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IN DEFENCE OF HUMANITY
COLLECTIVE HUMANITARIAN INTERVENTION:
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IN DEFENCE OF HUMANITY

Collective Humanitarian Intervention: A Duty to Intