region had interests in the conflict. Similarly, the conflict had spread beyond the borders of Liberia as some of the warring factions, for diverse reasons attacked countries like Sierra Leone, (necessitating Security Council's intervention) Guinea and Ivory Coasts. Although these issues have been explored in section five of chapter two and their legal significance will be examined in subsequent sections of this chapter, suffice it to note here that they put the Liberian case beyond the purview of the regime on invitation of external intervention in internal conflicts.

Furthermore, as invitations for external intervention for the restoration of democracy[613](when the incumbent government[614]has lost effective control of the

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[609] *Ibid.*
[610] *Enforcing Restraint*, *supra* 465 at 19.
[611] George Nolte, "Restoring Peace by Regional Action: International Law Aspects of the Liberian Conflict." Cited in Wippman on "Consent," *supra* note 523 at 225.
[612] *Supra* note 462 at 98.
[613] Clarke, *supra* note 506 at 29. See also, W. Michael Reisman, "Humanitarian Intervention and Fledgling Democracies" (1995) 18 *Fordham Int'l L.J.* at 794.

government) gains universal support,[615]it is difficult to deny that Doe, a *de jure* president with control of a substantial part of the capital city and the presidential mansion, could not invite external intervention. Although this trend may reveal support for the argument in section two of this chapter on the increasingly cosmopolitan character of human rights[616]and collective security, it equally supports the view that a de jure regime may still invite external intervention even when it's effectiveness hangs on the balance.[617] In both the Sierra Leonean and Haitian case[618] the inviting incumbents had in fact lost effectiveness.

It has also been argued that the scope of actvities and measures undertaken by ECOWAS was illegal and *ultra vires* a peacekeeping body.[619] The complaint here is that ECOMOG went too far in constituting an interim government for Liberia, organizing and overseeing elections to various political offices in Liberia and re-organizing the Liberian army and police. This is an important accusation which merits consideration here. The practice of peacekeeping is a contemporary phenomenon.[620] According to Brian Urquhart, "the technique of peacekeeping is a distinctive innovation by the United Nations. The Charter does not mention it. It was discovered, like penicillin."[621] Peacekeeping originated during United Nations intervention in the Greek civil war in

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[614] S.C.Res. 1132, U.N.SCOR, 51st Sess., 3822 Mtg. Para. 1, U.N.Doc. S/Res/1132 (1997). Note that ECOMOG intervention was not directly authorized by the Security Council. See also, See alsoS. C. Res. 1156, U.S.SCOR, 52nd Sess. 3861 mtg. Para.U.N.Doc. S/Res.1156 (1998)
[615] McCoubrey & White, *supra* note 445 at 34.
[616] Malvina Halberstam, "The Copenhagen Document: Intervention in Support of Democracy" (1993) 34 *Harv. Int'l. L. J.* at 163.
[617] OAS Doc. CP/SA/896/92 and CP/Doc.2248/92, April 1 1992. (as cited in Acevedo, *ibid*). The military *coups d'etat* in Burundi and in Sierra Leone, which had satisfied the test of effectiveness were frustrated by international isolation and delegitimation.
[618] U.N. SCOR, 49th Sess., 3413th Mtg. At 1, U.N.Doc. S/Res/940 (1994) Note also that this was the first time that the Security Council was authorizing the use of force for the restoration of democracy
[619] Kuffour, *supra* note 136 at 120. Offodile, *supra* 135 at 340.
[620] Kirgis, *supra* note 503 at 716.
[621] *Ibid.*

1947[622] and has usually been employed in maintaining cease-fires, assisting in the withdrawal of troops and the provision of buffer between opposing forces.[623] Peacekeeping operations are usually temporary and not really engaged in the settlement of conflicts but to provide auspicious conditions for peaceful resolution of conflicts.

In effect, peacekeeping operations are not, as the Court held in the *Certain Expenses of the United Nations Case,*[624] enforcement actions. However, in accomplishing their missions, peacekeeping forces may have both miliary and civilian components necessary for the aforementioned tasks and provision of humanitarian services. Although they are characterized by the absence of enforcement capabilities, they may use miltary force in self defence. Be that as it may, contemporary events have shown the pragmatic character of peacekeeping operations. In Namibia, Lebanon, Yugoslavia, Liberia, and Cambodia, they have engaged in roles hardly consistent with mere separation of warring forces and enhancement of humanitarian services in crisis situations. This is particularly true with those operations sanctioned by the Security Council.

Accordingly, the absence of consent of warring parties in such UN sanctioned peacekeeping operations appears to be of little impediment to the despatch of peacekeeping forces to troubled spots. Similarly, the scope of their operations seem to be tailored to the peculiarities of each crisis. As the Secretary-General of the United Nations confirmed in his report to the General Assembly entitled, *Supplement to the Agenda for Peace,*

> [T]hree aspects of recent mandates, in particular, have led peacekeeping operations to forfeit the consent of parties, to behave in a way that was not perceived of or to use force other than in self defence.

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[622] *Ibid.*
[623] *Supra*, at 717.
[624] [1962] I.C.J.Reports 151 at 170-172.

> These were the task of protecting humanitarian operations during fighting, the protection of civilian populations in safe areas, pressing parties to accept national reconciliation at a pace faster than they were ready to accept.[625]

As Berdal has pointedly noted, the volatile, complex and dangerous nature of internal conflicts, which often inflict serious fatalities[626]on peacekeepers, has given rise to the contemporary practice whereby host-state consent and traditional peacekeeping have yielded to what is now known as "robust peacekeeping."[627] There are other cases evidencing a noticeable trend in contemporary international law where traditional peacekeeping yields occasionally to peace enforcement or other roles not wholly compatible with traditional notions of peacekeeping.[628] For instance, in 1989-90 the United Nations set up the UN Transition Assistance Group (UNTAG)[629] to supervise the electoral process in Namibia. This task is clearly outside the traditional task of monitoring a cease-fire or supervising the withdrawal of belligerent forces. In another instance, the United Nations between 1991-2 set up the United Nations Advance Mission in Cambodia (UNTAMIC)[630] and the United Nations Temporary Authority In Cambodia (UNTAC)[631]to supervise government functions and eventual elections while rebuilding

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[625] *Supplement to an Agenda For Peace: Position Paper of the Secretary General on the Occcasion of the Fiftieth Anniversary of the United Nations*, U.N. SCOR, 50th Sess., paras.34-35, U.N. Doc. S/1995/1 (1995) (underlining supplied) [Hereinafter, *Supplemant to Agenda for Peace*]

[626] Mats Berdal, "The Security Council, Peacekeeping and Internal Conflict After the Cold War" (1995-7) 6-7 *Duke J. Comp. & Int'l L.* at 71. He notes that "as of late 1994, there had been 130 fatalities in the in the U.N. forces in Yugoslavia...and as of early 1996, there had been 410 fatalities in U.N peacekeeping operations in the former Yugoslavia.

[627] Richard Connoughton, "Time to Clear the Doctrine Dilemma" 21 *Jane's Defence Weekly* (1994) at 19.

[628] Margaret Vogts, "The Problems and Challenges of Peace-Making: From Peace-Keeping to Peace Enforcement" in Vogts., ed, *supra* note 41 at 150.

[629] Nico Schrijvens, "Introducing Second Generation Peacekeeping: The Case of Namibia" (1994) 6 *A. J.I.C.L.* at 1. See also, Sylvester Ekundayo, "ECOMOG-A Model For African Peace-keeping" October 16, 1998 AfricaNews at 12. According to him, " it should be emphasized that the concept, nature and scope and practice of peacekeeping are changing rapidly with the emergence of new types of conflict situations in the continent. Both the United Nations and the ECOWAS have recognized this, and have had to adapt traditional peacekeeping to meet specific intra-state conflicts such as verification of cease-fire agreements, security/protection for refugees and humanitarian relief workers, demobilization and disarmament of combatants, and observation of democratic political processes in the form of elections and referenda."

[630] *Ibid.*

[631] *Ibid.*

Cambodia and disarming the factions.[632]

This "second generation peacekeeping",[633] is closer to conflict management and peace enforcement than mere separation of warring parties. The new thinking and practice that peacekeeping should move "beyond the Sheriff's posse"[634]probably reflects pragmatism[635]and evidence of what the international society considers to be prudent and necessary in the contemporary circumstsnces. In view of the fact that the controversial measures taken by the ECOMOG peacekeepers were undetaken in active conjuction with the UN's UNOMIL (of which later) and sanctioned and or ratified by the Security Council, the objections by Kuffour and Offodile on the point are misconceived.[636] Secondly, the invitation by Doe did not delimit the scope of measures which ECOMOG could adopt to put the crisis under control. Thirdly, the ECOMOG mandate was not limited to merely separating the Liberian warlords. On the issue that the ECOWAS decision to intervene was taken without compliance with the necessary rules contained in the ECOWAS PMAD embodying its principles on collective security, it is now proposed to examine in the next sections the applicability of the doctrine of collective self defence to the Liberian crisis and the ECOWAS action.

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[632] Vogts, *supra* note 628 at 150.
[633] Schrijvens, *supra* note 629 at 3.
[634] Jinmi Adisa, "The Politics of Regional Military Cooperation: The Case of ECOMOG" in Vogts, *supra* note 41 at 217.
[635] Walter Shawn, " Protecting The Avatar of International Peace" (1995) 7 *Duke J. Int'l &Comp. L.* at 102.
[636] In Cambodia the U N peacekeepers exercised sovereign authority within the state and in Somalia they adopted enforcement measures to stop the anarchy, starvation and bloodletting .

4.3: COLLECTIVE SELF-DEFENCE AND THE LIBERIAN CRISIS

World peace, like war has tended to become indivisible.[637]

The ECOWAS argument on collective self-defence has been flayed[638]on the grounds that the rebellion did not constitute an armed attack on Liberia as envisaged by by the doctrine.[639] In addition, the applicability or otherwise of the Protocol Relating to Mutual Assistance on Defence (PMAD) to the Liberian case has been questioned.[640] It has been further argued that even if the PMAD is applicable, the necessary procedural mechanism for the invocation of the right of collective self-defence was not followed by ECOWAS. Therefore, the critics contend, the intervention was unlawful at international law. Since these arguments turn on very important principles in international law regarding the use of force, subsequent sections will examine them in detail. It is perhaps pertinent to proceed from the historical origins of the principle of collective self defence.

The right of collective self defence, like most legal principles, is distilled from practical experience. According to Kelsen,

> [B]etween the moment the illegal attack starts and the moment the centralized machinery of collective security is put into action, there is even in case of perfectly prompt functioning, a space of time, an interval which may be disastrous to the victim.[641]

It is probably in this context that Grotius argued that it is a right rooted in nature.[642] However, the scope of the exercise of the right of self-defence is delimited by

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[637] Akindele, *supra* note 343 at 3.
[638] Kufour, *supra* note 136 at 545.
[639] *Supra*, at 546.
[640] *Supra*, at 537.
[641] Hans Kelsen, "Collective Security and Collective Self Defence Under the Charter" (1948) 42 *A.J.I.L.* at 875.[Hereinafter, Kelsen on Collective Self Defence]
[642] Grotius, *supra* note 373 at 112.

positive law.[643] As the name suggests, self-defence is the defence of self. It is different from necessity as it "arises when a wrong has been done."[644] Secondly, unlike a reprisal it is not an enforcement of perceived legal rights, which function is a preserve of the civil state. To quote Bowett, it "is not a means of enforcing a perceived legal right".[645]Thirdly, unlike a reprisal, it is invoked at a moment of imminent danger which is of such character that waiting on the regular agencies of law enforcement for protection would be fatal to the potential victim of the attack. Max Sorensen has argued that the principles governing self-defence by states in international law are analogous to and derived from the municipal laws on self defence.[646] If this argument is accepted, it follows as McDougal and Feliciano affirm, that the principles governing recourse to self defence in a collective arrangement in international law are in themselves similar[647]to those rules applicable in the individual context. Self defence is tempered by the conditions of necessity, immediacy and proportionality and these elements combine to afford justification.[648]

Contrary to Vattel's argument that self-defence is a "sacred duty"[649]which a state must exercise, international law merely recognizes the rightful option of recourse to self-defence and imposes no duty to exercise it. As Dinstein shrewdly noted,

> [a] prudent state may decline to exercise this right on the ground that a political compromise is preferable to a clash of arms. The indubitable military supremacy of the adversary may have a sobering effect on the target state, inhibiting it from steps that would transmute a theoretical right

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[643] H. Lauterpacht, "The Grotian Tradition", (1946) 23 *B.Y.I.L* at 30-38.
[644] Josef Kunz,"Individual and Collective Self Defense in Article 51 of the Charter of the United Nations" (1947) 41 *A. J .I .L* 875. [Hereinafter, Kunz]
[645]D.W.Bowett, *Self Defence in International Law* (Manchester Univ.Press., Manchester, 1958) at 6 [Hereinafter, Bowett]
[646] Sorensen Max, *Manual of Public International Law* (London: Macmillan,, 1968) at 765.
[647] Dickinson," The Analogy Between Natural Persons and International Law in the Law of Nations," 26 Yale Law Journal at 265. See also, Myres McDougal., *International Law of War* (New Haven: Yale University Press,1994) at 247.
[648] *R v. Bottrell* (1981), 60 C.C.C (2d) 211; *R. v. Deegan* (1979) 49 C.C.C.(2d) 417; Section 34 (1) Criminal Code. R.S., c.C-34, s.1.; Kunz , *supra* note 644 at 876.
[649] C.G Fenwick, *The Principles of International Law* (New Haven: Yale University Press,1962) at 125.

> into a practical disaster. The idea that a state must sacrifice realism at the altar of conceptualism and risk defeat while prodded on by a "sacred duty"is incongrous. [650]

One of the theoretical conundrums surrounding the concept of collective self-defence is whether it in fact means the defence of others or a defence of a theoretical "comprehensive self."[651] In addition to these complexities,[652]the concept of self-defence is compounded by the (dis)honesty of its assertion by states.[653] Victims of aggression may therefore dispute assertions of the right by the presumed aggressor.[654]This ambiguity[655] compounds the theoretical and practical difficulties in the evaluation of the concept.

In examining the applicability of the principles of collective self defence to the ECOWAS intervention in Liberia, regard will be had to the customary international law, the practice of states, the ECOWAS PMAD, and subsidiary sources of international law such as judicial decisions and the opinion of writers. The analysis will however, be made within the context of collective security peculiarities of the West African sub-region. It is perhaps useful to start off with the practice and principles of the doctrine of collecticve self defence under customary international law.[656]

Contrary to the argument of Judge Oda in the celebrated *Nicaragua Case*[657] that the right of collective self-defence is of contemporary origin, scholars such as Georg

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[650] Yoram Distein, "International Law as a Primitive Legal System" (1986-7) 19 *N.Y.U.J.I.L* at 12.
[651] Myres McDougal & Florentino Feliciano, *Law and Minimum World Order-The Legal Regulation of International Coercion* (New Haven: Yale University Press, 1961) 246-260. [Hereinafter, McDougal & Feliciano]
[652] Ian Brownlie, "The Use of Force in Self Defense" (1961) 37 *B.Y.I.L* 183.
[653] Oscar Schacter, "Self Defense and the Rule of Law" (1989) 83 *A.J.I.L* at 259.
[654] Myres McDougal & Feliciano, *supra* note 651, *ibid*
[655] Shaw, M. N, *International Law* (Grotius Publications, London, 1991) at 698.
[656] Roger Clark, *supra* note 3 at 35.
[657] *Nicaragua Case, supra* note 462.

Schwarzenberger[658] have traced the practice to the provisions of the *Perpetual League* (1291) between the Swiss forest communities and the *Union of Utrecht* (1579) between Great Britain and France, which treaties acknowledged the concept of collective self-defence.[659]Thus, before the Civil War in Spain in 1936-1938 (where there was an express agreement by states not to aid the parties in the conflict), there existed alliances for collective self-defence.[660] Therefore, the doctrine of collective self-defence pre-dates the UN Charter provisions of Article 51.[661]

It is probable that the right of collective self-defence attained refinement as a rule of customary international law during the 19th century and early 20th century. At this period, the European continent and the Americas were the foci of the exercise of the right. It literally formed the theoretical basis for the continental and regional arrangements for security. It was entrenched in the Inter-American Treaty of Reciprocal Assistance concluded on 2 September 1947[662]vide Article 3 of that Treaty. During the negotiations for the United Nations Charter, the Latin American countries insisted that they would not sacrifice this right at the altar of the nascent United Nations.[663]

The right of collective self-defence was further confirmed by the United States policy of the famous *Monroe Doctrine.*[664] The right of collective self-defence, (further articulated in the Declaration of Lima) probably influenced the letter of Article 51 of the Charter of the United Nations, of which, later. It also probably influenced the Court's interpretation of the customary law right of collective self defence in the Nica*ragua Case*

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[658] Schwarzenberger, G. *A Manual of International Law* 6th ed.(New Jersey: Professional Books, 1976) at 153.
[659] Henry Wheaton, *Elements of International Law* (Washington: Carnegie Endowment, 1936)
[660] *Oppenheim's International Law, supra* note 425 at 1318.
[661] Starke, supra note 576 at 99.
[662] (1975) 14 *I.L.M.*1117
[663] De lima, *supra* note 483 at 94.

of which, later. It was not only the United States of America that affirmed the existence of the right as state practice and adopted it as a state policy. Other states such as Great Britain[665] made claims of acting in collective self defence with colonies as far away and as diverse as Persia, Egypt and Afghanistan.[666] Thus, in connection with the Kellog-Briand Pact of 1928, Great Britain observed that "there are certain regions of the world, the welfare and integrity of which constitute special and vital interest to our peace...their protection against attack is to the British empire a measure of self defense."[667] It was this liberal construction of the right that publicists have theoretically construed as the notion of a comprehensive self. This concept will be examined shortly.

However, the liberal construction of the right of collective self-defence in the guise of a virtually unlimited notion of comprehensive self was rejected by most publicists.[668] To Hans Wehberg, the British claim was sheer imperialism which "diminished the significance of the *Kellogg Pact* to a considerable degree."[669] To Bowett, it was sheer greed for terrirorial expansion.[670] Notwithstanding this quarrel with scholars, state practice, which reflected customary international law on the question, permitted a liberal notion of which states may act collectively to repel aggression against one state. Thus the claims by those powerful states characterized their conception of what they considered to be their spheres of influence. It is therefore safe to say that at customary international law, especially before the wind of anti-colonialism shrank the frontiers of those states, the right of collective self-defence was exercised on the basis of a common

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[664] *Ibid.*
[665] *Supra* note 646 at 257.
[666] Pearce - Higgins, 'The Monroe Doctrine' (1924) 5 *B.Y.I.L.*at 114
[667] R.I.I.A Documents (1928) Cmd.3109 at 25.
[668] Hans Wehberg, *The Outlawry of War* (Washington: Carnegie Endowmwnt for International Peace., 1931) at 86.
[669] *Ibid.*

regional security arrangement or where recognizable "vital interests"[671] were threatened by state aggression.

The concept of vital interest and similar linkages of interests or inter-connectivity of security, which scholars re-defined as the notion of a comprehensive self was a wide umbrella covering diverse notions including geographic and imperialistic assumptions. Often, however, it tended to involve states in a proximate or contigous relationship.[672] Dinstein, from his analysis of state practice, has argued that the doctrine of self interest or vital interest is sufficient to warrant an invocation of the right of collective self-defense[673] at customary international law. However, a caveat has been entered here, to wit; the security of states acting in collective self defence must be closely interwoven to warrant the invocation of that right. In effect, an attack on one state must by some objective criteria constitute an attack on the other states so as to warrant their intervention in the exercise of the right of collective self-defense.

These broad principles have not drowned loud theoretical and practical complaints about the nature of what constitues a comprehensive self. Nor about whether a state which is contigous to an attacked state but not itself the direct victim of the aggression may lawfully invoke the doctrine of collective self-defence under customary international law and about whether a state far away from the field of original aggression but possessing some vital interest there may purport to be acting in collective self-defence with the initial victim. McDougal and Feliciano have articulated state practice in this regard and their explanation accords with customary international law on the matter.

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[670] Bowett, *supra* note 618 at 213.
[671] *Supra* note 24 at 208-9.
[672] *Nicaragua Case*, *supra* note 462 at 220. See particularly Judge Jennings.
[673] Dinstein, *supra* note 650 at 24. See also, F.B Schick," The North Atlantic Treaty And The Problem of

According to them,

> [A] claim of collective self-defence arises whenever a number of traditional bodies-politic asserting certain demands for security as well as common expectations that such security can be achieved only by larger cooperative efforts, and purporting to define their respective identification structures so as to create a common overlap and interlock, confront an opponent, and present themselves to the rest of the general community as one unified group or collectivity for purposes of security and defence."[674]

The above formulation therefore encompasses the following elements as creating a comprehensive self. There must be first, a prior assertion by the relevant states of mutual securities arising from overlapping and interlocking securities and a public assertion and recognition of the means of securing that interlocking security by collective means.

In the context of West Africa, the overlapping and interlocking nature of the ethnic groups there, their common assertion of collective security and assurance of it through collective efforts amounts to a *prima facie* case of the existence of a comprehensive self in the sub-region. This aspect will be addressed later. However, at customary international law, the existence of a comprehensive self only creates a right of collective self-defence and does not impose it as a duty.[675] Furthermore, for states in the region to assert the right of collective self-defence the attack on one must constitute a clear and present danger to the inter-locking security of the entire region. Having regard to the dangers of abuse and hegemonic tendencies, the threshold bar of security must of necessity remain high if the right is not to be a cloak for the ulterior interests of the "assisting state(s)."

The exercise of collective self-defence is naturally premised upon a confrontation with immediate danger and this raises the issue of who construes or determines what danger or aggression is "clear and present" to that comprehensive self to warrant an exercise of the right of collective self-defence? Customary international law allowed for

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Peace" (1950) 62 *Juridical Review* at 26.

[674] McDougall & Feliciano, *supra* note 651 at 248.

[675] Bowett *supra* note 645 at 218. But see Kelsen, "Is The North Atlantic Treaty in Conformity With The Charter of The United Nations?" (1951) 19 *Univ. of Kansas L.Rev.* at 1.

"auto interpretation"[676]of what constituted clear and imminent danger short of armed attack.[677] In consequence, the exercise of collective self defense was not only probable in the absence of actual armed attack but members of the comprehensive self were at liberty to determine by themselves the existence or otherwise of an imminent armed attack.[678] As McDougal & Feliciano insist, "imminence of attack of such high degree as to preclude effective resort by the intended victim to non-violent modalities of response has always been recognized as sufficient justification."[679]

Oppenheim supports this view and cites some historical instances such: (a) the British preemptive shelling in 1807 of the Danish fleet at Copenhagen to frustrate Napoleon's (French) secret pact between Denmark and France;[680] (b) The Amelia Islands invasion in1817 by the United States to flush out pirates on the Spanish Island; (c) the German invasion of Luxembourg and Belgium in 1914; (d) the sinking of the French fleet at Oran in 1940; and (e) the Anglo-Soviet preemptive collective self defensive occupation of Iran in 1941. In the 1928 Kellog-Briand Treaty for the Renunciation of War, France and the United States had declared that a state purporting to be exercising the right, "was alone competent to decide whether circumstances require recourse to war in self defence."[681]

This principle has drawn considerable disagreement from some publicists. Lauterpacht contends that "such a claim is self contradictory as it purports to be based on legal right and at the same time, it dissociates itself from regulation and evaluation of the law."[682] During the Nuremberg trials, the Tribunal[683] reasoned in a similar vein and held

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[676]J.W.Verzijl, *International Law in Historical Perspective* (A.W.Sijthoff-Leyden, 1968) at 225.
[677] Von Glahn, *Law Among Nations* (Massachusetts: Simon&Schuster Co., 1996) at 563.
[678] *Ibid.*
[679] McDougal and Feliciano, *supra* note 651 at 238-241.
[680] Oppenheim, *International Law,supra* note 478 at 214-221 See also Karlsrud, "The Seizure of the Danish Fleet,1807" (1938) 32 *A.J.I.L.* at 280.
[681] E. Miller, "Self Defense, International Law, and the Six Day War" 20 *Is. L.R.* 49.
[682] H.Lauterpacht, *supra* note 643 at 180.
[683] Judgment of the International Military Tribunal at Nuremberg, 1946-*Trial of German War Criminals Before the The International Military Tribunal* (1947) at 208.

that "whether action taken under the claim of self defence was in fact aggressive or defensive must ultimately be subject to investigation or adjudication if international law is ever to be enforced."[684] In conclusion, it may therefore be said that at customary international law, the principle of auto-interpretation[685]is permitted but the claim is justiciable.[686]

Another element of the right of collective self-defence is the immediacy of the response to the danger or peril constituted by the initial unlawful attack. On this question, it seems that regard is had to the means and readiness of articulating a response by the comprehensive self to the danger in issue.[687] The difficulty here is that a belated response could confuse an exercise of the right with acts in the nature of reprisals. Save for cases of "continuing aggression",[688]the repulsion of the initial aggression has to be executed with relative despatch and under circumstances where such response is the only option "to secure a return to lawful norms."[689] As American Secretary of State Daniel Webster of the United States argued in his correspondence in the *Caroline Case*,[690] for the right to avail the United Kingdom, it should,

> [s]how a necessity of self defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation and the action must involve nothing unreasonable or excessive; since the act justified by the necessity of self defence, must be limited by that necessity and kept clearly within it.[691]

Webster's test largely remains the classical summation of the right individually or in the

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[684] Subhas Khare, *supra* note 454 at 74.
[685]Oscar Schacter "The Right of States to Use Armed Force" (1984) 82 *Michigan Law Review* at 1620.
[686] Yoram Dinstein, *War, Aggression and Self Defence* (Cambridge: Grotius Publications,1994) at 251. hereinafter, Dinstein] Dinstein notes that between 1920 and 1939, there is little treaty support for the doctrine of anticipatory collective self defence in Europe especially with reference to the *Convention For the Definition of Aggression of 1933,The Pact of Balkan Entity 1934 and the Sadabad Pact of 1939.*
[687] McDougal & Feliciano, *supra* note 624 at 239.
[688] *Oppenheims International Law*, *supra* note 425 at 418.
[689] *Supra* at 419.
[690] R.Y.Jennings, "The *Caroline* and the *McCleod Cases*" (1938) 32 *A.J.I.L* at 117.
[691] *Ibid.* See also Wheaton, *supra* note 632 at 441.

collective context under customary law. Similarly, the response was to be limited "in intensity and magnitude to what was reasonably necessary promptly to secure the permissible objectives of self defence under the conditions of necessity."[692] The twin essential elements of necessity and proportionality in the exercise of the right of collective self defence at customary international law was recently reaffirmed by the Court in the *Nuclear Weapons Case*[693] and in the *Nicaragua Case*,[694]of which later. A summary of the elements of customary international law on collective self-defence may be stated as follows: (a) there must be an unlawful armed attack or at least an imminent unlawful armed attack,(b) the attack or imminence thereof must be of such character that there cannot be a reasonable expectation by the victim of a recourse to pacific settlement, (c) save for "continuing aggression", the response to the attack or the imminent armed attack must be of an immediate character regard being had to the nature of the attack or threat and the means of its removal, (d) the response must be reasonable and proportional to the threat or the unlawful aggression, (e) The states acting collectively must have some acceptable degree of proximate relationship between them and must have given adequate notive to the international community of the existence thereof. Before applying these principles to the ECOWAS intervention in Liberia, the next section will examine the impact, of the UN Charter on the customary international law regime on collective self-defence.

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[692] McDougal, *supra* note 651 at 588. In a rather extreme case, the United States' army in 1916, struck deep into Mexican territory to permanently incapacitate some bandits who engaged in cross border raids from Mexico to the United States' territory. See G.A. Finch, "Mexico and the United States " (1917) 17 *A. J.I.L* at 399-406.

4.4: COLLECTIVE SELF-DEFENCE AND THE UN CHARTER

Article 51 of the Charter of the United Nations[695] provides as follows,

> Nothing in the present charter shall impair the inherent right of individual or collective self defense if an armed attack occurs against a member of the United Nations until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take any time such action as it deems necessary in order to maintain or restore international peace and security.[696]

The true meaning of these words in the application of the principles of collective self-defence has been problematic.[697] While some publicists argue that the right the customary international law right of collective self defence has been tempered by and subsumed in Article 51,[698] another school of thought maintains that the right exists in its classical state untouched by the Charter provisions.[699] The former view seems better and has been affirmed by the Court in the *Nicaragua Case*. In the view of the Court, Article 51 has not "subsumed and supervened"[700] the customary international law right of collective self-defence. Hence, it may be said that there are two parallel regimes on the right of collective self-defence.

The salient issue here is that "in considering the extent to which the United Nations Charter has limited the scope of the customary international law on collective self defence ...one cannot ignore the effectiveness or otherwise of international machinery

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[693] *Supra* note 368.
[694] *Supra* note 462.
[695] *Supra* note 388. (Hereinafter, Article 51 of the Charter]
[696] *Ibid.*
[697] Shaw, *supra* note 655 at 245.
[698] *Ibid.*
[699] Waldock. C.M.H, "The Regulation of the Use of Force by Individual States in International Law" *General Course on Public International Law*, 166 Hague Recueil des Cours, no.2 (1952) at 451.

as a substitute for individual action."[701] This is the crux of the problem. The corollary question therefore is the extent, if any, of the influence on customary international law of the spirit and letter of Article 51.[702] Without preempting the arguments that will appear below, it seems that the question whether the practice of states has been qualified by Article 51 betrays an expectation that Article 51 of the Charter ought to curtail the rather liberal regime of collective self-defence under customary international law.[703] The question may well be asked, should state practice be read subject to the Charter?

Having regard to the prevailing circumstances under which the Charter was negotiated, drawn, and agreed to by member states and its *raison d'etre*, there is a discernible attitude and disposition against the use of force by states in their dealings with one another. Article 2(4) of the Charter expressly reinforces this teleological disposition.[704] The provisions of Articles 25 and 28 of the Charter further confirm this view as they seek to confer a monopoly of the use of force in international law on the Security Council. This raises the presumption that the recourse to the right of collective self-defence should be a last resort by states and therefore be justiciable under Article 51 only. For the purposes of assessing the validity of the ECOWAS members that their action in Liberia also falls within the rubric of Article 51, an evaluation of the opinion of scholars and the Court on the various aspects of the issue is prudent. This will of course, take into consideration the collective peculiarities of the West African sub-region as affirmed and iterated in the PMAD of ECOWAS.[705]

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[700] *Nicaragua Case, supra* note 462 at 94.
[701] *Supra* note 659 at 315.
[702] *Ibid.*
[703] *Supra*, at 318.
[704] Kelsen on " Collective Self Defense", *supra* note 641 at 785.
[705] Preamble to the PMAD, *supra* note 438.

Scholars like Kelsen,[706] Jessup[707] and Henkin[708] have argued that under Article 51, the right to collective self-defence is conditional upon the occurrence of an armed attack. In the rather blunt words of Henkin, the argument on anticipatory collective self defence under this regime "is unfounded, its reasoning fallacious and, its doctrine pernicious."[709] On the other hand, another formidable school of thought represented by Dinstein[710] and McDougal and Feliciano[711] has made a persuasive case for anticipatory self-defence under Article 51. Although the Court in the *Nicaragua Case* did not express a view on this issue, because it was decided under the normative regime of customary international law, the Court did affirm that under customary law, "the exercise of this right is conditional on armed attack."[712] Be that as it may, when Article 51 is read in the overall context of the Charter to avoid and reduce the frequency and scope of armed conflicts, the better view would be that exercise of the right under Article 51 is limited to cases of armed attack.

What then is an armed attack and who determines when it has occurred? The consensus of opinion is that this is a privilege of the victim of the armed attack. However, like under customary international law, this privilege is clearly justiciable.[713] What is the meaning of "armed attack"? It seems that the Court and a majority of the publicists have no disagreement with the definition offered by Article 3, paragraph (g) of The Definition of Aggression annexed to General Assembly Resolution 3314 XXIX.[714] Thus, in addition to sending regular forces across an international border, "the sending by or on behalf of a

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[706] Kelsen, *supra* note 641. However, he takes the rather liberal view that the victim of the attack need not be a member of the United Nations as Article 51 purports.
[707] Phillip Jessup, *A Modern Law of Nations* (New York: Macmillan, 1948) at166.
[708] Louis Henkin, *supra* note 453 at 141-145.
[709] *Supra* at 141.
[710] Dinstein, *supra* note 650 at 18.
[711] McDougal &Feliciano, *supra* note 651 at 233.
[712] *Nicaragua Case, supra* note 462 at 103.
[713] Thomas & Thomas, *supra* note 476 at170.

state of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to...armed attack if carried out by regular forces- constitutes armed attack for the purposes of Article 51."[715] It is remarkable that the Court adopted a rather restrictive interpretation of this phrase. This perhaps affirms the teleological intention of the Charter. Although the dissenting view of Judge Jennings accords more with the reality of world geo-politics, it opens the door for a liberal recourse to further violence.

The question of who may lawfully act in collective self-defence under Article 51 has not been any less controversial under Article 51than under its customary international law counterpart. The Court in the Nicaragua Case indirectly considered the concept of a comprehensive self. The facts of the case as found by the Court were that sequel to the collapse of the Somoza regime and its replacement by the junta led by Daniel Ortega, the Ortega junta reneged on its promises to the United States. It did so by adopting socialist policies and also by refusing to democratize. Further, the junta became very friendly with the communist regime of Fidel Castro in Cuba and with the communist bloc. The United States of America then started aiding other neighbouring countries in the hemisphere such as Honduras, El Salvador, and Costa Rica to subvert the Ortega regime. The United States also funded and assisted a band of Nicaraguan rebels dedicated to the overthrow of the Ortega led regime. In addition, the United States also mined Nicaraguan ports.

In consequence of these activities, the Nicaraguan government filed a claim in the Court against the United States. On the question of whether the U.S could maintain a

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[714] *Supra* note 457.

[715] *Supra* note 462. But see the contrary opinion of Judge Jennings at page 543 of the Report on the need for a more liberal construction of the phrase and which argument appears quite realistic in the context of contemporary realities

claim of collective self with El Salvador for acts of aggression allegedly carried out by the Ortega government some four to five years before the US aided subversion of Nicaragua, the Court had cause to address the notion of collectivity of interest and the alleged requirement that a victim state must request third-state help before a claim of collective self-defence would be admissible. This aspect of the Court's decision is difficult to reconcile under customary international law and the Charter.

First, the condition of formal request for help is novel and of dubious validity.[716] No such requirement is evident on the face of Article 51. Second, it seems to misapprehend the philosophy of the right of collective self-defence. Collective self-defence is not necessarily the defence of another state but the defence of self on the principle that an aggression on another state constitutes (for reasons including mutual security and interdependence), a direct attack on a comprehensive self. The "assisting" State in effect defends itself. It is not a champion of the primary victim of the aggression. Third, the Court, in adjudicating the *Nicaragua Case*, was probably unduly influenced by the Inter-American Treaty of Reciprocal Assistance of which Article 3(2) makes the exercise of the right of collective self defence conditional upon a request by the "primary victim.[717] It is difficult to appreciate why the Court imposed this limitation on the right of collective self defence especially as it purported to be applying "customary international law" and not the provisions of the Rio Declaration.[718] Even if the Court was motivated by the understandable need to restrict the scope of the right to collective self-defence, it still does not warrant the interpretation placed on it by the Court. The request for assistance is therefore not part of the jurisprudence of customary international law nor of Article 51.

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[716] *Supra*, at 104.
[717] U.N.T.S. 21, at 93.

Regarding the question of parties who may partake in collective self-defence under the Charter, Kunz has argued that in the absence of any treaty obligation, collective self defence is only a right and not a duty but this hardly answers the question.[719] The Court in the *Nicaragua Case* did not specifically address this issue as none of the parties made an issue of it.[720] However, it appears that there is no strict requirement for the existence of a formal defence pact between states before recourse can be had by them to the right of collective self-defence under Article 51.[721]Dinstein[722] shares this view and in the absence of any provision to the contrary on the face of Article 51, it is probably correct. It may therefore be said that where the security of states are closely interwoven and such a circumstance is brought to the knowledge of third states, an attack on one state may constitute an attack on the other states. Accordingly, the right of collective self-defence under Article 51 may be invoked.

However, Bowett has argued that having regard to the *travaux preparatoires* of the Charter and Article 51, the exercise of the right to collective self defence is limited to states in a defense pact[723] or in a regional arrangement for mutual security.[724]This argument is intriguing as it re-echoes the debate whether the right of collective self-defence originated from the Latin American position at the Dumbarton Oaks Conference

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[718] P. Pirrone, "The Use of Force in the Framework of the O.A.S" in Cassese ed., *supra* note 532 at 123.
[719] Kunz *supra* note 644 at 877. See also Waldock,"The Regulation of the Use of Force by Individual States" (1952) 81 *Hague Recuil* at 445.; Armstrong, " Regional Pacts: Strong Ports or Storm Cellars" 27 *Foreign Affairs* 351.
[720] *Supra* note 462 at 108. However, it noted that there is no general right to intervene on the basis of disapproval of another State's economic, political, social or foreign policy. In the Court's view, "for such a general right to come into existence would involve a fundamental modification of the customary law of non-intervention" *Nicaragua Case, supra* at 108.
[721] Josef Kunz, "The Bogota Charter of the Organization Of American States" (1948) *A.J.I.L.* 508.
[722]Dinstein, *supra* note 686 at 24. See also, F.B Schick, " The North Atlantic Treaty And The Problem of Peace" (1950) 62 *Juridical Review* at 26.
[723] Bowett *supra* note 645 at 218.
[724] But see Kelsen, "Is The North Atlantic Treaty in Conformity With The Charter of The United Nations?" (1951) 19 *Univ. of Kansas Law Review* at 1.

or whether it ante-dates it. The question has already been resolved in favour of the latter view. Whilst the *travaux preparatoires* might be helpful in elucidating the provisions and intention of the Article, it is well to remember that the Latin American experience is not necessarily summative of the practice of states as it was at best, a continental peculiarity of a universal phenomenon. As such, Bowett's arguments on this issue may not be wholly correct. In sum, the right of collective self defence under Article 51 is not limited to states in a regional pact but the threshold bar of connectivity of collective security must of necessity remain high if the right is not to be a cloak for aggression or regional hegemony.

As regards the question of the acceptable time span between the act of aggression and the exercise of the right of self-defence, it appears that Article 51 maintains the customary international law rule that it should be relatively contemporaneous to the attack. On the issue of the requirement that states resorting to collective self defence should immediately report" measures taken in the exercise of the right to the Security Council, some publicists like Kelsen have argued that this is mandatory. Who determines whether the measures taken by the Security Council are necessary to restore the peace? Kelsen has argued that this is a responsibility of the Security Council.[725] On the other hand, other scholars like Greig have argued that the requirement of reporting to the Security Council of measures ostensibly taken in collective self-defece is directory and exhortatory and not mandatory. His argument is that doing otherwise does not invalidate the exercise of the right.[726] However, the better view, and as further confirmed by the

[725] Kelsen, *supra* note 614.
[726] W.C.Greig, "Collective Self Defense : What Does Article 51 Require?" (1991) 40 *I. C.L .Q* at 366

Court in the *Nuclear Weapons Case.*[727] is that the assisting state must report the steps taken by it to the Security Council as it substantially reflects on the *bona fides* of the belief in the right. This view is consistent with the attitude of the Charter to restrain the use of force by states and also enhances the justiciability of the assertion of the right.

On the question of the scope of the right of collective self defence when the Security Council intervenes, it seems that the obligation to cease acting in collective self defence would only arise when the steps taken by the Security Council are by themselves capable of removing the attack giving rise to the resort to collective self defense. An extreme view contends that states exercising the right of collective self defense have the right to pursue the right to a logical conclusion by defeating the aggressor and imposing a peace treaty on the vanquished aggressor.[728] This view is problematic as it introduces to the right alien elements of reprisals, punishment and self-help. It seems that in this context, the right is not at large and must be measured on the standard bar of what is reasonable and proportional to the initial aggression.

In summary, the principles governing the exercise of collective self-defence under the Charter may be stated as follows:

- There must be an armed attack and the determination of its occurrence is the responsibility of the victim or comprehensive self but this claim remains justiciable and is subject to public scrutiny.
- There must be a strong mutual security relationship or nexus between the victim and the assisting state constituting a comprehensive self and the initial aggression must constitute a clear and present danger to the security of the comprehensive self.

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[727] *Supra* note 368.

[728] Feinstein, "The Legality of The Use of Force by Israel in Lebanon-June 1982" (1985) 20 *Is.L.R.*365. It is interesting to note that the Israeli incursion deep into Lebanese territory in June 1982 which served to effectively cripple the prospects of future attacks by militant Palestinians operating from Lebanon has been justified on this principle.

- Save for cases of "continuing" aggression, the response by the comprehensive self must be immediate, regard being had to the nature of the aggression and the reasonable time it would take to assess the manner and the nature of the response to be adopted.
- The victim of the armed attack, that is in this case, the comprehensive self as represented by the ECOWAS is obliged to report all measures taken in collective self defence to the Security Council.
- Parties to the conflict are to hold their peace once the Security Council has effectively intervened to restore peace.

Having examined the principles of collective self defence under the regimes of the Charter and customary international law, it is clear that the Charter regime is narrower and better if recourse to use of force is to be reduced. Accordingly, notwithstanding the coexistence of both regimes, the parameters of the Charter regime will be used in evaluating the legality or otherwise of ECOWAS action in Liberia under the doctrine of collective self-defence.

4.5: JUSTIFICATION OF ECOWAS UNDER COLLECTIVE SELF-DEFENCE

The threshold point for the invocation of the right of collective self-defence is the occurrence of an "armed attack."[729] The question now is whether the NPFL invasion of Liberia and or its support by some third states rose to the level of an armed attack as contemplated by Article 51.[730] The Definition of Aggression[731] contained in the General Assembly Resolution 3314 of December 1974 contains binding normative definitions of what constitutes armed attack. This has further been articulated and reiterated by the Court in both the *Nicaragua Case* and the *Nuclear Weapons Case*. However, some publicists like Bruno Simma are pessimistic in this regard. In his view, "despite the exertion of considerable effort a generally recognized definition of 'armed attack' has not been found."[732]

Be that as it may, Article 3, paragraph (g) of The Definition of Aggression annexed to General Assembly Resolution 3314 XXIX[733]which defines armed attack as including the sending of regular forces across an international border; the sending by or on behalf of a state of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to...armed attack" would suffice for the purposes of this analysis. Being a declaration of the United Nations adopted with substantial support by states, it is evidence of international law on the matter.[734] The issue to be resolved is whether the facts of the rebellion and the ostensible third state support for it constitutes armed attack for the purposes of Article 51 and customary international law on collective self defence.

The alleged support given to the rebels by various states within and around the

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[729] Bruno Simma *et al* eds., *The Charter of the United Nations- A Commentary* (London:Oxford University Press, 1994) at 662-678. [Hereinafter, Simma]
[730] Simma *supra* note 729 at 668.
[731] *Supra* note 401, *ibid.*
[732] Simma, *supra* note 729 at 669.
[733] *Supra* note 457, *ibid.*
[734] Higgins, *supra* note 387, *ibid.* But see the contrary opinion of Judge Jennings at page 543 of the Report on the need for a more liberal construction of the phrase, which argument appears quite realistic in the context of contemporary weapons of warfare and military intrigues.

West African sub-region has already been documented in the preceding chapters. While a repetition of those allegations is hardly helpful, for the purposes of the elucidation of the arguments here, some of the more pertinent instances will be revisited and their legal implications addressed. The training of the NPFL rebels in Libya has already been detailed in chapter two. The Libyan motive is rather controversial. Some commentators such as Mark Huband who interviewed some of the ex-NPFL rebels contend that Ghadaffi wanted a beachhead in West Africa and control of the sophisticated American Omega Relay satellite in Liberia.[735] Other reasons include his alleged desire to use the NPFL rebels to seize the relatively large number of Americans in Liberia.[736] Be that as it may, the crucial question here is whether the alleged support of the various factions by diverse states is sufficiently attributable to those states and whether it constitutes armed attack.

It is not in doubt that the NPFL rebels launched the rebellion from Cote d'Ivoire and allegedly received extensive support from both the Ivoirean government and the government of Burkina Faso.[737] These are not without legal consequences. The critical test here is whether the government of Cote d'Ivoire and Burkina Faso merely neglected to safeguard their territories from being used by the rebels or whether they (the two governments) voluntarily placed their territories at the disposal of the rebels. In the former case, it would be a delict at international law. While these speculations may have their relative elements of truth, they afford little probative utility to the international lawyer. As the Court pertinently noted in the *Corfu Channel Case*,

> [I]t cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves prima

[735] Huband, *supra* note 74 at 65.
[736] *Ibid.*
[737] *Supra* at 76.

facie responsibility nor shifts the burden of proof."[738]

Moreover, the use of a state's territory by a rebel group does not amount to armed attack but may constitute subversion of the victim state. In addition, the support of the warring factions by some States does not necessarily make them the agents of their benefactors. As the Court held in the Nicaragua Case, it must be shown that the warring factions were not only created by those states financing their campaign but that they were under their control.[739] Offering logistic support and finances to the rebel group is not enough. The element of control is critical. In the absence of probative proof that Cote d'Ivoire, Burkina Faso and Libya created and controlled the warring factions, the question of the existence or not of an armed attack under this heading does not arise.[740] But this is not the end of the matter as the sending of 400 Burkina Faso troops by the Burkinabe government to Liberia to fight alongside the NPFL rebels is a different kettle of fish.

As already indicated in sections four and five of chapter two, the government of Burkina Faso acknowledged sending over 400 of its state army to the NPFL rebels which it justified as "moral support"[741] for the rebels. The legal significance of this fact is quite radical. The decision of the Court in the *Nicaragua Case*[742] leaves little doubt that the Burkinabe action took the matter out of the rubric of indirect aggression[743] to one of actual direct aggression constituting armed attack. According to the Court,

> [I]n particular, it may be considered to be agreed that an armed attack must be understood as including, not merely action by regular armed forces across an international border, but also the sending by or on

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[738] *Supra* note 463 at 18.
[739] *Supra* note 462 at 100-120.
[740] *Ibid.*
[741] Estimates range from 400 to 1,000. See Ofodile, *supra* note 135 at 384. Candy Shiner, "Peacekeepers Caught up in Renewed War in Liberia" *Christian Science Monitor*, 27 October 1992 at 7. See also, Aning Kwesi "The International Dimensions of Internal Conflict: The Case of Liberia and West Africa" Online>http://www.cdr.dk/wp-97-4, *supra* note 276.; D. Elwood Dunn, "The Civil War in Liberia" in Taisier M.Ali & Robert Matthews, eds., *Civil Wars in Africa-Roots and Resolution* (Montreal-Kingston, McGill-Queeen's University Press., 1999) 89 at 90.
[742] R.St. J. MacDonald," The Nicaragua Case: New Answers to Old Questions" (1986) 34 *Can..Y.I.L* 127.
[743] Pierluigi Lamberti Zanardi, "Indirect Military Aggression" in Cassese, ed., *The Current Legal Regulation of the Use of Force*, *supra* note 532 at 111.

> behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to inter alia to an armed attack conducted by regular forces, or its substantial involvement therein.[744](emphasis added)

Although these remarks were made in respect of the customary law regime, they apply with equal force to the Charter regime[745]on collective self-defence. Accordingly, the sending of 400 Burkinabe troops to Liberia by the government of Burkina Faso to fight alongside the NPFL rebels is nothing short of an armed attack against Liberia. Even if the despatch of Burkinabe troops to Liberia was at the request of the rebel NPFL in Liberia, it still constitutes armed attack against Liberia since the existence of a civil war does not necessarily mean the disappearance of Liberian sovereignty. As the Court held in the *Nicaragua Case,* state sovereignty and the doctrine of non-intervention "would certainly lose its effectiveness ...if intervention were to be justified by a mere request for assistance by an opposition group in another state."[746] Accordingly, the unlawful despatch of Burkina Faso troops across its borders to Liberia to help in the rebellion against Doe violated intenational law and constituted armed attack against Liberia.

Having crossed the threshold point on collective self defence, the second test is whether ECOWAS and its constitutive States is a comprehensive self warranting its intervention. In answering this question, the crucial test ought to be the substantiality of the new comprehensive self created by public assertions of an inter-connectedness of securities by the affected states. In the Liberian case, its collective security arrangement in the ECOWAS PMAD is sufficient to create and assert its comprehesivity of self. The preamble to the ECOWAS PMAD and its substantive Articles leave no doubt about the existence of a comprehensive self. The preamble does not only "recognize that Member States belong to the same geographical area",[747]it affirms the consciousness of ECOWAS that regional security can best be achieved by pooling together their resources within a

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[744] *Nicaragua Case, supra* note 462 at 630, para 195.
[745] Simma, *supra* note 769 at 687.
[746] *Supra* note 462 at 126.
[747] *Supra* note at 438.

common agency.[748] Thus, in addition to the shared economic interests of the ECOWAS member states, there exists an understanding and public affirmation in the sub-region of the interlocking and inter-dependent nature of their mutual securities. This understanding finds ample expression in the substantive provisions of the PMAD and the ECOWAS Non-Aggression Pact. Some of the pertinent provisions of the ECOWAS Protocol on Non-Aggression and the Protocol Relating to Mutual Assistance on Defence (PMAD) are as follows:

> Article 2 of the Non-Aggression Pact,
>
> Each member shall refrain from committing, encouraging or condoning acts of subversion, hostility or aggression against the territorial integrity or political independence of the other member states.[749]

The provisions of Articles 3 and 4 impose a positive duty on member states to ensure that their territories are not used for acts of regional and inter-state subversion.

Article 3 of PMAD:

> [E]ach member state shall undertake to prevent foreigners on its territory from committing the acts referred to in Article 2 above against the sovereignty and territorial integrity of other member states.[750]

Article 4 of PMAD:

> Each member state shall undertake to prevent non-resident foreigners from using its territory as a base for committing the acts referred to in Article 2 above against the sovereignty and territorial integrity of member states.[751]

In addition, the PMAD articulates ECOWAS explicit approbation of the doctrine of collective self defence within the region as Article 2 of the PMAD provides that,

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[748] *Ibid.*
[749] Reproduced in Weller, *supra* note 5 at 18.
[750] *Ibid.*
[751] *Ibid.*

> [M]ember states declare and accept that any armed attack or aggression directed against any Member state shall constitute a threat or aggression against the entire Community.[752]

Members of the ECOWAS are by virtue of Article 3 of the PMAD obliged to give mutual aid and assistance for defence against any armed threat or aggression.[753] This objective is to be achieved through the instrumentality of an Allied Armed Force of the Community to be composed of nationals from existing armed forces of the Community earmarked for that purpose and placed at the disposal of the Community in cases of any "armed intervention."[754] The phrase "armed intervention" seems to have a contextualized meaning regard being to the provisions of Article 15 (1). That Article provides that "intervention by AAFC (the Community's Allied Force) shall in all cases be justified by the legitimate defence of the community." However, the ECOWAS Community shall not employ this provision to intervene "if the conflict remains purely internal."[755]

It is very pertinent to note that by virtue of Article 18 of the PMAD, a conflict is not internal if, as in the Liberian case it is "actively maintained and sustained from the outside."[756] Nor would it still be construed as an internal matter when it actually spilt over into Sierra Leone with catastrophic consequences. The impact of the Liberian crisis on Sierra Leone formed the substance of the deliberations of the United Nations General Assembly at its 86th Plenary meeting held on the 21st of December 1993.[757] The subsequent Resolution passed by that body made the following findings,

- that the spill over effect of the Liberian crisis had caused serious destruction and devastation of the productive areas of the territory of Sierra Leone and of its economy as a whole,[758]

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[752] *Ibid.*
[753] *Ibid.*
[754] Article 13 of PMAD.
[755] Article 18 of PMAD.
[756] *Ibid.*
[757] International Assistance to Sierra Leone, G.A. Res.48/196, U.N.GAOR Supp. (No. 49) at 171, U.N Doc. A/48/49 (1993).
[758] Paragraph 5, *ibid.*

- The conflict in Liberia had "devastated lives and properties in the eastern and southern provinces of Sierra Leone,[759] causing a "massive outflows of refugees and displaced persons."[760]

On the foregoing grounds grounds, it is argued that in addition to the treaty obligations imposed on member states by the ECOWAS Non-Aggression Pact and the PMAD, their clearly exists the collectivity of interest and a comprehensive self justifying the assertion of a right in collective self-defence by ECOWAS.

It has been argued by critics of the intervention that the decision to intervene via the framework of the PMAD was flawed and invalid for alleged non-compliance with the provisions of the PMAD and the ECOWAS Treaty.[761] This argument is apparently formidable. In support of the argument, Article 6 of the PMAD has been invoked. The Article provides that

> The Authority[762]shall decide on the expediency of military action and entrust its execution to the Force Commander of the Allied Forces of the Community (AAFC)[763]

Since the decision to intervene militarily was taken by the Standing Mediation Committee, a delegate of the ECOWAS Authority[764]of Heads of States and Government as provided above, the decision to intervene, it has been argued, was invalid. It has to be recalled that the ECOWAS Authority of Heads of State and Government, met on 30 May 1990 in Gambia established a Community Standing Mediation Committee.[765] This body, made up of four members of the ECOWAS Authority itself was appointed by that organ

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[759] Paragraph 6, *ibid.*
[760] *Ibid.* Note also that in addition to other Resolutions of the General Assembly, Resolution 49 of 1994 appealed to the world community to aid the states around Liberia contend with the refugee crisis. See G.A. Res. 49/26, 49 U.N. GAOR Supp. (No. 49) U.N.Doc.A/49/49 (1994).
[761] Kofour, *supra* note 136 at 534.
[762] Article 1 of the PMAD defines "Authority" as "the Authority of Heads of States and Government as defined in Article 8 of the ECOWAS Treaty." See Weller, *supra* note 5 at 20.
[763] *Ibid.*
[764] *Ibid.*
[765] ECOWAS Authority of Heads of State and Government, Decision A/DEC.9/5/90, Relating to the Establishment of the Standing Mediation Committee, Banjul, Republic of Gambia, 30 May 1990. Reproduced in Weller, supra note 5 at 38-39.

and chaired by the chairman of ECOWAS. Its mandate is to suggest and explore amicable ways of settling disputes in the sub-region and report to the full Authority.[766] It was the Standing Mediation Committee that recommended despatch of peacekeeping troops to Liberia. The argument that the decision to intervene taken by the Standing Mediation Committee, instead of the full body of the Authority of Heads of States, was illegal is erroneous and ignores subsequent developments on the issue.

At the extra-ordinary Summit of the Authority convened at Bamako, Mali between November 27-28,1990, "the Authority expressed its appreciation to the members of the Mediation Committee for the initiatives taken in finding a peaceful resolution to the crisis in Liberia" and moreover, "ratified the ECOWAS peace plan for Liberia as embodied in the Banjul Communique and Decisions of the Standing Mediation Commiittee adopted on 7 August 1990." [767] Although this clear ratification of the decision to intervene taken by the Standing Mediation Committee was *ex post facto*, arguments on the purported incompetence of the decision to intervene are not well founded.

The other conditionality for justification under collective self-defence is whether the response by the West African states was both necessary, timely and proportional to the threat posed by the conflict. In evaluating this aspect of the right to collective self-defence, regard should be had to the complexities of the civil war in Liberia, its impact on the countries in the sub-region, the relative difficulties in raising the necessary military response and finally, the most reasonable solution to the problem. The impact of the Liberian conflict on Liberians, the region and the international community at large have been explored in chapter two. It has already been noted that six weeks after the rebellion, the neighbouring countries were already feeling the pangs and pain of the conflict as the

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[766] *Ibid.*

[767] ECOWAS Authority of Heads of State and Governemnt, Decision A/DEC.1/11/90 Relating to the Approval of the Decisions of the Community Standing Mediation Committee Taken During its First Sessions from 6-7 August 1990, Bamako, Republic of Mali, 28 November 1990. Reproduced in Weller, *supra* note 5 at 111.

rate of the inflow of refugees was a already stretching the capacity and security of those states.[768] Meanwhile, both the OAU and the UN, beyond platitudes and homilies on peaceful coexistence and amicable settlement of conflicts, ignored the spreading disaster. Meanwhile, the crisis had recorded numerous atrocities and was becoming increasingly ethnicized, a phenomenon which, given the problems of the Berlin partitioning of Africa, was bound to draw the conflct, as it did, beyond the frontiers of Liberia. It is therefore argued that in view of the factors listed above, ECOWAS response was necessary.

On the question of timeliness of response and reporting to the Security Council of measures taken under Article 51 of the Charter, it is important to recall that Doe's letter[769] inviting the ECOWAS to intervene in the anarchy in Liberia was addressed to that body on the 14th July 1990. Three weeks thereafter, precisely on 7th August 1990, the ECOWAS Standing Mediation Committee, acting on behalf of the ECOWAS Authority of Heads of States took the following decisions[770] on Liberia:

- Established an ECOWAS Cease-fire Monitoring Group (ECOMOG),
- Ordered a Cease-fire in Liberia,
- Ordered all combatants in the conflict to surrender all arms to the ECOMOG
- Ordered all parties to the conflict to refrain from the importation of arms and ammunition into Liberia,
- Proposed the establishment of a democratically elected government in Liberia,
- Proposed the establishment of an Interim Government for Liberia.[771]

That these far reaching decisions were taken just shortly after Doe's intimation to ECOWAS about the crisis in Liberia, can hardly be said to have been belated; moreover, the crisis was in the nature of a continuing aggression. It is thus clear that the response by the ECOWAS was very timely especially in the context of the efforts necessary to

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[768] Weller, *supra* note 5 at 35.
[769] Weller, *supra* at 60.
[770] *Supra* note 521.
[771] *Ibid.* As already noted, these decisions were subsequently ratified by the full body of the Authority of Heads of States of ECOWAS.

convene sixteen different states to agree on a common agenda.

However, some commentators have argued that the ECOWAS response which ultimately led to the resolution of the crisis and the installation of a democratically elected government in Liberia was not proportional[772] to the threat posed by the Liberian crisis. This argument, attractive as it seems on the surface, makes a profound mistake. As Loius Henkin noted, any inquiry into the role of law "must take into account the state of 'the system'-the character of international society and of the law at a given time."[773] This is not to mean that scholars or international lawyers are at liberty to torture legal rules to yield particularly pliable and amenable interpretations and justifications. Far from that; the issue here is that to the extent that argument on this aspect of the question fails to take into consideration the prevailing conditions and the intrinsic nature of the issues at hand, the objection remains suspect.

It is well to recall the earlier arguments on the emergence of a pragmatic, instead of a doctrinaire approach to peacekeeping or collective self-defence as the case may be. As already noted, a study of multi-lateral responses to civil strife with international repercussions shows that peacekeeping measures are more or less a necessary demand of the nature of the crisis. Peacekeeping bodies intervening in intra-state conflicts increasingly insist on universally observed elections in resolving those conflicts. In a situation like Liberia's where the rebellion threatening the region was rooted in the poverty of governmental legitimacy,[774] it stands to reason that democratic elections should be part of the recommended remedy by those states acting in collective self-defence. It is therefore argued that to the extent that the ECOWAS created and sustained an environment whereby the warring factions were disarmed and a genuine democracy instituted to enable the Liberian people to rebuild their country, the ECOWAS response was proportional to the threat posed by the civil war. Moreover, the measures taken

[772] Kufour, *supra* note 136 at 535.
[773] Henkin, *How Nations Behave*, *supra* note 453 at xii.
[774] Luard, *supra* note 333.

enabled most of the neighbouring member-states to reclaim their threatened sovereignty and did not go beyond the ECOMOG mandate, nor was it limited by Doe's original invitation.

The next criteria for justification in collective self defence under the Charter is that parties acting in collective self-defence should speedily report to the Security Council, the steps taken by them in pursuance of Article 51 of the Charter. Here the ECOWAS action may well be the paragon of scrupulous compliance. Although the ECOWAS decision to act *inter alia* in collective self-defence was taken on the 7th of August 1990, it is significant to note that the Security Council was informed of those decisions within 48 hours. Indeed by a letter[775] dated 9 August 1990 and addressed to the Security Council, the Security Council was informed of the steps taken by the ECOWAS. The pertinent aspects of the letter read thus,

> I consider it necessary to invite you to this brief session on the tragic situation in Republic of Liberia and on the efforts at the regional level to restore peace to that country...the Authority held its first Summit in Banjul from the 6-7 August 1990 and came up with effective steps for ending the Liberian tragedy. Conscious of its responsibility for the maintenance of peace and security in the sub-region, the Committee on behalf of the Authority of ECOWAS Heads of States and Government, decided as follows:
>
> - There shall be an immediate cease-fire. All parties to the conflict shall cease all activities of a military and paramilitary nature as well as all acts of violence.
> - Under the authority of Chairman of ECOWAS, a cease-fire Monitoring Group (ECOMOG), was set up; it comprises military contingents from member states of the of the ECOWAS Standing Mediation Committee, as well as Guinea and Sierra Leone, Liberia's neighbours.
> - ECOMOG shall assist the Committee in supervising the implementation and ensuring strict compliance of the cease-fire by all the parties to the conflict.
> - That a broad-based Interim National Government shall be set up in the Republic of Liberia to administer that country and organise free and

[775] U.N Doc. S/21485 of September 10, 1990 (Annex)

fair elections, leading to a democratically elected government. The composition of the Interim Government shall be determined by all parties to the conflict, including political parties and other interest groups.

- None of the leaders of the warring parties shall head the Interim Government.
- For the purposes of carrying out a peacekeeping role and monitoring the peace process in Liberia, a special emergency fund was established. There shall be voluntary contribution by the member states of ECOWAS, the OAU and other friendly countries to the special fund. A budget of about US$50 million is projected for financing the military operations, and for the immediate humanitarian needs of the Liberian people.[776]

The letter concludes with a statement that the ECOMOG action was not designed to take sides in the conflicts and urging the international community to support the ECOWAS in its initiative. The letter dispels any doubt as to whether the ECOWAS satisfied this leg of the conditions for a valid invocation of the rights of collective self defence as provided by Article 51 of the Charter.

The last condition is that the states acting in collective self defence should cease further actions in that regard once the Security Council takes effective steps to resolve the conflict. With particular reference to the case of the ECOWAS action in Liberia, it is remarkable that the Security Council not only approved of the actions taken by the ECOWAS but within 18 months after the initial ECOWAS intervention, engaged in an unprecedented alliance with that body. The alliance, in the form of the creation of the United Nations Observer Monitoring Group in Liberia (UNOMIL) lasted from 1992 to 1997.

In view of the various implications of this novel arrangement and its impact on collective security and the provisions of the United Nations Charter relating to regional arrangements, attention will shift in this thesis to the continuing expansion of the meaning of the phrase, "threat to international peace," and its role as the trigger mechanism for the provisions of chapter 7 of the UN Charter. The next chapter will argue

[776] U.N Doc. S/24811 of November 16, 1992 (Annex)

that recent state practice shows an untidy and incoherent compliance with the relevant Charter provisions on regional ebforcement actions. In most cases like that of Liberia, the relationship between regional bodies and the Security Council in the application of chapter 7 of the UN Charter is accidental and leaves much to be desired. This seems to present the Security Council with the need to ratify whatever presumptous or unathourized measures adopted by multi-lateral security organizations without the prior authorization of the Council. The cases of Liberia and Kosovo are in point. One of the grave dangers in this evolving practice is that regional organizations may now proceed to engage in illicit military interventions in the knowledge that presented with a *fait accompli*, the Security Council would "ratify" such brazen usurpation of responsibility. With respect to this chapter, it is argued that the ECOWAS intervention in Liberia is not only legaly justifiable under the principles of invitation by an officila and recognized governmnet (though threatened) but also under the principles guiding resort to the doctrine of collective self-defence under Article 51 of the UN Charter.

CHAPTER FIVE

CHAPTER 8 OF THE UN CHARTER AND RATIFICATION OF THE ECOWAS ACTION BY THE SECURITY COUNCIL

> The principal task of the student of international organization is not to waste more time debating over regionalism versus universalism but to study the ways in which, in concrete cases, the two principles can be utilized in combination and the standards to be applied in determining the dosage of each to be adopted.[777]

5.1: INTRODUCTION

It is now common knowledge that the increasing rate of internal conflicts of international character imposes a huge strain on the United Nations.[778] This trend has probably resulted in the apparent readiness of the United Nations to welcome regional initiatives or collaboration in the maintenance of international security or in some cases, to merely spectate when such efforts are taken by regional organizations. Witness the cases of the OAS intervention in Haiti, the Islamic Conference and Arab League initiatives in the Somali Crisis, the Association of South East Asia Nations efforts in the Cambodian crisis and the OSCE initiatives regarding the new states in the defunct Soviet Union and [779] the 1999 European Union/ NATO bombing of Yugoslavia.

On the Liberian crisis, the Report of the United Nations on the Observer Mission in Liberia, (UNOMIL) acknowledges that "the United Nations, from the beginning of the conflict, supported the efforts of the ECOWAS member states."[780] This sense of support for the ECOWAS[781] gradually and eventually yielded to a diminished UN role in Liberia. This subordination of the UN was justified by Secretary-General of the United Nations as "reaffirming ...commitment to a systematic cooperation between the United Nations and

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[777] Pitman Potter, cited in Akindele, *supra* note 343 at foreword.
[778] According to Boutros Boutros Ghali, in 1994 there were 70.000 U.N Peacekeepers in 17 operations around the world at a cost of $3.3billion per year. See Binaefer Nowrojee *supra* note 86 at 129.
[779] Binaefer Nowrojee, *supra* note 86 at 129.
[780] Assessment of the Special Representative of the SG, Report SG UN Doc. S/25402 of March 12, 1993.
[781] *Ibid.*

a regional organization, as envisaged in Chapter VIII of the Charter.[782] The UN contented itself with giving ECOWAS assistance on political reconciliation, humanitarian assistance and electoral assistance.

It is remarkable that this Report and subsequent proceedings and events leading to the unprecedented close cooperation between a regional organization and the United Nations has escaped the relative close scrutiny of scholars. In this chapter an attempt will be made to examine the legality of the ECOWAS action in Liberia in the context of this trend and as it impacts on the Charter of the United Nations on enforcement actions. Towards this objective, this chapter is divided into three sections. Section one is introductory.

Section 5.2 is a doctrinal exercise on the pertinent aspects of the Charter on the maintenance of global peace. The essence is to highlight the general consensus of writers and commentators that it is the Security Council that has the responsibility of maintaining peace globally. The critical question here is whether having regard to the provisions of the Charter, a regional body can proceed to undertake enforcement actions without the prior approval and authorization of the Security Council. It also explores the continuing expanded meaning of the phrase, "threat to international peace" in its role as the trigger mechanism for the provisions of chapter 7 of the UN Charter.

Section 5.3 examines the juridical nature of the UN Security Council resolutions and traces the process of ratification of the ECOWAS action in Liberia. However, this section contends that recent state practice on chapter 8 of the Charter is untidy and incoherent and also examines the process by which the aberrant action of the ECOWAS in Liberia gained apparent legitimacy by ratification. It is remarkable that the United Nations Security Council passed 16 unanimous resolutions approving and appreciating the ECOWAS enforcement action in Liberia. Similarly, the General Assembly passed 6 resolutions commending and justifying the ECOWAS action in Liberia. The corollary

[782] *Ibid.*

issue is whether a post facto ratification of any such enforcement actions is possible within the framework of the United Nations. That is to say, is there a place for ratification and retroactive validation of regional enforcement actions at international law? Could those resolutions have legitimated the ECOWAS initiative in Liberia? Regard is also had to the probable reasons why the ECOWAS action in Liberia enabled it to gain the approval by the Security Council and the General Assembly? This is achieved by a short comparison with OAU intervention in Chad and OAS intervention in Haiti.

As the dangers inherent in such ex post facto ratification are apparent, this section sets the tone for discussion on how the emerging trend may be remedied. Section three and indeed the whole of chapter five conclude with the observation that in view of the Security Council's ratification, the ECOWAS action, notwithstanding some of its obvious defects, was lawful at international law.

5.2: REGIONAL ENFORCEMENT ACTIONS AND THE UN CHARTER

> As a way of providing ECOMOG with sufficient means to ensure the implementation of the Agreement, and with the support of the Security Council, the Secretary-General established a trust fund, under the auspices of the United Nations, that can be utilized to enable African countries to send reinforcements to ECOMOG, to provide assistance to countries already participating in ECOMOG, and for humanitarian assistance, elections and demobilization.[783]

> In the final quarter of the twentieth century the character and significance of international law, I believe, will be importantly influenced by the Third World.[784]

The unified response of the Security Council to the Gulf conflict raised the prospect of a "new world order" of global commitment to the maintenance of international law and removal of threats to international peace.[785] As subsequent events indicate, the euphoria died a sudden death as it was apparently motivated by concerns other than the vindication of international law or a sincere concern for collective security. The fond expectation of a world governed by law and of the willingness of the great powers to lend their might in defence of right, justice and international law has since the end of the Second World War been frustrated by their self serving, provincial and/ or ideological agendas. The end of that war had given rise to a resounding determination and resolve by states to "save succeeding generations from the scourge of war."[786] The United Nations was set up with a fundamental purpose of maintaining "international peace and security."[787] This was to be achieved primarily by taking "effective collective measures for the prevention and removal of threats to the peace."[788]

Although the phrase "threat to international peace" is not defined in the Charter, the body capable of making that determination was provided for in Chapter five of the

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[783] Boutros Boutros Ghali, .Report of the U.N Secretary General, United Nations Observer Mission in Lnberia, Online> hppt://www/un.org/Depts/DPKO/Mision/unomil/-b.htm, accessed on 19/11/98.
[784] Louis Henkin, *How Nations Behave supra* note 381 at xiii.
[785] McCoubrey & White, *supra* note 453 at vii.
[786] The Charter of the United Nations, *supra* note 388.
[787] Article 1, *ibid.*
[788] *Ibid.* Underlining supplied.

Charter. This chapter makes clear provision for the mechanism by which such crucial functions may be exercised. While Article 7 of the Charter establishes the Security Council, Articles 23 and 24 state the responsibility of the Security Council.[789] Article 24 provides that the Members of the United Nations,

> [C]onfer 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.[790]

However, the power to maintain international peace is not to be exercised at the whims and caprices of the Security Council. Article 24 (2) delimits and circumscribes the scope of this responsibility. Thus it clearly provides that "in discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations."[791] To reinforce the supremacy of the Security Council in the maintenance of international peace, the determination of what constitutes a threat to international peace and security is the sole responsibility of the Security Council. Hence Article 39 of the Charter provides that

> [T]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression 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.[792]

This regime of supreme and primary responsibility for the maintenance of international peace appears to be tempered by a desire in the Charter to strike a balance between regional imperatives and the need for international collective security. In effect, some of the responsibilities relating to the maintenance of international security need not be discharged by the Security Council itself but may be discharged on its behalf by regional

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[789] *Ibid.*
[790] *Ibid.*
[791] *Ibid.*
[792] Article 39 (Underlining supplied).

agencies.[793] Thus, Article 52 provides that

> [N]othing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action.[794]

This compromise is quickly qualified by the provisions of the Charter which limits this margin of regional initiatives to measures not necessitating what it refers to as "enforcement actions."[795] Thus, while the regional bodies may be used for enforcement actions by the Security Council, they cannot lawfully seize such initiatives on their own volition. In the express words of Article 53 the Charter,

> [T]he Security Council shall, where appropriate, utilize such regional agencies or arrangements for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.[796]

The rules above purport that if any enforcement action is to be undertaken by any regional agency, it must be with the prior authorization of the Security Council first sought and obtained. For the assessment of the lawfulness of the ECOWAS action in Liberia under the prevailing Charter regime, three issues arise here. The first is the meaning of threat to international peace. The second is the meaning of "enforcement action". The third is if an enforcement action is undertaken to remove a threat to international peace but without the prior authorization of the Security Council, may such an action be accorded *ex post facto* ratification. It is upon these three sets of issues that the legality of the ECOWAS action in Liberia and consequent UN response will be evaluated.

However, it must be remembered that the Charter provisions on regional

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[793] H.A.Amankwah, "International Law, Dispute Settlement and Regional Organizations in the African Setting" in Snyder and Sathirathai, eds., *supra* note 600 at 197-206.
[794] Article 53 of the Charter, *supra* note 388.
[795] *Ibid.*
[796] Article 53 (Underlining supplied).

arrangements and initiatives like other provisions of the Charter are ostensibly designed for inter-state conflicts.[797] Thus, Article 2 (4) containing the ban on the use of force and Articles 39, 51, 52 and 53 which contain the exceptions thereto apply basically to member states in their relations with each other.[798] Be that as it may, the emergence of the contemporary rash of civil wars has probably resulted in the Security Council engaging in an ingenious and relatively liberal construction[799]and interpretation of Article 39 of the Charter. This awesome provision confers on the Security Council the powers to act, and if need be, override the limitations posed by the principles of non-intervention.

It is upon making this determination, that it may take measures necessary for its removal. This duty overrides the prohibition on the Council and states from interfering in matters which are purely "internal"[800]to a state, when the crisis in issue constitutes a clear and present threat to international peace and security. The determination of the existence of a threat to international peace and security is the gateway to enforcement actions and military delimitation of state sovereignty. Therefore, it is important that the phrase "threat to international peace and security" be properly scrutinized and its boundaries delimited with as much precision as possible.

Recent state practice reflecting the gradual evolution of a holistic and global conception of collective security (which has been discussed in chapter 3)[801]points to the emergence of a rather liberal regime on the determination of what constitutes threat to international peace and security. This trend has been most noticeable in the increasing cases of outbreak of civil wars. It is interesting to note that the Somali debacle,[802] the Yugoslavian crisis,[803]the Sierra Leonean crisis and several other cases of civil wars have

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[797] McCoubrey & White, *supra* note 445 at 4.
[798] *Supra*, at 5.
[799] Simma *et al*, eds., *supra* note 729 at 565-611.
[800] Article 2 (7) UN Charter, *supra* note 388.
[801] Michael Reisman, "Coercion and Self Determination: Construing Charter Article 2(4)" (1984) 78 *A.J.I.L.* 642.
[802] Wippman on *Consent*, *supra* note 523 at 234.
[803] But see Mark Weisburd, " The Emptiness of the Concept of *Jus Cogen*, as Illustrated by the War in Bosnia-Herzegovina" (1995-6) *17 Michigan J.l of Int'l. Law* at 1.

all been determined by the Security Council as constituting threats to international peace and security. The collapse of a government in a civil war, genocide, and refugee crises have been construed in contemporary times as threats to international peace and security and thus beyond the domestic jurisdiction of the affected state.[804] In other words, internally generated crises which physically impact on neighbouring states are being increasingly perceived of as threats to international peace warranting the intervention of the Security Council in the primary source zone of crisis.

As states have pursuant to Article 25 of the Charter undertaken to "accept and carry out the decisions of the Security Council in accordance with the Charter" it is beyond doubt that where such determinations have been made, member states are obliged to collectively enforce such decisions.[805] While widespread human rights abuses,[806]the denial of the right to self-determination, extreme violence,[807]civil wars, genocide and overthrow of democratic regimes by force may now be construed as threats to international peace where they impact on neighbouring states, the true test may probably be political rather than legal, even though the issue may be presented otherwise.[808] As the gateway to the use of force by the Security Council, and by delegation, regional bodies,[809]the need for clarity and objectivity as to the elements of and *a priori* contents of what constitutes a threat to international peace can hardly be overstated.

The malleability of the concept of threat to international peace appears to be

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[804] The process of making customary international law is informal, haphazard and is not usually deliberate. See Henkin, *How Nations Behave*, *supra* note 453 at 32-34.
[805] McCoubrey & White, *Supra* note 445 at 32. See also, *Reparation Case* [1949] I.C.J. Rep. at 178-9.
[806] Simma, *supra* note 729 at 612.
[807] Jochen Frowein, "Action With Respect to Threats to the Peace, Breaches of the Peace, Acts of Aggression" in Simma eds., *supra* note 729 at 611. [Hereinafter, Frowein]
[808] *Ibid.* The Belgian intervention in the Katangese rebellion and the seemingly internal nature of the Biafran civil war in Nigeria have been distinguished on this basis. The ongoing debate as to the alleged difference between "threats to the peace" and "danger to the peace" are not helpful. According to Prof. Frowein, "an abstract distinction between the threat to the peace and the mere endangering of peace does not appear possible." Frowein, *supra*, at 623. But see N.D White, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* 2nd ed., (Manchester: Manchester University Press, 1993) at 38-48.
[809] Kelsen, *supra* note 641 at 727-8.

substantially reduced or avoided on the rare occasions where the Security Council has made such decisions by unanimous votes.[810] However, the practice of the Security Council seems to indicate an appreciable latitude in its determination of what constites a threat to international peace.[811] Needless to say, for the Security Council to make the determination that a particular crisis is a threat to international peace, it needs the relevant information from those states who are directly confronted with the threat. This is probably the aspect where the margin of appreciation possessed by regional bodies becomes very useful.[812]This aspect will be further explored in the last chapter.

Be that as it may, the elasticity of the concept of threat to international peace as McCoubrey and White argue, is apparent in the extensive and varied use made of it[813] between 1965 and 1968.[814] Similarly, it is reflected in the contemporary[815]resurgence of civil conflicts. One may refer to the examples of Iraq,[816]Yugoslavia,[817]Somalia,[818]Haiti, of which later, to buttress this point. Why should the crisis in Yugoslavia be construed as a threat to international peace when the chronic civil war in Sudan has remained relatively ignored inspite of the endless bloodshed and genocide there and the destabilizing impact on neighbouring states? Why Iraq and not Turkey? Are the Kurds in Iraq better deserving of protection that their Turkish kins?

In the Liberia case, it suffices to note that the Security Council by Resolution 788 of 1992 made a determination that the violence in that country was a threat to international peace.[819] Having crossed that threshold,[820]the next issue is what is an

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[810] Frowein, *supra* note 807 at 610.
[811] Frowein, *supra* at 613.
[812] B. Boutros Ghali, *Agenda for Peace*, (1992) SC Doc.S/24111, 17 June 1992.
[813] C.G Fenwick, "When is There a Threat to the Peace?-Rhodesia 61 *A.J.I.L* 753-5
[814] McCoubrey & White, *supra* note 445 at 37.
[815] H. Freudenschub, "Article 39 of the UN Charter Revisited: Threats to the Peace and the Recent Practice of the UN Security Council" (1993) 46 *Austrian Journal of Public International Law* at 1-39.
[816] Following the Iraqi invasion of Kuwait in August 1990, the United Nations Security Council adopted Resolution 688 of 5 April 1991 determining that the Iraqi suppression of the Kurds was a threat to international peace.
[817] SC/Res 713, 46 UN SCOR (1991)
[818] McCoubrey & White *supra* note 445 at 41.
[819] UN Doc. S/Res.788, 45 UN SCOR (1990)

"enforcement action"? Article 53 of the Charter and other provisions of the Charter are not helpful, as they do not offer any definition of this all-important phrase.[821] The editors of the *European Commentary on the Charter of the United Nations* are of the considered view that by virtue of the *travaux preparatoires* of the Charter, all measures under chapter 8 of the Charter, without exception, are enforcement measures.[822] On the other hand, a section of North and South American scholars are agreed that it refers to use of military force and mandatory sanctions excluding purely defensive actions.[823] The better view seems to be that it relates to those actions (excluding defensive acts) which ultimately require military coercion or force for their effect. This much was the finding of the Security Council in the *Dominican case*.

In the *Dominican Case*, the collective measures taken by the OAS against the Dominican Republic which fell short of armed force was impliedly held by the Security Council not to be an enforcement action as contemplated by chapters 7 and 8 of the Charter. The Security Council's three power resolution merely urged the Council to "take note"[824] of the OAS action. In effect, the economic sanctions by the OAS against the Dominican Republic as a regional action not requiring the use of armed force for its execution was construed as not being an enforcement action for the purposes of Article 53.[825] This interpretation by the Security Council is however incompatible with its subsequent reaction to the Cuban Quarantine of 1962.[826] Here the Security Council by necessary implication decided that the naval blockade imposed on Cuba by the US/OAS

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[820] Ofodile, *supra* note 135 at 411.
[821] J. Wolf, "Regional Arrangements and the UN Charter" (1983) 6 *E.P.I.L* at 289-95.
[822] Simma, eds., *supra* note 729 at 732.
[823] McCoubrey & White, *supra* note 445 at 46; See also, Michael Akehurst, "Enforcement Action by Regional Agencies With Special Reference to the Organization of American States" (1967) 7 *B.Y.I.L.* at 175-227
[824] In 1960, there was an unsuccessful attempt by President Trujillo of the Domican Republic to assassinate President Betancourt of Venezuela. The member states of the OAS acting under Articles 6and 8 of the Rio Treaty agreed to impose sanctions on the Dominican Republic and a break of diplomatic relations with it. At the Security Council, the Soviet Delegate argued that the OAS action amounted to an enforcement action requiring the prior authorization of the Security Council. UN.Doc.s/4491 (1960)
[825] Akindele, *supra* note 343 at 110.
[826] U.S. Dept. of state, (1962) Bulletin xlvii at 15.

and which obviously required military manoeuvres for its effectiveness was not an enforcenment action requiring the Council's prior authorization.[827] It may well be that in this case, the heavy hand of superpower politics in the Security Council was triumphant.

Be that as it may, the hallowed grounds of enforcement action can hardly be defiled by cosmetic use of the term "peacekeeping."[828] As the learned editors of the European Commentary on the Charter have noted,

> [I]t is problematic to state categorically that peacekeeping is not enforcement action because peacekeeping activities can be performed in various guises. It is apparent that some observation missions function as means for peaceful settlement of disputes. But it is difficult to draw a line which will ensure in every particular case, that peacekeeping forces do not resort to coercive measures; especially when the forces are on the initiative of a regional arrangement.[829]

The short point here is that the ECOWAS action in Liberia, being a clear use of military force, albeit for the ostensible good of the region and Liberia, was an enforcement action requiring the prior authorization of the Security Council first sought and obtained. However, scholars such as Binaefer Nowrojee have argued that regional enforcement actions may be validly undertaken without the prior authorization of the Security Council provided that the enforcement action "is consistent with the Principles and Purposes of the United Nations.[830] This argument, attractive as it may appear, is hardly compatible and consistent with the clear letter of the Charter as already stated. Having made that determination, the next issue is whether in spite of the absence of a prior authorization of the enforcement action taken by the ECOMOG, the Security Council was competent to ratify such enforcement action by ECOWAS.

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[827] UN Doc S/PV.992-8(1962). See also, Akindele, *supra* note 343 at 110.
[828] Christopher Greenwood "Protection of Peacekeepers: The Legal Regime" (1996) 7 *Duke J. of Int'l. &Comp.*l. at 185.
[829] Georg Ress, "Article 53 of the United Nations Charter" in Simma ed., *supra* note 729 at 732.
[830] Binaeffer Nowrojee, *supra* note 86 at 131.

5.3: THE PROCESS AND CHARACTER OF RATIFICATION

The United Nations is legislator as well as judge and executive and its judgments are political not juridical.[831]

In examining the nature of the powers of the Security Council to ratify enforcement actions undertaken by regional bodies without its prior authorization, the attitude of the Security Council in the *Dominican Case* is perhaps helpful.[832] In that instance, the Soviet Union summoned the Security Council in September 1960 "to approve the decision of the OAS, so as to give it legal effect and render it more effective."[833] Another member of the Security Council, Poland, joined the Soviet Union in arguing that the "Security Council is entitled to annul or revise as well as complete regional measures."[834] It is remarkable that no member of the Council doubted the powers of the Security Council to annul, revise or complete enforcement actions undertaken by a regional body. However, the crucial determinant here was whether the sanctions imposed on Venezuala amounted to "enforcement actions" as contemplated by Article 53 of the Charter.

The position of the Security Council is consistent with its paramount role as the ultimate guardian of peace and security in the world. In principle, the primacy of the Security Council in the maintenance of peace is not necessarily impaired merely because a regional organization jumped into a conflict before the Security Council did. The Security Council may ratify or reverse the measure taken by the regional bodies if undertaken without its permission first sought and obtained, or even where authorization was given but exceeded by the regional organization. Where then does this power come from and what is the juridical nature and character of UN Security Council resolutions.

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[831] Louis Henkin, *supra* note 453 at 168.
[832] See UN SCOR 893rd mtg. Sept. 8 1960 at 4.
[833] U.N Doc.S/PV.893. par.24. The obvious implication according to Inis Claude is that the groundwork was being laid by the Soviet Union to disapprove of the measures taken by the OAS. See Inis Claude, "The OAS, the UN and the United States" International Conciliation (March 1964) at 48-9.
[834] *Ibid* at 38-39. See also, R. St MacDonald, "The Developing Rrelations Bbeteween Superior and Coordinate Bodies at International law" (1964) 2 *Can.Y.I.L.* at 21.

Malintoppi has argued that being the apex body of a universal organization committed to certain values and aspirations, its resolutions represent the manifestation of what its members believe to be their general feeling.[835] Given the unrepresentative character of that body, and glaring inconsistencies in the resolution of international crises, one cannot be very enthusiastic about Malintoppi's articulation of the issue. Another difficulty with his conception of the matter is that in the absence of that quality of repetition which evidences a normative prescription or obligation at international law, it is difficult to believe that a resolution adopted by the five concurring permanent members plus five other selected members of the council is a true reflection of general feeling on an issue. At best, the resolution may well pre-empt an embryonic norm or actually be the product of hard and shrewd behind-the-scene negotiation between the permanent members of the Council as opposed to a true attestation of consensus on the question.[836] If the juridical character of a resolution of the Security Council is to have meaning, it is argued that such resolutions should substsntially scale the above-mentioned hurdles.

Although Schwebel[837]and Arrangio-Ruiz[838]have their doubts about the normative content and character of resolutions (especially these of the General Assembly), most scholars are agreed that the Resolutions passed by the Security Council, depending upon their content and context have a normative effect.[839] Higgins[840]and the editors of *Oppenheim*[841] (to mention a few) are of the view that the United Nations Security Council resolutions passed in the discharge of its responsiblities under chapter 7 are

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[835] J.Castenada, *Legal Effects of United Nations Resolutions* (New York: Columbia University Press., 1969) at 170-1.
[836] Kirgis, *supra* note 503 at 336.
[837] Before he became a judge at the International Court of Justice. Stephen Schwebel, "The Effect of Resolutions of the U.N. General Assembly on Customary nternational Law" (1979) *Proc. Am. Soc'y. Int'l L* at 301-05.
[838] Arangio-Ruiz, "The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Nations" (1972) 3 *Receil des cours* at 457.
[839] Georges Abi-Saab, 'The Development of International Law by the United Nations" in Snyder and Sathirathai, eds., *supra* note 600 at 221.
[840] Rosalyn Higgins, "The UN and Law Making" (1970) *Proc. Am. Soc'y. Int'l L* at 42. See also su*pra* note 387.
[841] *Supra* note 493 at 10.

binding on all states. In addition to an analogy to treaty obligations at international law which could be made in respect of Charter obligations, the Security Council being the apex organ of the UN body, is deemed to portray in many instances, the practice of states as to what they consider to be obligatory. Accordingly, apart from its resolution passed pursuant to chapter 7 of the Charter, its other resolutions may, depending on the circumstances, generate new norms and also serve as a revelation of the subjective element of international law i.e *opinio juris*.[842] This may well be a function of the fact that the permanent members of the Security Council largely represent the configuration of the balance of military and economic might, veritable tools in the enforcement of "law".

On the other hand, the United Nations, in a manner of speaking acts as a peculiar form of legislative body for the globe. This it does by the process of the adoption of Resolutions. According to Sir Robert Jenning and Arthur Watts, "resolutions adopted unanimously, being a matter of consensual agreement, are sometimes regarded as equivalent to treaties concluded in simplified form."[843] With specific reference to Resolutions passed pursuant to Chapters 7and 8 of the Charter which is the *raison d'etre* of the United Nations, there is hardly any doubt that they are more than recommendations. Membership of the UN or any other body imports obligation to comply with the rules of that organization. Article 25 of the Charter makes clear the normative nature of decisions on international peace taken by the Security Council as members are obliged to comply with the measures adopted. Where an obligation created by treaties of a regional body conflict with the Charter obligations of a member of the United Nations, there is no doubt that the Charter provisions will prevail.[844] Similarly, it cannot be questioned that the Security Council has the legal authority to remove threats to

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[842] But see Anthony D'Amato who dismisses the concept of opinio juris as "otiose.," D'Amato, "Custom and Treaty: a Response to Professor Weisburd" (1988) 21 *Vanderbilt J. of Transn'l law* 459 at 471.
[843] *Oppenheimm's Internartional law,* supra note 478 at 48.
[844] Article 103, of the UN Charter, *supra* note 388.

international peace. If it decides to achieve this by authorizing a state or a regional body to use force on its behalf, such use of force is for all practical purposes, an exercise of the will of the Security Council on behalf of the United Nations.[845]

What is required is a clear indication by the Security Council of the "extent and nature"[846] of the armed force to be used by the agent state or regional organizations. Of course, any such use of force whether by the Security Council directly or any of its appointees must be geared towards the validation of the principles and purposes of the United Nations. Thus, if states exercising this function on behalf of the Security Council wish to use less or more force, they must first seek and obtain a mandate or change thereof from the Security Council.[847] This is usually done at the Security Council by the adoption of relevant resolutions. Reference may be made to the instances presented by the cases of Southern Rhodesia,[848]and Yugoslavia, of which, later. However, there is hardly any reason at international law why an enforcement action undertaken by a reginal organization without prior authorization of the Security Council may not be subsequently ratified by the Security Council if circumstances warrant. In the overall context of the Liberian tragedy, it stands to reason that the Security Council resolutions on the crisis have a normative quality. An examination of the ratification process by the Security Council of the ECOWAS enforcement action is necessary.

The ratification process of the ECOWAS action in Liberia started in 1992. In effect, while the Liberian civil war had blossomed into a full humanitarian and regional crisis in six months of its explosion, the world feigned ignorance of the unfolding tragedy. It is equally ironic that it was the other African states of Zaire and Ethiopia who

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[845] McCoubrey & White, *supra* note 445 at 238.
[846] *Ibid.* It should however be noted that authority should not be delegated without adequate safeguards to prevent national interests from outstripping collective security interests.
[847] *Ibid.* Some scholars have rightly argued that even if the actions of the ECOMOG was an enforcement process, they were justified, regard being had to the fact that it was the rebels who attacked the ECOMOG troops. Thus, the ECOMOG was entitled to act in self defence even if it may be construed as constituting enforcement actions. See Weller, *supra* note 5 at 241.
[848] McDougal & Reisman, "Rhodesia and the United Nations: The Lawfulness of International Concern" (1968) 62 *A.J.I.L.* at 1-19.

at the material times were non-permanent members of the Security Council, that blocked the attempts by the Liberian Permanent Representative at the United Nations to table the crisis before that body.[849] In addition, France trying to "protect its business interests in the war torn country,"[850]was not very enthusiastic about bringing the crisis to the agenda of the Security Council.

These issues raise doubts about the propriety of having as members of the Security Council, states which have little semblance of legitimacy and order at home. How could Zaire and Ethiopia, war torn and ravaged as a result of decades of internal misrule and corruption, sit on the Security Council? It is equally significant in this context to recall that at the start of the Rwandan genocide, Rwanda was presiding at the Security Council! It will be argued in the last chapter that instead of having only states as members of the Security Council, regional organizations should have seats in the Security Council especially when matters of security involving their regions are under consideration. If this arrangement was in place, the similar machinations of France (a permanent member of the Security Council) to frustrate UN intervention would have been nipped in the bud. This arrangement would also ensure that other conflicts totally ignored by the Security Council, but no less deadly and destructive would at least be tabled on the Council's agenda.

As an aside, the case of the people of Southern Sudan is directly in point. In the harrowing words of a church leader in that war-ravaged part of the country, "I have told my people: let us die silently now'...the world has forgotten us."[851] The "political domination and brutal oppression dictated by Khartoum"[852]of the people of Southern

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[849] Raymond Hopkins, " Anomie, System Reform, and Challenges to the UN System" in Miltom Esman and Shibley Telhami, eds., *International Organizations and Ethnic Conflict* (Ithaca, New York: Cornell University Press, 1995) at 95. Both countries apparently did not want to set the precedent whereby their similarly circumstanced civil wars would eventually become the subject of Security Council intervention.
[850] Binaefer Nowrojee, *supra* note 86 at 142.
[851] Julie Flint, "The Unwinnable War" (1993) Nov-Dec. *African Report* at 46-49.
[852] Angela Lloyd, "The Southern Sudan: A Compelling Case for Secession" (1994-5) 32 *Columbia J. of Transn'l Law* 419 at 420.

Sudan has largely gone unnoticed notwithstanding its chronic character.[853] Sudan epitomizes the inequities and instabilities born by the imposition of artificial boundaries drawn in accord with colonial preferences rather than national interests.[854] Its neglect by the Security Council, however, is one out of many instances casting serious doubts on the presumption that members of the Security have a global, rather than a parochial agenda in maintenance of world peace. The corollary point here is that unless an honest and serious effort has been made to bring a crisis to the attention of the Security and that body fails and/ or refuses to act accordingly, it will be difficult to justify any regional initiative ostensibly designed to address that situation, even if the Security Council thereafter purports to raftify such unilateral actions. The Charter process ought to be exhausted before any such multi-lateral actions could be taken.

Be that as it may, Resolution 788 of 1992[855] is the starting point in the ratification of the ECOWAS action in Liberia by the Security Council. That resolution:

- Determined that the situation in Liberia was a threat to "international peace, particularly in West Africa as a whole,
- Welcomed and commended ECOWAS actions in Liberia,
- Condemned all attacks on the ECOMOG troops and recognized the ECOWAS action in Liberia as a peacekeeping exercise,
- Imposed a complete arms embargo on Liberia except for arms destined for the ECOWAS in Liberia,
- Requested all member states to respect the measures established by ECOWAS to bring about a peaceful solution to the conflict in Liberia,

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[853] *Supra*. The conflict has raged on since 1956.
[854] *Supra* at 421. See also, Adila Abusharaf, "The Legal Relationship Between Multinational Oil Corpoations and the Sudan: Problem and Prospets" (1991) 43 *Journal of African Law* 18.
[855] *Supra* note 324.

- Decided to remain seized of the matter.[856]

Similarly, Resolution 813 of 1993 made on the 26 of March 1993[857]reaffirmed the above mentioned aspects of Resolution 788 of 1992. In addition, it demanded that all parties cooperate with the Secretary-General of the United Nations and with ECOWAS to ensure the full and prompt implementation of the Yamoussoukro Accord, and:

- Declared its readiness to consider any appropriate measures in support of ECOWAS if any party is unwilling to cooperate in implementation of the Yamoussoukro Accords, in particular the encampment and disarmament provisions,
- Requested the Secretary-General, in consultation with ECOWAS to consider the possibility of convening a meeting of the President of the Interim Government of National Unity and the warring factions, after thorough and detailed groundwork, to restate their commitment to the implementation of the Yamoussoukro Accord within an agreeable timetable.[858]

This unprecedented and growing cooperation between a regional body and the United Nations in peace enforcement and peacekeeping was further cemented by the provisions of Resolution 856 of 1993 passed on the 10th of August 1993 at its 3263rd meeting.[859] This resolution, the third in the series, welcomed the decision of the Secretary-General to send a technical team to the United Nations to gather and evaluate information relevant to the proposed establishment of a United Nations Observer Mission in Liberia (UNOMIL).[860]

An advance team of thirty military observers were despatched to Liberia to monitor, investigate and report on cease-fire violations.[861] In addition, the Secretary-General of the

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[856] *Ibid*, paragraph 14.
[857] *Supra* note 444.
[858] *Ibid.*
[859] S/Res/856 (1993)
[860] *Ibid.* The creation of the UNOMIL was effected pursuant to Resolution 866 of the Security Council adopted on the 22nd of September of 1993 (of which, later).
[861] *Ibid.*

United Nations was requested to draw up a framework which would "ensure coordination between the UNOMIL and the peacekeeping forces of ECOWAS and their respective roles and responsibilities.[862] Resolution 856 of 1993, like the earlier resolutions, "commends (ed) ECOWAS for its efforts" to restore peace in Liberia. This remarkable cooperation between the United Nations and the ECOWAS in Liberia did not end with Resolution 856 of 1993.

Resolution 866[863] of 1993 passed on the 22nd of September 1993 went further than the three previous Resolutions and is arguably one of the most radical resolutions substantiating the notion that the United Nations apparently "franchised" its primary responsibility for peace enforcement to the ECOWAS. The preamble to this resolution "emphasized that the Peace Agreements assigns ECOMOG the primary responsibility of supervising the implementation of the military provisions of the Agreement and envisages that the United Nations role shall be to monitor and verify this process."[864] The express letters of this aspect of Resolution 866 clearly relegates the United Nations to the background role of monitoring the more aggressive and dominant ECOWAS in the Liberian conflict.

In fact, Resolution 866 itself attests "that this would be the first peace-keeping mission undertaken with a peacekeeping mission already set up by another organization, in this case ECOWAS."[865] This admission clearly dispels any notion or illusion that the United Nations was not fully aware of the nature and character of the relationship created by it with the ECOWAS in the Liberian conflict. The Resolution further noted that this unparalleled arrangement "would contribute significantly to the effective implementation of the Peace Agreement."[866]

To give teeth to this arrangement, a Joint Cease-fire Monitoring Committee (JCMC)

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[862] *Ibid.*
[863] S/Res/866 (1993)
[864] *Ibid.*(Underlining mine)
[865] *Ibid.* (Underlining mine)
[866] *Ibid.*

composed of three Liberian warring parties, ECOMOG and the United Nations was established. In addition, the UNOMIL as contemplated by Resolution 856 was finally established. The UNOMIL was to be comprised of military observers as well as medical, engineering, communications, transportation and electoral components together with the minimal staff necessary to support it. A critical review of the mandate of the UNOMIL leaves the clear impression that the ECOMOG was the enforcement arm of the United Nations while the UNOMIL took care of the more specialized aspects of peacekeeping.

This is understandable having regard to the relative inexperience of the ECOMOG in the more refined and intricate aspects of contemporary peacekeeping operations. This "division of labour" and symbiotic cooperation between the two institutions immanent in the mandate of the UNOMIL as contained in Resolution 866 may be listed as follows:

- To receive and investigate all alleged incidents of breach of the Cease-fire Agreement,
- To monitor compliance with the embargo on arms supply to the rebels, especially at the Sierra Leonean and other borders,
- To observe and verify the election process,
- To assist in the coordination of humanitarian assistance,
- To develop a plan and assess financial requirements for the demobilization of combatants,
- To report on any major violations of international humanitarian law to the Secretary General,
- To train ECOMOG engineers in mine clearance and in cooperation with ECOMOG, coordinate the identification of mines and assist in the clearance of mines and unexploded bombs,[867]
- Without participation in enforcement operations,[868] to coordinate with ECOMOG in

[867] *Ibid.*

[868] *Ibid.* Here the United Nations clearly acknowledged that the ECOWAS action in Liberia was indeed a peace enforcement action.

the discharge of ECOMOG's separate responsibilities both formally and informally.

It is perhaps pertinent at this stage to comment on the constitution of the UNOMIL. The UNOMIL consisted of several contributions of personnel and materials by several member states of the United Nations. At its height, it consisted of at least 400 military observers drawn from such states as Austria, Bangladesh, Belgium, Brazil, China, Congo, Czech Republic, Egypt, Guinea-Bissau, Hungary, India, Jordan, Kenya, Malaysia, Nepal, Netherlands, Pakistan, Poland, Russian Federation, Slovak Republic, Sweden and Uruguay.[869] Its military command was held sequentially by Maj. General Sihandar Shami of Pakistan, Col. David Magonone of Kenya, Maj. General Mahmoud Falka of Egypt and Maj. General Ismael Opande of Kenya.[870]

Voluntary contributions for its budget came from many countries especially Denmark, France, Japan , the Netherlands, Norway, the United Kingdom, Canada and the United States of America.[871] In addition, the General Assembly adopted a general Resolution assessing the contributions to be made towards the financing of the UNOMIL.[872] It is also pertinent to note that the expenses of the UNOMIL were clearly declared by the General Assembly to be "expenses of the Organization to be borne by Member states in accordance with Article 17, paragraph 2 of the Charter of the United Nations."[873] In effect, that the ECOMOG/UNOMIL action in Liberia was technically speaking, a United Nations operation with all its legal implications. In addition to establishing the UNOMIL, Resolution 866 of 1993 encouraged all member states of the OAU to send additional troops the ECOMOG and also established a Trust Fund to offset

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[869] UNOMIL Facts and Figures as of 30 June 1997. Online > http://www.un.org.Depts/DPKO/Mission/unomil –fhtml accessed on 30th March 1999.
[870] *Ibid.*
[871] *Ibid.*
[872] Financing of the United Observer Mission in Liberia, G.A.RES.49/232, 49 U.N. GAOR Supp. (No.49) at 281, U.N.Doc. A/49/49/ (1994)
[873] *Ibid.* Paragraph 4. On the implication of this, see *The Certain Expenses Case, supra* note 617.

some of the costs of the ECOWAS action of Liberia.[874] The assessed contributions were augmented by voluntarily contributions from several states.

The allied and combined activities of the UNOMIL/ECOMOG formed an aspect of the subsequent Resolution of the Security Council in 1994. Thus in Resolution[875] 911 of 1994 adopted at the 3366th of the Security Council, the Council "welcomed the close cooperation between UNOMIL and ECOMOG" and stressed "the importance of continued full cooperation and coordination between them in the implementation of their respective tasks."[876] Further, it implored all parties to the conflict to cooperate with the ECOMOG in its efforts to resolve the crisis.[877] It should be remembered that the Resolution once again affirms the determination of the Security Council to remain actively seized of the matter.[878]

The Security Council at its 3442nd meeting held on the 21st of October 1994, reviewed the events in Liberia and for the first time acknowledged as per Resolution 950 of 1994 that the Liberian crisis in addition to being a "threat to international peace" had degenerated into "ethnic warfare."[879] As already noted, this exarcerbated "the widespread killings of civilians and other violations of international humanitarian law by the factions in Liberia, and the detention and the maltreatment of UNOMIL observers, ECOMOG soldiers and other international personnel."[880]

Hence, the Security Council condemned those atrocities and as per paragrapgh 8 of Resolution 911 of 1994 demanded all factions in the dispute to respect the "status of ECOMOG and UNOMIL personnel."[881] Resolution 950 of 1994 reminded all persons of the Security Council's decision to remain actively seized of the matter.[882] With the

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[874] *Ibid.*
[875] S/Res/911(1994)
[876] *Ibid.*
[877] *Ibid.*
[878] *Ibid.*
[879] S/Res/950 (1994)
[880] *Ibid.*
[881] *Ibid.*
[882] *Ibid.*

situation in Liberia further deteriorating and some of the neighbouring states pouring arms into Liberia, the Security Council at its 3489th meeting convened on the 13th of January 1995. In the Resolution adopted at the end of that meeting, the Council noting "with concern that there has been a continuing inflow of arms into Liberia in violation of the existing arms embargo"[883] urged the ECOWAS to convene a meeting for the purposes of "tightening the application of the arms embargo."[884]

To further attest to the desire of the Security Council to have ECOMOG directly resolve the crisis in Liberia, it is perhaps pertinent to note when the patience of Nigeria and Ghana (the two leading contributors to the ECOMOG) wore thin and a pull-out of the ECOMOG from Liberia was seriously contemplated, the Security Council became alarmed and reiterated "the need for the ECOWAS States to maintain their troops in ECOMOG."[885] These concerns were reflected and reiterated in the subsequent Resolution 985 of 1995[886] which was passed at the 3517th meeting of the Security Council.

In fact, Resolution 985 of 1995 was one of the most far reaching efforts by the Security Council to curtail the inflow of arms into Liberia as it constituted the full Security Council into a Committee to monitor the flow of arms into Liberia.[887] Be that as it may, the fractious nature of the Liberian crisis and the impact of external parties on the crisis extended the agony of Liberians in the conflict.

Further, the proceeds from the United Nations Trust Fund for Liberia could hardly be utilized effectively to relieve the hardship imposed on Liberians caught up in the conflict. In this season of despair, the Security Council vide Resolution 1001 of 1995,[888] "reaffirmed the continued necessity for ECOMOG and UNOMIL to cooperate in fulfilling their respective mandates and to this end urge [ed] the ECOMOG to enhance its

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[883] S/Res/972 (1995)
[884] *Ibid.*
[885] *Ibid.*
[886] *Supra* note 309.
[887] *Ibid.*
[888] U.N.Doc. S/Res/ 1001 (1995)

cooperation with UNOMIL at all levels to enable the mission to discharge its mandate." [889] In addition, it urged the ECOMOG to take "necessary action to provide security for UNOMIL observers and civilian staff."[890]

The Abuja Agreement[891] signed on 19 August 1995 is probably the most significant step towards the resolution of the Liberian crisis as the subsequent disarming of the rebels and the return to democratic governance in Liberia are based on it. It supplemented the Cotonou Agreement,[892] the Akosombo Agreement[893] and the Accra Agreement.[894] Its importance is equally reflected in the decisions of the Security Council at its 3577th meeting and embodied in Resolution 1014 of 1995.[895]

This Resolution does not only continue with the numerous statements of support by the Security Council for the ECOWAS initiative but made a case for "additional resources in terms of troops, equipment and logistics for ECOMOG in Liberia"[896] to oversee the implementation of the various aspects of the agreement, in particular "the disarmament and demobilization process."[897] Owing to the importance of some of its features, to better appreciate the subsequent discussion on this aspect of the Liberian crisis, some of its very pertinent aspects are summarized below. They include the :

- Adoption of measures to enhance the relationship between UNOMIL and ECOWAS;
- Provision of financial, logistical, and other assistance in support of the ECOMOG to enable it to carry out its mandate,[898]
- Encouragement of Member states, in particular African countries to consider providing troops to the expanded ECOMOG,

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[889] *Ibid.*
[890] *Ibid.*
[891] U.N.Doc/S.1995/742
[892] U.N.Doc/S.26272/
[893] U.N.Doc./1994/1174
[894] U.N.Doc./1995/7
[895] U.N. Doc. S/Res/1014 (1995) [Hereinafter, Resolution 1014 of 1995]
[896] *Ibid.*
[897] *Ibid.*
[898] *Ibid.*

- Demand that all factions in the conflict respect the status of the ECOMOG and the UNOMIL,
- Encouragement of the OAU to continue its post-conflict peace-building collaboration with ECOWAS in promoting the cause of peace in Liberia.[899]

After the adoption of Resolution 1014, the ECOMOG proceeded on a programme of deployment of its troops throughout the areas hitherto occupied by the rebels. However, this process suffered another setback as one of the rebels led by General Roosevelt Johnson attacked ECOMOG in Tubmanburg on 28 December 1995 and killed several of them.[900]

Following the Tubmanburg incident, the United Nations, acting in concert with the OAU despatched mediators to the affected areas to negotiate a return to relative normalcy. This event and similar incidents of violations of the cease-fire agreements and breach of fundamental norms of war necessitated the strengthening of the ECOMOG. Consequent on these factors some African states such as Tanzania sent troops to the ECOMOG, which was duly "appreciated"[901] by the Security Council in Resolution 1020 of 1995 adopted at its 3592nd meeting held on 10 November 1995.

Resolution 1020 of 1995 "adjusted the mandate of the UNOMIL"[902]in the following manner;

- To exercise its good offices to support the efforts of ECOWAS and the Liberian National Transitional Government (LNTG) to implement the peace agreements and to cooperate with them for this purpose,
- To investigate allegations of cease-fire violations,
- To monitor compliance with the other military provisions of the peace agreements including disengagement of forces, disarmament and observance of the arms embargo

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[899] *Ibid.*
[900] Liberia: UN Report, 01/29/96. Online <http:www.gopher.undp.org/11/uncurr/sgreg/. Accessed on the 30th March 1999.
[901] U.N.Doc/S/Res/1020/ (1995) [Hereinafter, Resolution 1020 of 1995]
[902] *Ibid.*

and to verify their impartial application,

- To assist in the maintenance of assembly sites agreed upon by ECOMOG, the LNTG and the factions in the implementation of a programme for demobilization of combatants,
- To observe and verify the election in consultation with the OAU and the ECOWAS.[903]

In addition, Resolution 1020 of 1996 urged all member states to continue their material and logistic support for ECOMOG and reiterated that the presence of the UNOMIL was wholly predicated upon the security provided by the ECOMOG.[904] In other words, the UNOMIL would not be in Liberia but for the ECOMOG which had substantially created the conducive environment for the complimentary role played by it. In this context, Resolution 1020 of 1996, like previous Resolutions stressed the need "for close contacts and enhanced coordination between UNOMIL and ECOMOG in their operational activities at all levels."[905]

To further reinforce that the UNOMIL/ECOMOG activities in Liberia were directly under the control and guiding auspices of the United Nations Security Council, Resolution 1020 of 1996 affirmed the decision of the Council to remain 'directly seized of the matter."[906] These activities by the United Nations Security Council did not necessarily bring about an immediate end to the crisis. There were repeated attacks on the ECOMOG and unarmed civilians by the rebels and thus the Security Council at its 3624th meeting held on the 29th of January 1996 considered and adopted Resolution 1041 of 1996.[907] Paragraphs 4 and 5 of this Resolution did not only condemn the attacks but also commiserated with the victims of the unlawful attacks.[908] It addition, it reiterated the

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[903] *Ibid.*
[904] *Ibid.*
[905] *Ibid.*
[906] *Ibid.*
[907] U.N.Doc/S/Res/1041/ (1996)
[908] *Ibid.*

status of the ECOMOG and UNOMIL as peacekeepers and demanded that that status be accorded its traditional respect.[909]

The peace process in Liberia suffered serious setbacks again as the warring factions escalated the regime of violence in Liberia. The escalating violence warranted the ECOWAS to resolve not to recognize any government in Liberia that emerged by sheer force of arms.[910] On the other hand, the West African states of Nigeria and Ghana, who were the backbone of the ECOMOG, were compelled to threaten their immediate withdrawal from the peacekeepng exercise.[911] At the debates of the Security Council in May 1996, these development necessitated the Council to adopt Resolution 1059 of 1996 condemning the ceasefire violations and "encouraging the ECOWAS to consider ways and means to strengthen ECOMOG and persuade the faction leaders to resume the peace process."[912] The Security Council also expressed its support for the ECOWAS stance not to recognize any illegitimate but forcefully effective government in Liberia.[913]Another significant aspect of Resolution 1059 of 1996 is that it reiterates the ultimate dependence of the UNOMIL on ECOMOG. Thus, according to paragraph 8 of its preamble, the Security Council stressed that "the presence of UNOMIL in Liberia is predicated on the presence of ECOMOG and its commitment to ensure the safety of UNOMIL military observers."[914] This further evidences the symbiotic relationship between the ECOMOG and the UNOMIL.

As the peace process now gained greater momentum, the Security Council at its 3669th meeting held on the 30th August 1996 adopted another Resolution affirming once again, the need for closer cooperation and coordination between the UNOMIL and

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[909] *Ibid.*
[910] This belated assumption of a higher ground of legitimacy and it's probable role as a tool for the reduction or elimination of tyrannical regimes around the world will be explored in the next chapter as one of the recommendations for the avoidance of civil wars.
[911] *Ibid.*
[912] U.N.Doc/S/Res/1059 (1996)
[913] *Ibid.*
[914] *Ibid.*

ECOMOG.[915] In addition, this resolution acknowledges another ugly aspect of the Liberian crisis-the use of children by the rebels as combatants. Paragraph 9 of the Resolution thus unequivocally condemned "the practice of some factions recruiting, training and deploying children for combat."[916] As this aspect has already been addressed, further ink will not be spent on it here. Moreover, Resolution 1083 of 1996 adopted at the 3717th meeting of the Security Council on November 27th 1996 reiterated the Council's continued condemnation of that international delict.[917]

However, the disarmament process of the warring factions had started in earnest.[918] This development is further evidenced by Security Council Resolution 1100 of 1997.[919] The last of the United Nations Security Council Resolutions on the Liberian crisis is Resolution 1116 of 1997 which was adopted at the 3793rd meeting of the Security Council. This Resolution not only extended the mandate of the UNOMIL to its terminal date of 27th July 1997 but also expressed the gratitude of the Security Council to all the members of the international community which had supported the ECOMOG in its action in Liberia.[920] It is abundantly evident that the effect of the resolutions of the Security Council on the Liberian crisis has the clear legal effect of ratifying the ECOMOG initiative as lawful and legitimate.[921]The West African action in Liberia was consummated with the installation of a democratically elected government for Liberia and the restructuring of the Liberian Army by the ECOMOG.[922]

It was not only the Security Council that took an active part in approving the ECOWAS action in Liberia. At the 85th Plenary meeting of the General Assembly, that

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[915] U.N. Doc/S/Res/1071 (1996) [Hereinafter, Resolution 1071 of 1996]
[916] *Ibid.*
[917] U.N.Doc/S/Res/1083 (1996)
[918] *Ibid.*
[919] U.N.Doc. S/Res/1100 (1997)
[920] U.N Doc.S/Res/1116 (1997).
[921] Bhupinder Singh Chimni "Towards A thirld World Approach to non-intervention: Through the Labyrinth of Western Doctrine" in Snyder and Sathirathai, eds., *supra* note 600 at 73.
[922] "Liberia, ECOMOG Tussle Over Restructuring of the Army" Panafrican News Agency, November 11, 1997. Online<http://www.africanews.org/PANA/news/19971111/feat8.html accessed on 08/11/98

body by an unanimous Resolution affirmed its "appreciation to the international community for its support of the peace plan for Liberia of the ECOWAS, ...and hopes(d) that the continuing efforts made at the sub-regional and international levels aimed at a peaceful resolution of the Liberian will, within the shortest possible time, lead to national reconciliation, reconstruction and development[923] This universal validation of the ECOWAS action in Liberia was not a mere solitary approval.

At the 89th Plenary meeting of the General Assembly held on the 16th of December 1992 another unanimous Resolution was adopted expressing universal "appreciation for the continuing mediatory efforts of the ECOWAS to find a peaceful solution to the Liberian crisis."[924] This second global acclamation was immediately followed by another unanimous Resolution adopted at the 92nd Plenary meeting of the General Assembly held on the 18th of December 1992.[925] This Resolution equally restates global validation of the ECOWAS action in Liberia and called upon the international community to quickly contribute humanitarian relief materials to embattled Liberia.[926]The spate of universal approval and commendation of the ECOWAS action in Liberia is also apparent in another unanimous Resolution adopted by the General Assembly at its 85th Plenary meeting held on the 20th of December 1993.[927] Here the General Assembly for the fifth time in a row expressed its "appreciation" the efforts of Liberia in the crisis.[928]The approbation of this "regional effort"[929] in conflict management and resolution was completed by another General Assembly Resolution adopted at the

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[923] G.A res.47/74, 47 U.N. GAOR Supp. (No. 49) at 31, U.N.Doc. A/47/49 (1992).
[924] Assistance to Refugees and Displaced Persons in Africa, G.A. Res. 47/107, 47 U.N.GAOR Supp. (No. 49) at 188, U.N.Doc. A/47/49 (1992). Online< http://www1.umn.edu/humanrts/resolutions/47/107GA1992.html accessed on 05/01/99.
[925] Assistance for the Rehabilitation of Liberia, G.A. RES. 47/154, 47 U.N GAOR Supp. (No. 49) at 114, U.N. Doc. A/47/49 (1992)
[926] *Ibid.*
[927] G.A.Res.48/118, 48 U.N. GAOR Supp. (No. 49) U.N.Doc. A/48/49 (1993).
[928] *Ibid*
[929] Assistance to Refugees, Returnees and Displaced Ppersons in Africa, G.A.Res,49/174, 49 U.N. GAOR Supp. (No. 49) at 191, U.N Doc. A/49/49 (1994).

94th Plenary meeting held on the 23rd December 1994.[930]

Despite the near-universal acclamation of the ECOWAS action in Liberia, some disturbing issues are raised by it. The first is an examination of why it was so popularly received within the United Nations. The second is the impact of the precedent on the Charter regime regarding the use of force by regional bodies. This will be valuated in the context of the recent NATO bombing of Yugoslavia. Thirdly, how can the lapses in the ECOWAS action in Liberia be usefully evaluated so as to enhance a cordinated framework for regional/universal cooperation for the maintenance of international security under the United Nations framework? The third question will be addressed in chapter six.

With respect to the first question, the ECOWAS action in Liberia was not the first regional initiative ostensibly advertised as an attempt to secure regional security and peace. Previous cases exist at international law where multilateral actions supposedly premised on concerns for regional security have been undertaken but condemned by the international community. In some of those cases, the fear of hegemonism masking as regional concern for peace was quite real.[931] Although unilateral actions are forbidden by the Charter[932] regional organizations have under certain circumstances employed themselves in the maintenance of peace. The cases of the OAU in Chad and the OAS in Haiti readily come to mind. A short comparison may be useful here.

In 1981, members of the OAU sent a peacekeeping force to separate the warring factions in Goukhoni Weddeye and Hissene Habre in Chad.[933] This measure was greeted

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[930] *Ibid.*

[931] *Ibid.* Witness the case of Czechoslovakia. Seventeen days after the Warsaw Pact which bound the members to cooperate on the basis of "the principles of equality, respect for sovereignty and national independence, those same members invaded the country on the pretext that there was an internal problem in Czechoslovakia which threatened the sub-region. Similar abuses occurred in Hungary. See Richard Falk, ed., *The International Law of Civil War* (Baltimore: John Hopkins University Press, 1971) at 419.

[932] Hugh Kindred, *et al* eds., *International Law-Chiefly as Interpreted and Applied in Canada* 5th ed. (Canada: Emond Publications, 1993) at 850-851. [Hereinafter, Kindred]

[933] Amadu Sesay, "The Limits of Peace-Keeping by a Regional Organization: The OAU in Chad" (1991) vol. X1 *Conflict Quarterly* (Winter) at 7.

with acclaim across Africa and touted as the beginning of African solutions to African problems. Chad is the fifth largest country in Africa and one of the poorest with ninety per cent of its territory generally referred to as "useless."[934] From its independence from France in 1960, its governance has been marked with incompetence, ethnic rivalry and corruption. [935]These factiors gave rise to internal rebellions which like the Liberian case, found its bloom with the end of the Cold War. These rebellions have been generally acknowledged as largely sponsored by Ghadafi of Libya with the ostensible aim of having the upper-hand in Chad/Libya's perennial dispute over the Uranium rich Aouzou strip bordering both countries.[936]

The OAU decision to intervene has been rationalized on the grounds of African States' suspicion of foreign intervention in African crisis, especially, since the Congolese crisis of the sixties which is generally perceived to have sabotaged the "progressive" government of Patrice Lumumba.[937] Similarly, the orchestrated plan by the embattled President Weddeye of Chad to enter Chad into a political union with Libya had disturbed security concerns in that region warranting the quickness with which the decision to intervene was made.[938] With the promise of logistic support from France and the United States, the OAU intervened to stop the conflict and pre-empt Ghadafi's plan of a "greater Islamic State."[939] Accordingly, troops from Nigeria, Senegal and Zaire were despatched under the auspices of the OAU to Chad. The agreement between the OAU and Weddeye for the despatch of the peacekeeping troops to Chad was signed in Nairobi, Kenya on the 28 Noveber 1981.[940] Soon after the arrival of the OAU peacekeepers, the beleaguered

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[934] *Supra.*
[935] Orobola Fasehun & Amadu Sesay, "The OAU and Conflict Control" Mimeogragh, Department of International Relations, University of Ife, 1980, at 12.
[936] *Supra* note 933 at 8.
[937] *Supra* note 933.
[938] *Ibid.*
[939] David Yost, "French Policy in Chad and the Libyan Challenge" (1983) *Orbis* (Winter) at 965-997.
[940] Olusola Ojo & Amadu Sesay, " The OAU Peacekeeping Force in Chad: Policy Implementation and Failure" in C.A.B.Olowu & Victor Ayeni, *A Nigerian Reader in the Policy Process* (Ife: University of Ife Press, 1991) at 1-18.

government of Weddeye which had invited OAU's intervention was upstaged by forces loyal to Hissene Habre.[941] The intervention by OAU faltered and collapsed.

Although the OAU intervention in Chad, hampered by lack of resources and absence of sincerity on the part of President Weddeye and the opposing political force of Hissene Habre was a complete failure, its legality has not been questioned. However, like the Liberian case, its domination by Nigeria[942]and lack of credibility[943]raises similar questions regarding the limitations of peacekeeping operations by regional bodies. Be that as it may, it is arguable that if Nigeria, as in the Liberian case, had been ready and willing to spend as much as it did in Liberia and succeeded in its overall objective, the OAU peacekeeping in Chad would have succeeded and would have been favourably perceived. In addition to Weddeye's undoudted right to invite OAU, which he did (although, like Doe he was beleaguered and was finally ousted after four months of inviting the OAU), the extant issue is whether the test of legality in the circumstances depends on the "success" of the enforcement action by a regional organization? Does the end justify the means of intervention? This question dovetails into the second issue of the precedential impact of the Security Council ratification of the ECOWAS action on the Charter regime. Before examining this issue, a quick reference to the Haiti case may be useful.

In the Haiti case,[944] President Jean-Bertrand Aristide who won an internationally supervised election as the president of Haiti was overthrown in a miliatry coup on September 30, 1991. The Organization of American States quickly reacted with a package of diplomatic and economic sanctions against the Raul Cedras led junta.[945] In addition, the OAS resolved not to recognize the illegitimate junta. Upon the invitation of

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[941] Amate, *supra* note 30 at 187.
[942] Nigeria was the main financier and spent over 50 million USD in the effort.
[943] Certain States contributing troops to the OAU force were accused of bias by some of the warring factions.
[944] Acevedo, *supra* note 400.
[945] *Supra* at 132.

the deposed President Aristide[946]that the OAS establish a civilian mission to pave way for his return to power, the necessary mechanism was put in place. On May 17, 1992 the OAS ad hoc Meeting of Consultation of Foreign Ministers passed a resolution urging member states to adopt whatever measures were necessary to restore democracy in Haiti.[947]

Thereafter, the UN Secretary-General started working in consultation with the OAS on the restoration of democracy in Haiti. The argument by the Security Council that the Haitian crisis was an internal problem of Haiti[948]in which it could not lawfully intervene soon yielded to a determination by the Council under chapter 7 of the Charter that the crisis was a threat to international peace.[949] Accordingly, it authorized members of the OAS "to use all necessary means to facilitate the departure from Haiti of the military leadership and the restoration of the legitimate authorities of the government of Haiti."[950]Consequently, the OAS Multinational Force entered Haiti to pave way for the United Nations Mission in Haiti[951]which organized the return of Aristide and maintained peace in the interim.

Unlike the OAU in Chad where there was no UN collaboration with a regional organization in the enforcement of peace, the ECOWAS/UNOMIL cooperation and the OAS/UNMH collaboration in Haiti raise certain issues and lessons. The first point is that the legitimacy of both cases is largely dependent upon the recognition of the requirement that the Security Council must assume some measure of control, directly or indirectly, in the enforcement action.[952]Second,[953]for such regional enforcement actions to be

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[946] Request from the President of the Republic of Haiti to the Secretary General of the OAS , doc.MRE/doc.3./91, October 7, 1991. Cited in Acevedo, *ibid.*
[947] Restoration of Democracy in Haiti, Resolution MRE/Res.3/92, May 17, 1992. Cited in Acevedo, *ibid.*
[948] SC/3011 mtg, 46 UN SCOR (1991)
[949] U.N.Doc. S/Res/940/(1994)
[950] *Ibid.* Note that this was the first time that the Security Council was authorizing the use of force for the restoration of democracy.
[951] Report of the Multinational Force in Haiti, U.N.Doc. 8/1994/1107.
[952] *Ibid.*
[953] Tom Farer, *supra* note 491 at 316.

legitimate, they must be premised on a recognized institutional, procedural and substantive framework. Although this condition is ostensibly designed to screen out hegemonial tendencies from the considerstion of a regional or multi-lateral decision to intervene in a crisis,[954]evidence indicates otherwise. The ECOMOG was literally an extension of the Nigerian army, ditto for the OAU intervention in Chad. Third, the crisis forming the subject for the intervention must be such, which clearly rises to the level of a threat to international peace. The determination of this circumstance is a prerogative of the Security Council and cannot be delegated. However, regional organizations, by their proximity to the crisis may have a margin of appreciation of the danger, which they should bring to the attention of the Council. This is not the same as their making the determination by themselves that a particular state of affairs constitutes a threat to international peace. It is not every crisis in a state, real or imaginary which affords a gateway to Article 53 or which *ipso facto* constitutes an exception to Article 2 (7) of the Charter.[955]

On the second issue of the precedential impact of the Security Council ratifiaction of the ECOWAS action in Liberia on the Charter regime of chapter 8, an eloquent expression of the fears of abuse is in the controversy over the NATO bombing of Yugoslavia in April-May 1999. The human casualties in that unilateral action have been estimated at 2,000 deaths and hundreds of thousands of refugees have been decried by most commentators,[956]but its legal implications deserve some attention here.[957] Inasmuch as editorial opinions and news reports seem to support the right of forceful humanitarian intervention, the existence of that right in the post-Charter era has been very difficult to

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[954] *Ibid.*
[955] *Ibid.*
[956] Noam Chosky, "The Demolition of World Order" (1999) *Harper's Magazine* (June) at 1517. [Hereinafter, Chomsky]
[957] Antonio Cassese, "*Ex inuria ius oritur*: Are we Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community" (1999) vol 10 *E.J.I.L.* at 1-7. See also, Simma, *supra* note 449.

establish and indeed, is very controversial.[958] While this issue is outside the scope of this thesis, it will suffice to note that the prevalent view is that the right of humanitarian intervention, if it existed, did not survive the Charter.[959]

Be that as it may, the pertinent question here is whether the ratification of the ECOWAS action in Liberia by the Security Council did not set a dangerous precedent whereby powerful states would be engaging in illicit enforcement actions on the real or even vague hope that the Security Council would ratify such acts. A related issue, especially in respect of the bombing of Kosovo, is the validity of the peace agreements between Yugoslavia and NATO in respect of cessation of the bombing and the resolution of the Kosovo crisis. For the avoidance of doubt, Article 52 of the 1969 Vienna Convention on the Law of Treaties voids any treaty concluded upon the use or threat of use of force contrary to principles of international law as embodied in the Charter.[960] The question then is, if the use of force by NATO in Yugoslavia is contrary to principles of international law as embodied in the Charter, of what legal validity is the peace agreement between NATO and Yugoslavia purportedly endorsed and ratified by the Security Council? Can we place something on nothing? This is not the central issue in this thesis, but only shows the quagmire into which the rash of "ratifications' by the Security Council of unathourized regional enforcement actions has thrown international law.

Although an appreciation of Article 53 of the Charter in good faith "leaves room for the possibility of ex post facto authorization"[961]by the Security Council of regional enforcement actions, the probability of abuse as already indicated is high. In further reference to the Kosovo crisis it is remarkable that "when France called for a UN

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[958] *Nicaragua Case, supra* note 462 at 14.
[959] Michael Akehurst, "Humanitarian Intervention" in Hedley Bull, ed., *Intervention in World Politics* (New York: Council on Foreign Relation., 1984) at 285. See the *Declaration on Friendly Relations, supra* note 457; Artcle 2 (4) of the Charter, *supra* note 388.
[960] *Supra* note 545.
[961] Simma, *supra* note 449, at 3.

Security Council resolution to authorize the deployment of NATO peacekeepers, the US State Department flatly refused, insisting that "NATO should be able to act independently of the United Nations."[962] Apparently, the US knew that its unilateral actions in Yugoslavia would in the fulness of time be "ratified" by the Security Council. It is possible that it had not forgotten the lessons from Liberia. This instance is not isolated as the continous bombing of Iraq by US and its allies evidence.[963] In the Iraq case, the US and its allies, by a tortured redefinition of the content and meaning of resolution 678 of 1990[964] which authourized the initial allied repulsion of Iraqi aggression against Kuwait, have bypassed the Security Council and continously engaged in unilateral enforcement actions.

Returning to the Kosovo crisis, it is instructive to note that President Clinton of the United States had once noted that "unless human tragedy is caused by natural disaster, there is no such thing as a purely significant humanitarian enterprise."[965] The siginificance of this is explored below. Thus, although the determination by the Security Council that the situation in Yugoslavia constituted a threat to international peace was made by resolution 1199 of 1998, Yugoslavia was requested to take urgent steps to arrest the deteriorating humanitarian condition.[966] For the avoidance of doubts, the Security Council expressly reserved for itself the prerogative of deciding whether Yugoslavia had remedied the situation and if not, to "consider further action and additional measures to maintain or restore peace and stability in the region."[967]

Despite this and President Clinton's earlier disavowal of altruism in interventions ostensibly geared to avert humanitarian tragedies, NATO subsequently proceeded to

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[962] Chomsky, *supra* note 965 at 16. [Underlining supplied]
[963] Jules Lobel & Michael Ratner, "Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime" (1999) *A.J.I.L.* at 1.
[964] Reprinted in 29 I.L.M.1565 (1990)
[965] A TV remark, June 1994. Cited in Elwood Dunn, *supra* note 741 at 115. See also, Rakiya Omaar & Alex de Waal, "The Lessons of Humanitarian Imperialism in Somali" (1993) *War Report* (Feb-March) at 12.
[966] U.N.Doc. SC/Res/1199/1998.
[967] *Ibid.*

engage in enforcement actions on Yugoslavia[968]without reference to the Security Council. This high-handed defiance and isolation of the Security Council by NATO may mark the beginning of a competitive relationship between both bodies, which can hardly be masked by the subsequent "ratification" of the NATO conduct by the Security Council. The impact of this is a gradual, if not rapid destruction of the framework of the Charter on the regime on the use of force.[969] As Cassese rightly warns, "...one cannot confine oneself to hoping that this dramatic departure from the UN standards will remain an exception. Once a group of powerful states has realized that it can freely escape the strictures of the UN Charter and resort to force without any censure, except for that of public opinion, a Pandora's box may be opened."[970] Sadly enough, the Security Council as in the Liberian case, was made to "baptise" the NATO actions in Yugoslavia when it purported to adopt a resolution in terms of NATO objectives.

Having examined these issues, the next chapter, concludes this discourse in three parts. The first part posits preventative and curative measures the causative agents of instability and violence in juridical states. The second part examines the adequacy or otherwise of regional collective security machineries. The third and final part evaluates deferred question of the impact of the growing cases of regional enforcement actions on the Charter regime and how best regional organizations may be harnessed for collective security purposes. The common theme is that individual liberty, state stability, regional security and systemic coherence are inter-linked. These are some of the lessons immanent in the Liberian crisis.

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[968] Simma, *supra* note 449, at 8.
[969] Cassese, *supra* note 957 at 2.
[970] *Ibid.*

CHAPTER SIX

LEGITIMACY OF GOVERNANCE, STATE STABILITY AND GLOBAL SYSTEMIC COHERENCE: THE TRINITY OF COLLECTIVE SECURITY

> It is the absence of legitimacy, of an established political order commanding general consent, which is often the ultimate cause of civil wars.[971]

6.1: INTRODUCTION

The preceding chapters have examined the origins of the rebellion in Liberia and its impact on neighbouring states and international law. It is desirable to draw some lessons from that tragic experience. The first lesson is that from the three different levels of analysis frame-work already adopted; the national, regional and global, events at the first level enabled the regional and global factors to impact heavily on Liberia. At the national level, the obvious issue is the question of bad governance and abuse of human rights in Liberia which pushed the people to despair. With the internal decay and auspicious regional and global circumstances, recourse was had by them to violence.

A considerable welter of opinion agrees that the intensification of contempt for bad governments and rejection of the constitutionality of the state cause most civil wars.[972] In Greece, Lebanon, Vietnam and the Dominican Republic, the issue was about elections alleged to have been rigged.[973] In the Congo/Katangese war, one of the main issues was the power of the President to dismiss the Prime Minister. The Nigeria/Biafra war was substantially about the type of federal structure in that country which would give vent to its diversity.[974] In Liberia, the war was about power and revenge for Doe's tyranny. In Somalia, the corrupt and debauched regime of Siad Barre exploded, pitting the Horn of Africa in a bizzare conflict. In Zaire, Mobutu Sese Seko's expiration[975]has left in its wake a civil war, which is eliciting an uncertain response from the Southern

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[971] Luard, *supra* note 333.
[972] Farer, supra note 527.
[973] *Ibid.*
[974] *Ibid.*
[975] *Schism in SADC Over Congo War* Online> http://www.6day.co.za/98/08/0820/news/.htm visited on 25/11/98.

African Development Community.[976]

This chapter attempts to suggest solutions to the spate of civil wars with international dimensions now raging across several African states. It argues that regional agencies have a role to play within the framework of the UN Charter towards managing and resolving conflict but must do so within the confines of international law. It further suggests ways which such regional organizations may best be employed in achieving international peace and security. In expounding these arguments, this chapter is divided into four sections of which section one is introductory. Section 6.2 briefly examines the concept and practice of legitimacy of governance and how it could be applied, especially in the juridical states with notorious inclinations for political violence which threatens the stability of other states. It argues that the quest for legitimacy of governance is both a municipal and international concern and suggests a role for states and multi-lateral organizations. Section 6.3 suggests ways in which the relationship between regional bodies and the Security Council may be enhanced, coordinated and strenghtened for fruitful collaboration for the maintenance of global peace. Section 6.4 is a summary of the entire discussion in the thesis.

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[976] The rebellion led by Laurent Kabila portended to be an end to the internecine conflicts in that country. Events have proved the expectations wrong. Shortly after the emergence of the Kabila regime in Zaire (later renamed Congo), the Foreign Minister of the regime Bizima Kazare and a coalition of Banyamulenge (ethnic Tutsis of East Congo) rebelled against the rule of Kabila alleging that he was no better than the late Mobutu. Accusing him of corruption, tribalism, and dishonesty of intention in claiming to return the country to democratic rule. The leading figures in the armed rebellion against Kabila include Mr.Jean Pierre Ondekame a former commander of Kabila's army which overthrew the regime of Mobutu; Zahiti Ngoma, an international lawyer formerly with the UNESCO. It has been alleged that the rebels who now occupy a significant portion of Congo are backed by the governments of neighbouring Rwanda and Uganda and on this notion, the Congolese government has refused to negotiate with the rebels described as the "pawns of Rwanda and Uganda." Consequent upon this state of affairs, the Southern African Development Community (SADC) reviewed the situation and noting "the escalating conflict's potential for upsetting the region's precarious balance," decided to intervene. The first measure taken was to impose an economic blockade against the rebels. At the present moment, the SADC has intervened militarily. See Http://www. southmovement.alphalink.com.au./southnews/Nam3-pana-mini.htm. Visited on 08/08/99. In July 1999, the government of Zaire instituted an action at the International Court of Justice against the governments of Uganda, Burundi and Rwanda for their alleged support of the rebels and aggression against Zaire.

6.2: RECONCEIVING THE PARAMETERS OF GOVERNANCE

> The doctrine of legitimism, which originally meant dynastic or monarchical legitimism, has now divorced itself of its rather unfortunate ancestry and has come to be centred on the concept of popular legitimism.[977]

With the recent spate of internal conflicts, the concept of legitimacy of governance[978]assumed greater significance. Illegitimacy of governance may be manifested in injustice in the distribution of state resources, denial of effective participation in governance and absence of transparency and accountability in the political process.[979]These factors disable the penetration of popular desires into the instruments and character of governance. From the discussion in previous chapters, it seems that the prevalence of bad governments in Africa peaked during the Cold War.

The preoccupation with the intrigues of the Cold War enabled such governments to keep the lid shut on the irrepressible human quest for freedom and justice. However, with the relative and contemporary redefinition of global security, the hitherto empty shell of governance is ostensibly and gradually being filled up with other criteria of legitimacy. Values such as democratic representation and liberal economics are assuming international ascendancy and currency. Hence, those governments unwilling to face up to the challenges of the emerging order have been threatened. Unfortunately, it is not only some of those governments that are becoming history. More often than not, they pull the state and its people with them to the bottomless pit. In most cases, especially in Africa with its heavy reliance on external trade and aid, this wind of change has blown from across the Atlantic.

The International Covenant on Civil and Political Rights posits certain normative values as essential constitutive elements of a legitimate government. While its preamble

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[977] Obiora Okafor, "The Global Process of Legitimation and the Legitimacy of Global Governance" (1998) 10 *A.J.I.C.L.* at 250.
[978] Thomas Franck "Legitimacy in the International System" (1988) 82 *A.J.I.L* 705.
[979] Okafor, *supra* note 977.

recognizes the inherent dignity of the human person and the foundation of global peace on human freedom and justice, Article 2 thereof enjoins all State parties to the Convention to respect diversity of political opinions.[980] Indeed, Article 2 further enjoins the parties to the Convention to fashion out constitutional and legislative processes for the effective enjoyment of political and civil rights in the domestic polity. Save for public emergencies wherein certain civil and political rights may be temporarily abridged under the narrow conditions stipulated in its Artcle 4, Article 5 of the Convention forbids any limitations on the enjoyment of civil and political rights by individuals and groups of individuals in state parties to the Convention.[981]

The norms of the Convention expressly and implicitly recognize that civil and political rights can best be enjoyed in representative governments which are transparent and accountable to members of the state in an orderly and peaceful manner. The General Assembly of the United Nations has equally underscored the elements of good governance including the holding of free and fair elections at periodic intervals,[982] respect for human rights in all its ramifications,[983] movement towards strong anti-corruption measures and the pursuit of sound social policies by the government. In effect, the concept of legitimacy of governance is "philosophical, legal and political,"[984] and its central position within the international normative regime is well established.

It would be simplistic to assert that the conflicts in Africa and other trouble spots around the world, which threaten international peace, is necessarily a function of their heterogeneity.[985] Rather, the tinderbox is ignited by the pursuit of policies, which run

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[980] International Covenant on Civil and Political Rights, *supra* note 381. See also, Stephen Stedman, "*Peacemaking in Civil War* (Colorado: Lynne Rienner Publishers, 1991) at 3.
[981] International Covenant on Civil and Political Rights, *supra* note 381.
[982] U.N.GAOR 45th Sess. Supp. No. 49. U.N.Doc. A/RES/45/150 (1990)
[983] Quashigah on "Protection of Human Rights" *supra* note 239 at 97. See also, Robert Jackson & Doreen Jackson., *Contemporary Government and Politics: Democracy and Authoritarianism* (Ontario: Prentice Hall, 1993) at 3.
[984] E.K. Quashigah "Legitimacy of Governments and the Resolution of Intra-National Conflicts in Africa" (1995) 7 *A.J.I.C.L.* at 284.
[985] Quashigah, *supra*, at 289.

against the grain of the Convention on Civil, and Political Rights and similar norms of international law designed to enhance a full and unfettered enjoyment of human rights.[986] In Africa with a panoply of ethnic groups split across several states,[987]the need for a scrupulous respect for these norms of international law can hardly be overstated. Similarly, "fiscal federalism"[988]or "economic self determination"[989]which are implicit norms in the Convention on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights[990] must be scrupulously respected and enforced. A situation where people of a particular ethnic group are made to believe with reason that resources from "their" part of the country are unfairly used to develop other parts of the country at their expense does not bode well for civil stability. In the contemporary Nigeria, this is one area of concern which perceptive scholars fear to be a cause for concern capable of violently destabilizing that country. It is equally remarkable that the economic exploitation of crude oil in Southern Sudan by the Khartoum regime at the expense of the Southern Sudanese peoples fuels the civil war in that country.

As the Liberian case has shown, a situation in which a certain group of people bonded by a common heritage or ethnicity corners the wealth of the state for themselves cannot endure too long nor create a sense of belonging among those on the receiving end. According to Gambari, "one of the swiftest ways to the destruction of a state is to give preference to one particular tribe over another, or to show favour to one group of people rather than another."[991] Similarly, the empowerment of the people by mass education needs to be encouraged to enhance transparency and faith in governance.[992] Democracy

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[986] K.C.Wheare, *Federal Government* (London: Oxford University Press, 1956) at 11.
[987] Quashigah, *supra* note 984 at 289. See also, Adila Abusharaf, "The Legal Relationship Between Multinational Oil Corporation and the Sudan" (1999) 43 *Journal of African Law* at 18.
[988] Quashigah, *supra* note 984 at 289.
[989] Henkin, *How Nations Behave, supra* note 453 at 203.
[990] International Covenant on Economic, Social and Cultural Rights (1966) 993 U.N.T.S. 3.
[991] Ibrahim Gambari, "Paths to Safe Polity" Online>http:www.ngrguardiannews.com/news/htm accessed on 25 May, 1999. [Hereinafter Gambari]
[992] Michael, Brown., "The Causes and Regional Dimensions of Internal Conflict" in Brown, ed., *International Dimensions of Internal Conflicts, supra* note 223 at 573-587.

and its virtues can hardly he appreciated by those whom illiteracy have rendered impervious to external stimuli or contending ideas. Democracy and respect for human rights thrive in literate societies. The high illiteracy in Liberia enabled their oppression and domination.

The short point in the above-mentioned factors and issues is that "the problem of civil conflict in Africa is essentially a problem of governance."[993] It is not a coincidence that those African states characterized by lack of democratic accountability, well functioning judicial systems, gross and systemic abuse of human rights, and ethnic politics[994]have found themselves enmeshed in civil conflicts. It is not being suggested here that democracy, good governance and indigenous constitutions reflecting the culture and aspirations of a people would instantaneously conjure political stability and economic development.[995] Rather, good governence in the long run, affords the best avenue for the prevention and management of grievances which lead to violent internal conflicts.[996]

Those Africans who argue that the elements of good governance are of relevance only to the Western world are seriously mistaken. It is as much African[997]as it is global. Indeed, of late, several African countries at various international fora have declared and re-affirmed the direct relevance of good governance to continental peace, economic progress, stability and collective security.[998] This is evident in the June 1990 OAU

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[993] James Busumtwi-Sam, "Redefining Security After the Cold War" in *supra* note 741 at 258.
[994] Sean Murphy "The Security Council, Legitimacy and the Concept of Collective Security After the Cold War" (1984-5) 32 *Colum. J. of Transn'l Law* (1994-5) 201. [Hereinafter, Murphy]
[995] According to the findings by the London Development Institute, "authoritarian rule is likely to generate higher domestic savings as a basis for higher levels of growth whether by forcing public savings or by promoting inegalitarian policies which indirectly assist growth." See Anna Shephard "The Economics of Democracy" (1992) *African Report*, March-April 1992 at 29. Cited in Quashigah on "Protection of Human Rights." *Supra* note 239, *ibid*. Reference may be made to Latin America, Asia and Ghana.
[996] Human Rights Throughout The World, Scientific America. Online > http://www.sciam.com:80/1998/1298issue/1298numbers.html accessed on 6 April 1999. According to the report, two fifths of the world live under tyranny and another two fifths live under arbitrarily imposed regimes which are hardly accountable.
[997] Okey Martin Ejidike, "Human Rights in the Cultural Traditions and Social Practice of the Igbo of South-Eastern Nigeria" (1999) 43 *Journal of African Law* 71.
[998] "O.A.U. Summit Ends With Democracy Plea" Online<http.www/news2.bbc.co.uk/english/world/africa

"Declaration on the Political and Socio-economic Situation in Africa" recognizing the direct inter-dependence of collective security on good governance in the continent.[999] At the African Leadership Forum held in Kampala in May 1991 a conference on Security, Stability, Development abd Cooperation in Africa modelled on the European Conference on Security and Cooperation in Europe offered a holistic framework on good governance and collective security.[1000] The Conference clearly identified democratization, popular participation and accountability as the key to security and stability in the continent. Finally, at the 35th Summit of the OAU in Algiers, Algeria held on 10-14 July 1999, the heads of state of African countries while acknowledging the points above adopted an unanimous resolution to "isolate any government in the region that comes to power by force of arms."[1001] In addition, the body resolved to suspend membership of any country under military rule. While one cannot really be sanguine about the seriousness of the OAU's resolve in this regard, the rise of the consciousness of the inherent dangers of illegitimate governance amongst African states is a welcome development.[1002]

Another aspect of the problem is "the consistent relationship between national poverty and the level of respect for human rights"[1003]which usually occasions civil strife. The economic situation in Africa which has been notoriously worsened by graft, corruption, appropriation and theft of the state purse by rulers has been further complicated by continous drop in the price of commodities and a shift of Western attention to Eastern Europe. Legitimate governance can hardly be sustained on empty wallets and stomachs. According to a United Nations Report, African countries lost $50 billion between 1986 and 1992 as a result of falling commodity prices.[1004] It is interesting

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accessed on 21 July 1999.
[999] James Busumtwi-Sam, "Redefining Security After the Cold War" in *supra* note 993 at 268.
[1000] *Ibid.*
[1001] *Supra* note 998.
[1002] Julius Nyerere, "How to Check Coups in Africa" Online>http:www.ngrguardiannews.com/news/htm accessed on 26 May, 1999. See also, "ECOWAS Recognises Wanke" online>http:www.ngrguardiannews.com/news/htm accessed on 26 May, 1999
[1003] Quashigah, "Protection of Human Rights" *supra* note 239 at 93.
[1004] Quoted in Quashigah, *supra* at 108.

to note that the rebellion in Liberia was also fueled by the economic downturn in that country. With the fall in revenue earnings and loss of foreign economic aid which hitherto flowed by virtue of Liberia's geo-political relevance under the Cold War, the incompetence and illegitimacy of the Doe regime became more pronounced. The fall of the Berlin Wall has both symbolically and practically permitted a massive movement of financial and human capital to that part of the world by West European and North American governments and corpoations. In fact, the movement of scarce African high skilled labour to Europe and America may not be unconnected with the bad governance and consequent strife in African countries. It is not accidental that African countries witnessing civil strife are those in which economic institutions have all but collapsed. The obvious loser is the African continent and its peoples.[1005]

The international community can avoid and reduce cases of internal civil strife by other ways including revisiting the normative regime on the law on recognition of governments and non-intervention.[1006] African countries have tended to ignore the negative normative impact of according recognition[1007]to cut-throat warlords in control the capital city of their countries.[1008] It is quite revealing that in the Liberian crisis, ECOWAS and the UN Security Council passed resolutions declaring that they would not recognize any government in Liberia that emerged through the smoking barrels of the gun. If the Doe government, which emerged by literally slitting the belly of President Tolbert had been denied international recogntion, the normative impact might have been enormous.

The point is that the international commuinty would do well to collectively refuse

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[1005] Brown, *supra* note 993 at 14.
[1006] Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947) at 68. See also, Hans Kelsen, "Recognition in International Law: Some Theoretical Observations" (1941) 35 *A.J.I.L* at 605.
[1007] Obiora Okafor "The Concept of Legitimate Governance in the Contemporary Municipal and International Legal Systems: An Interdisciplinary Analysis (LL.M Thesis, The University of British Columbia, 1995) at 16.
[1008]Okafor, *supra* note 977 at 251.

to sanctify raw might as right. Of course, there is practical wisdom in not ignoring an effective government but such governments need not be publicly recognized or consorted with as if coming to power on the bones and blood of victims of human rights abuses is of no significance. Such public recognition expressly and implicitly confers undeserved international legitimacy on the rogue government. The virtues of a collective and unified avoidance and shunning of such governments can hardly be overstated. When the Doe government emerged, it is interesting to recall that while some states refused to recognise it, others chose to do "business" with it. There is a high normative value in the inter-relationship of governments. States would do well to actively explore the provisions of Article 41 of the International Covenant on Civil and Political Rights providing for the making of complaints to the Human Rights Committee (established by Article 28 of the Convention) regarding infractions of the obligations created in the Convention. It is remarkable that no state, not even members of ECOWAS deemed it fit to lodge a formal complaint at the Human Rights Committee against the excesses of Samuel Doe.

African multi-lateral organizations should clearly articulate and publicize the criteria for good governance in their area and errant governments should not be welcome in their fold. It is remarkable that this suggestion has just been embraced by the OAU at its Summit in July 1999.[1009] This approach worked perfectly well in Lesotho in 1994. In that country, the King, for no ostensible reason, sacked the Prime Minister and appointed a new one.[1010] This arbitrary and illegal conduct threw the country into turmoil. The Southern African Development Community (SADC) immediately issued an ultimatum denying legitimacy to the usurper and threatened sanctions against the whimsical King. Whereupon, the King immediately restored of the Prime Minister to office. Similar attempts have failed elsewhere for lack of serious resolve.[1011] Scholars like Okafor,[1012]

[1009] *Supra* note 998.

[1010] Quashigah, *supra* note 984 at 304.

[1011] When the Togolese tyrant Gnassingbe Eyadema murdered Sylvanius Olympio, states like Nigeria, Guinea and Sierra Leone successfully debarred Eyadema from attending the inaugural conference of the OAU. However, "when Nkrumah was overthrown in 1966... an attempt to deny the usurpers of

Franck[1013] and Munansangu[1014]agree that such measures on delegitimation will have "normative, jurisprudential, political or socio-economic effect on both the rogue government and on the international order."[1015]

If international law is to be "no more than congealed politics,"[1016]such measures will aid, modify, and humanize the political processes by which international law is made and validated. Jurisprudentially, it may result in the nullification and invalidation of the official processes of the rogue governmnent in the eyes of the international community.[1017] It may also result in loss of sovereign, diplomatic or jurisdictional immunities. Politically such governemnts may not participate in and derive the benefits of mutual international intercourse. Economically, they may be punished with sanctions and their assets frozen or seized like those of the Cedras regime in Haiti. In the normative sense, such measures will enhance the character of international law in its compliance-pull and strenghten its capacity to attract habitual obedience.[1018] These lessons are immanent in the Liberian crisis[1019]and show up the inadequacies in contemporary assumptions and practices of international law.

Turning to the Security Council, the systemic incoherence in the world order regarding the application or enforcement of international norms gives cause for anxiety. While the Security Council made the determinations that the situations in Iraq and Liberia respectively constituted threats to international peace, it responded differently to

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participartory legitimacy ...failed...Congo, Guinea, Mali...refused to take part in the proceedings." See Bolaji Akinyemi " The Organization of African Unity and the Concept of Non-Interference in Internal Affairs of Member States" in Snyder & Sathirathai, eds., *supra* note 600 at 78.

[1012] *Supra* note 600.

[1013] T.M. Franck and M.M. Munansangu, *The International Economic Order: International Law in the Making* (New York: UNITAR, 1982) at 2.

[1014] *Ibid.*

[1015] *Supra* note 977 at 257.

[1016] *Supra* note 1013 at 2.

[1017] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resoltuion 276* (1970), Advisory Opinion, [1971] I.CJ Rep.16.

[1018] T.M. Franck, *The Power of Legitimacy Amongst Nations* (New York: Cornell Univ. Press, 1990) at 3.

[1019] Amos Sawyer, *The Emergence of Autocracy in Liberia:Tragedy and Challenge* (San Francisco: ICS Press, 1992) at 301.

both crises. For Iraq, it amassed the greatest armada and arsenal known to humanity to expel that country's forces out from Kuwait. On Liberia, it pontificated on peace and "approved"[1020] of ECOWAS initiatives.

The Security Council's refusal or unwillingness to effectively intervene in Sudan, Congo and Sierra Leone gives room for regional assertiveness and hegemonism. The apparent inconsistency inherent where "the butchers of Tiananmen and the Butcher of Ham are embraced so that the United Nations can repel the Butcher of Baghdad,"[1021] undermines the international order of security. One is aware that political and meta-legal considerations have largely determined Security Council's articulation and execution of its responsibilty.

However, in the dialectical interaction between normative idealism and the national interests[1022] of the Security Council permament members, the defeat of the former[1023] is a tragedy. In the prescient words of Edward Carr,

> [T]he ideal once embodied in an institution, ceases to be an ideal and becomes the expresion of a selfish interest, which must be destroyed in the name of a new ideal. This constant interaction of irreconciliable forces is the stuff of politics. Every political situation contains mutually incompatible elements of utopia and reality, of morality and power.[1024]

Although this prognosis is no cause for despair, international lawyers should use the unfortunate circumstances as veritable materials for examining ways of enhancing the contemporary regime of collective security,[1025]most probably beginning with reform of the Security Council.[1026] Be that as it may, the question is beyond the immediate scope of

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[1020] UN SCOR, 47th Sess., 2974th Mtg., U.N.Doc. S/PV: 2974 (1991) Provisional Verbatim Record, Statement of the Ppresident, Mr. Bagbeni Adeito Nzengeya. " The members of the Security Council commend and approve of the efforts made by the ECOWAS Heads of States to promote peace and normalcy in Liberia."

[1021] Michael Reisman, "Some Lessons From Iraq: International Law and Democratic Politics" 164 *Yale Journal of Internationl Law* at 203.

[1022] Henkin, *How Nations Behave, supra* note 453 at 331

[1023] *Supra* note 977 at 260.

[1024] Reproduced in Okafor, *ibid.*

[1025] *Ibid.*

[1026] There are heated arguments that the Security Ccouncil has become a "rubber stamp" for U.S foreign

this thesis. Having dispensed with those issues, the next section explores ways and means by which regional arrangements may best be utilized for securing collective security within the framework of the United Nations Charter.

policy. See Okafor, *ibid.* Various suggestions have been made in this regard. Ranging from complete abolition of the veto power, expansion of the veto power to make it more representative of the regions and cultures of the world, *et cetera.*

6.3: REGIONAL BODIES AND COLLECTIVE SECURITY

> In the 'world order perspective', the traditional separation of law and politics is abolished and the legal scholar takes on the persona and the role of the politically–engaged rhetorician and activist...a solidarist direction. The model rests on the desire to direct international legal studies towards a populist global condition in which every man, woman and child on earth may live in peace and harmony, can be confident of political and social dignity and can live in a balanced natural environment. No enlightened person would disagree with any of these goals. Problems only arise in attempting to know how best to pursue them. Should they be pursued within the framework of the state system? Can they be pursued outside that framework?[1027]

> Those who suppose that the legal system is a self sufficient set of rules existing outside of its participants and constraining lawyers and judges to acts against their consciences will always be prevalent among lawyers, judges and legal historians. Those who think that every human action can be explained by the necessities of the prevailing social environment and the requirements of national security will always be common among anthropologists, political scientists and sociologists. But every so often in a human heart the ice will thaw, and a human person will acknowledge his responsibility for other human persons he has touched.[1028]

Diverse scholarship on the desirable relationship between regional organizations and the United Nations[1029]in the maintenance of international peace and security have identified the salient battle for supremacy[1030]between these two regimes. In spite of the clear primary role of the Security Council in the maintenance of global peace, centripetal forces of regionalism tend to give the impression that both regimes are at par or at worst in a gladiatorial stance. This state of affairs is reminiscent of the wars of jurisdiction fought by the English Courts of Admiralty and the Kings Bench in the 17th century and is perhaps attributable to the self afflicted paralysis of the Security Council.

That the Security Council apparently takes action mainly when the interests of its

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[1027] Robert Jackson, *supra* note 446.
[1028] Roger Clark, *supra* note 3 at 83.
[1029] Berhanykun Andemicael ed., *Regionalism and the United Nations* (New York: Oceana Publications, 1979) at 225.
[1030] F.C.Okoye, *International Law and the New African States* (London: Sweet and Maxwell, 1972) at 157.

permanent members are involved can hardly be denied. Witness its action in Haiti and in Iraq where the interests of a superpower were involved. Compare that with its inaction in the Chechnya and Tibet crises where the interests of other permanent members are involved. If those are juxtaposed with its complete indifference to the chronic conflict in Southern Sudan,[1031] empty exhortations on Burundi, Ethiopia, Sierra Leone, Zaire, Guinea-Bissau and several other places, the *realpolitik* becomes obvious. Where it does not clearly abdicate its role to maintain peace, it becomes a veritable avenue for ineffective "conciliatory, hortatory or condemnatory"[1032] rhetoric and platitudes on peace.

This situation apparently affords fuel for the emergence of regional or ad-hoc actions to secure global peace independent of the Security Council. This trend is dangerous. The situation is hardly helped by the Charter of the United Nations in its provisions on the proper role of regional organizations in the maintenance of international peace. The Charter is not an examplar of precision and clarity in legal draftmanship as it does not delimit with relative certainty the boundaries and terms of association between regional organizations and the Security Council. Thus, the task of delimiting and defining this important relationship appears to be a function of uncoordinated state practice. Towards striking a balance between the Security Council and regional initiatives a few suggestions derived from the ECOWAS action in Liberia are worthy of consideration.

As an aside, the provisions of Article 43 of the Charter, which provides for a unified military force capable of securing peace in troubled states need not be realized literally but certain innovative arrangements are possible. Instead of the standing army contemplated by the Charter, the United Nations Secretariat would do well to actualize its currently proposed arrangement whereby units of the Armed Forces of some states will be specially designated a United Nations force ready to be deployed at short notice.[1033]

[1031] Wole Soyinka, *The Open Sore of A Continent: A Personal Narrative of the Nigerian* Crisis (New York: Oxford University Press, 1996) at 25.
[1032] A. Cassese, *The Current Legal Regulation of the Use of Force* (Martinus Nijhoff, 1986) *supra* note 743 at 511.
[1033] "Nigeria, 21 Others Join Global Peacekeeping Outfit" The Guardian, 3rd April 1999. Online

While this arrangement is being examined, it is perhaps more fruitful to examine how the existing regional bodies may be harmonized and their abilities and potentials harnessed for securing global peace within the existing framework of the Charter.

On how regional bodies may be incorporated in the maintenance of international peace by the Security Council, Tom Farer has pertinently suggested that the existing relationship between the United Nations and the various regional bodies be urgently redefined for clarity.[1034] The scope of the respective autonomy and areas of competence and expertise of regional organizations should be clearly established. A situation like Liberia's where ECOWAS, an organization designed for regional economic integration, grapples with the problems of peacekeeping and military enforcement of peace leaves much to be desired. It lacked the experience, infrastructure, logistics and personnel for the task and these obviously affected its performance in Liberia.

Although the Charter does not define the relationship between the United Nations and regional organizations,[1035] it would be prudent to categorize and delimit them depending on their constitutive treaties, focus and specialized competence. At the moment no one can say with appreciable certainty which regional organizations in any part of the globe could function under chapter 8 of the UN Charter. At the moment, another economic body known as the Southern African Development Commission (SADC) is wrestling with the intricacies in of peace enforcement in Zaire.[1036] Regional bodies dealing with educational, scientific, economic, environmental or other diverse concerns should be so clearly recognized and their areas of special competence and expertise delimited. This is probably the better way in which the envisaged closer cooperation between both regimes could be enhanced.[1037] Peace enforcement should not

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>http://www.ngrguardiannews.com accessed on 3rd April 1999. Note that the same approach is being pressed by the Francophone countries in West Africa for the ECOMOG.

[1034] Farer, *supra* note 527, *ibid.*

[1035] Clark, *supra* note 506 at 3.

[1036] *Supra* note 975.

[1037] Murphy, *supra* note 996 at 201.

be an "all-comers" affair. The much expected regime of close cooperation between the UN and regional organizations should be on a clearly established basis of recognition of competence.

Further, regional bodies should be encouraged to exchange information with the Security Council. This can be achieved by inviting them to attend meetings of the Security Council where matters of security affecting their respective regions are in issue. The Security Council and regional organizations should have the mutual powers of introducing matters to the respective agenda of each organ where necessary.[1038] Where such efforts to compel the active involvement of the Security Council fails, the regional body may ask for the Security Council's authorization to intervene in the conflict. If this arrangement was in place, the reactionary efforts by Zaire and Ethiopia at the Security Council which prevented a timely response by the Council to the Liberian crisis would probably have been obviated. Similarly, it would obviate the inherent danger of abuse in *ex post facto* ratifications.

A symbiotic relationship between regional organizations and the Security Council should be fostered.[1039]The present fluid and distanced relationship between the Council and regional organizations on security is undesirable. The former Secretary-General of the United Nations, Boutros-Boutros Ghali in apparent rationalization of this fluid state of affairs hailed it as affording some "useful flexibility conducive to a rich variety of complementary roles."[1040] Arguing further, he posited that "just as no two regions or situations are the same, so the design of cooperative work and its division of labour must adapt to the realities of each case with flexibility and creativity."[1041] While these glorious words for the contemporary regime of relationship between the United Nations and the regional bodies have some element of truth, unfortunately there is no design of

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[1038] *Supra.*
[1039] *Ibid.*
[1040] Boutros Ghali, *Agenda for Peace, supra* note note 812 at 60-5.
[1041] *Ibid.*

cooperative work, the existence of which the Secretary General assumed. And that is the crux of the problem.

It is perhaps pertinent to recall that the former Secretary General of the United Nations, Boutros Boutros Ghali took an unprecedented step in 1994. On August 1, 1994 he held a meeting with the heads of all regional organizations committed to the maintenance of regional security such as the Commonwealth of Independent States (CIS), the European Union (EU), League of Arab States, NATO, OAU, ECOWAS et cetera.[1042] At the meeting, it was reiterated that United Nations has the primary responsibility but the need for some decentralization of that mandate under the Charter was acknowledged. What then shall be the nature of this much heralded era of decentralization of authority?

From a sober examination of the relationship between the ECOWAS and the Security Council in the management of the Liberian crisis, it can hardly be gainsaid that some element of clear devolution and decentralization of authority is necessary. The contemporary practice by which regional bodies like NATO, ECOWAS and the SADC literally determine by themselves, the existence or otherwise of threats to international peace, by-pass the Security Council by formulating and enforcing perceived responses thereto, is not only illegal but extremely dangerous. Indeed it strikes at the very root of the essence of the existence of the Security Council.[1043] The question of primary jurisdiction in maintenance of peace, globally or regionally, can hardly be resolved in favour of regional bodies.[1044] Where the Security Council is unable to act, it may then clearly and with a rather narrow margin of latitude, authorize a regional body recognized as existing for the purposes of chapter 8 of the Charter to deal with the matter. In such a situation, the Security Council may still retain political and moral control over the intervention. Such a delegation of authority should be on very clear terms leaving no

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[1042] Boutros Boutros Ghali, *Building Peace Development: Report of the Work of the Organization for the 48th to the 49th Session of the General Assembly* (U.N. Dept. of Information., 1994) at 158.
[1043] Alan Henriksson "The UN and Rregional Organizations: King-Links of a Global Chain" (1996) *7 Duke J. of Int'l & Comp. L.* at 35.
[1044] But see, Clovis Maksoud, "The Arab World's Quandary" (1991) 8 *World Policy Journal* at 551.

room for an extended and tortured expansion by a regional body. For instance, the mandate to a regional body to intervene may be limited in time and renewable by the Security Council every three months.

The redefinition of the relationship between regional organizations and the Security Council should not only be articulated before the emergence of crisis situations but where violent conflicts arise which threaten international peace, the role of the two regimes should be clearly defined. A few lessons derived from the ECOWAS action in Liberia may be helpful. Owing to the proximity of regional organizations to the conflict,[1045] it is not difficult to foresee a situation where blinded by the dusts of the conflict, regional organizations bring their own agenda and perspectives to the conflict and thus may compound an already grave and complex situation.[1046] In the Liberian case, it was no secret that the Francophone states and their Anglophone counterparts brought their mutual suspicions and prejudices to bear upon their perception of the problem.[1047]

However, the maintenance of international peace and security by the Security Council does not necessarily mean that the Security Council must be involved in every minute aspect of crisis detection and peace enforcement. It may delegate some of its functions to regional bodies and yet maintain direct control of the extent of the use of force and formulate general policies behind such actions. In the circumstances, it is suggested that in addition to those non-permanent members of different continents sitting as members of the Security Council, regional organizations with security interests should be relied upon for information regarding the state of security in their respective regions. This acknowledges that regional organizations are best situated to appreciate the emergence of threats to international peace at their earliest stages, yet it hardly addresses the problem of absence of standing at the Security Council of regional bodies. This is one

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[1045] Dan Lindley, "Collective Security Organizations and Internal Conflict" in Brown, ed., *supra* note 223 at 556.
[1046] Binaefer Nowrojee, *supra* note 86 at 138. See also, Ghali, *Agenda for Peace, supra* note 812 at 3.
[1047] *Ibid*, at 141.

way by which the making of a determination by the Security Council of the emergence of a threat to internationl peace could have appreciable objectivity.

How will the information relevant for the making by the Security Council of the determination that there exists a threat to international peace in a particular case be effectively used if the regional bodies on security have no competence to table such issues as part of the agenda of the Security Council? It is probable that the information gathered by the regional bodies in the exercise of their advantages of proximity to the emerging threat to peace may end up as a bulky and dust ridden file in an obscure office at the United Nations. If the information is passed on to the continental representatives at the Security Council, chances are that it may never see the light of day. The case of Liberia is in point.[1048]

Therefore, there is a need for a review of the procedural rules of the Security Council to enable regional bodies, relying on their perceived higher margin of appreciation of threats to international peace, to table such emerging crises before the Security Council. This necessarily calls for a clearer definition of the scope of authority of regional bodies and how best they can be utilized while remaining under the direction of the Security Council. There is hardly any denying the reality that a concerted global approach to conflict prevention, management and resolution is far more preferable to regional initiatives.

The question of funding of operations has profound implications that have to be resolved. The situation in Liberia is again instructive. In the ECOWAS action it has been estimated that as at 1994, the sum of $90 million was expended. Of this sum only $18.4 was contributed by the United Nations Trust Fund. Seventy per cent of the balance was borne by Nigeria.[1049] Several of the West African troops in Liberia were paid their

[1048] On the sometimes ugly face of African politics on issues of collective security, see Michael Wolfers. *Politics in the Organization of African Unity* (London: Methuen, 1967) at 92.See also T.A. Imobighe, "An African High Command: The Search for a Feasible Strategy of Continental Security" (1980) 79 *African Affairs* at 315.

[1049] Binaefer Nowrojee, *supra* note 86 at 147.

salaries directly from their respective governments. Several West African states could hardly afford the cost of keeping their troops in Liberia. This necessarily raised at least two dangers.

First, as the salaries were in some cases unpaid for months, some of the peacekeepers began to engage in activities incompatible with their peacekeeping status. Substantial and serious cases of looting, expropriation and theft of Liberian assets by the ECOMOG peacekeeping troops have been widely reported.[1050] Extortion of the traumatized Liberians by the ECOMOG peacekeepers were also reported.[1051] Second, regional enforcement actions have shown that they are more or less unilateral in character even when masked in the toga of the regional machinery. This is more pronounced in the aspect of funding and when the peacekeepers are paid from the respective accounts of their different countries. Loyalty is split and those contributing countries who can afford to pay their soldiers are more likely and able to hijack the supposed regional and collective effort.

The ECOWAS action in Liberia was largely dominated and inspired by the military government in Nigeria. Of the 12 billion United States dollars spent by ECOWAS in the crisis, Nigeria accounted for 8 billion dollars.[1052] Hence, the impression and allegation that the ECOWAS action in Liberia was in fact a Nigerian quest for hegemonial control of West Africa. Similar allegations are present in the ECOWAS intervention in the Sierra Leonean crsis.[1053] The NATO intervention in Kosovo crisis has equally been perceived as a US attempt to impose its will and ideology in the Balkans.[1054] The current SADC intervention in the Zairean crisis has equally been inspired by Zimbabwe whose Prime Minister, Robert Mugabe, is known to harbour ideas about

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[1050] Terrence Lyons, "Liberia's Path From Anarchy to Elections" (1998) 97 *Current History* at 229-33.
[1051] *Ibid.*
[1052] *Ibid.*
[1053] Sylvester Ekundayo "ECOMOG-A Model for African Peacekeeping" *Africanews* Oct. 16, 1998, at 12.
[1054] Chomsky, *supra* note 956.

Zimbabwean leadership of Southern Africa.[1055] To reduce and possibly avoid this debilitating suspicion when regional enforcement actions are in place, the funds for the maintenance of peacekeeping troops should be in one pool regardless of the contibution of any state and managed by the civilian administative body of the relevant regional organization[1056]and/ or with the UN.

In addition, a professional civilian staff to monitor and document the excesses of the military aspect of the enforcement actions should be institutionalized and made answerable to the office of the Secretary-General of the United Nations. This should be made to work in liasion with that regional organization and should also serve as a clearing ground for regional bodies already at work in trouble spots. Unlike the UN Special Representative or High Commisioner which are usually appointed after the conflict has been resolved, this kind of agency would serve as information gathering and collation centre during the enforcement of peace by a regional organization so as to ensure that human rights abuses by peacekeepers and warring factions are not left undocumented and unpunished.[1057] In the Liberian case, the ECOMOG/UNOMIL peacekeepers were alleged to have abused women and young girls, siring over 25,000 children in the process.[1058] A UN Special Represenative who merely visits refugees from the conflict and flies back to New York to deliver "a special report" is absolutely useless in the documentation and collation of incidents of human rights abuses perpetrated in the field of conflict.

On the sexual abuse of Liberian women and girls, the Nigerian dominated contingent with over 5,000 troops in the ECOMOG accounts for 50 per cent of the number of children born to the peacekeepers, the remaining 50 per cent is split by

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[1055] *Schism in SADC Over Congo Wa.r* Online> http://www.6day.co.za/98/08/0820/news/.htm visited on 25/11/98., *supra* note 975, *ibid.*.

[1056] Brown, *supra* note 223 at 556.

[1057] William Neil " Human Rights Monitoring versus Political Expediency: The Experience of the OAS /UN Mission in Haiti". 8 Harvard Human Rights Journal (1995) at 101.

[1058] Jeff Cooper, "Tracing Missing Fathers" World News, Inter Press Service, 23 October 1998 online< www.oneworld.org/ips/oct98 /html accessed on 22 July 1999.

Ghanaian, Guinean, the Gambian and Siera Leonean fathers.[1059] Most of the girls were between 13 and 16 years of age and reportedly had affairs with ECOMOG soldiers in return for food and protection during the war.[1060] In the absence of an effective civilian machinery to supervise the conduct of ECOMOG troops in Liberia, over 85 per cent of the young girls sexually abused by the peacekeepers are yet to locate the soldiers nor establish contacts between them and the "ECOMOG Children." Sadly, a combination of a paucity of reliable documentation of the atrocities by the warring factions and the peacekeepers, and the absence of the necessary political will has made it impossible for criminal charges to be pressed against the perpetrators of atrocities in the conflict.[1061]

Furthermore, the norms on intervention should be codified. Just as the United Nations International Law Commission has researched and codified several applicable norms, it is high time a body of experts evaluated the cases of multilateral enforcement actions and came up with principles which may be adopted by the General Assembly of the United Nations in the form of a Declaration. In this context, a few suggestions may be worth trying.

First, no regional enforcement action may be countenanced without the express authorization of the Security Council first sought and obtained. *Ex post facto* ratifications of unilateral regional enforcement actions leave ample room for abuse and arbitrariness and does great damage to the normative order on the use of force. Second, no regional organization purporting to enforce the peace may enter a field of conflict without an effective cease-fire in place. The attack on ECOMOG troops by the NPFL rebels was largely a function of the absence of a prior effective cease-fire before the ECOMOG purported to enforce the "cease-fire."[1062] This factor also contributed to the protracted nature of the conflict and actual intervention and literally made ECOMOG a party to the

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[1059] *Ibid.*
[1060] *Ibid.*
[1061] Abraham William, "War Crimes Tribunal for Liberian Warlords" (1996) vol. 11, *The Perspective* at 6.
[1062] James Busumtwi-Sam, "Redefining Security After the Cold War" in *supra* note 993 at 276.

conflict. Third, there must be clear lines demarcating the combatants themselves and the interventionist forces. A situation in which the rebels, the vestiges of the government troops and the ECOMOG peacekeeepers had little or no clear lines of demarcation contributed to the high casualty rate and chaotic nature of the conflict and its resolution by the interventionist forces. Similarly, the absence of a clearly demarcated line of conflict and intervention obscured the apportionment of responsibility for human rights abuses perpetrated in the conflict.

If serious abuses of human rights are perpetrated in areas where the lines of separation are not clear, it is very easy for the crime to go undetected, and if detected, to remain unpunished. Fourth, the interventionist force must be clearly neutral.[1063] This may best be achieved by a prior express authorization of the Security Council and scrupulous compliance with the regional organization's constitutional mechanism. The fudgy and ad hoc manner in which ECOWAS approved and "ratified" its decision to intervene in Liberia cast serious doubts on its neutrality and this in turn impacted negatively on its perception by the warring factions.

Fifth, the mandate of the regional enforcers of peace must necessarily be subject to the overriding authority of the Security Council. Finally, to secure collective security, we must first secure social distributive justice. Within the African context with a multitude of ethnic groups split across different frontiers of that continent's fifty-three countries, the practice of a holistic conception of collective security and distributive social justice secured by good governance is the antidote to the needless civil conflicts ravaging the continent. Collective security and social justice, in the words of Nigerian novelist Chinua Achebe, are "two sides of the same coin."[1064]

[1063] *Supra.*

[1064] Chinua Achebe, *The Trouble With Nigeria.* (London: Heinemann, 1983) at 24.

6.4 CONCLUSION

This thesis has examined the legality of the ECOWAS intervention in Liberia within the standpoint of collective security in a dynamic world. The Liberian state in its structure, polity and organization raises questions as regards the nature of statehood in Africa, mode of governance and *raison d'etre*. With this comes the urgent need for a redefinition of the parameters of governance in Africa. Further, the causes of the Liberian conflict raise interesting issues concerning the impact of global events and phenomena on the stability and security of most African states. The intervention itself marked the first active collaboration in peacekeeping by a regional organization with the United Nations. This unprecedented development presents an interesting but potentially dangerous precedent. This thesis has also explored some of the aspects relating to the Charter regime on the use of force especially the relationship between chapters 7 and 8.

Some concluding observations are now pertinent. First, although heavy weather has been made about the colonial legacy in Africa of the Berlin demarcated boundaries, the instability and civil crises in that continent are essentially a question of bad governance. The Berlin boundaries may inflame and exacerbate those conflicts when as a result of decay in the polity they arise. The direct link between legitimate governance and stability in the state is now deservedly well established. Second, the regime on recognition of governments needs urgent reappraisal. Regarding the intervention, several issues are raised. First, it raises the question of whether a regional organization can use force to maintain peace within its area of relevance, given the paralysis of the Security Council and the increasing marginalization and marginality of Africa in global relevance. With notorious UN indifference or half-hearted responses to militaristic conflicts in

Sudan, Zaire, Angola, Chad, Ethiopia, Eritrea, Guinea-Bissau, Sierra Leone, Uganda and Somalia, Burundi, and other flashpoints in Africa, the temptation for relatively powerful neighbouring states to seize the initiative and intervene cannot lightly be discounted.

This is moreso, when the chords of ethnic affiliations have survived the European knife of division of Africa at the 1884 Berlin Conference. One can only refer to the Watutsi (Tutsi) crisis in Central/East Africa which has found expression in the infamous Rwandan genocide, Zairean war, and several other ethnic motivated crises in that part of the continent. Consequently, the dangers of abuse inherent in the ECOWAS precedent may be worse than the Security Council's notorious indifference. The imperative question that arises is how to improve the relationship between the Security Council and regional organizations in the maintenance and enforcement of peace.

In this context one cannot fail to question the role and responsibility of members of the UN Security Council, especially the permanent members. Is their primary responsibility to global concerns held hostage by their selfish and national interests? If the permanent members of the Council look out for their respective national interests at the expense of their responsibility to the globe, the attitude is ominous. The diversity of the issues raised in the Liberian conflict and the consequent military intervention by ECOWAS are almost infinite. However, in examining some of them, this thesis has located the seeds of the conflict, not only in Liberia's (and by parity of reasoning, other African states') historical foundations but in contemporary factors. It has also identified the catalysts of such crises within the international framework.

Further, it has examined the relevant doctrines on the enforcement of peace in the context of contemporary state practice and the prognosis is that the world is at risk of an

era when regional organizations assume primary responsibility for the maintenance of global peace on their own terms without substantive reference to the United Nations Security Council. Unilateralism which has been veiled in multi-lateral actions is becoming rampant and the Security Council is increasingly assuming the diminished role of a "legitimizer", and ratifier of its hijacked legal responsibility. There is no indication that this trend would not continue and its impact on the Charter law would be enormously negative. If the concept and practice of collective security must have meaning at international law, it must not only be by a collective effort through a legitimate, representative and responsible Security Council but must also perceive of security in its holistic character, unabriged or defiled by parochial pretensions of powerful states. Perhaps this thesis should be closed with the words of Polish contemporary poetess, Wislawa Szymborska.[1065]

> Oh, the leaky boundaries of man-made states!
>
> How many clouds float past them with impunity;
>
> How much desert sand shifts from one land to another;
>
> How many mountain pebbles tumble into foreign soil
>
> In provocative hops!

[1065] Quoted in James Rosenau, *Along the Domestic-Foreign Frontier-Exploring Gorvernance in a Turbulent World* (Cambridge: Cambridge University Press., 1999) at 451.

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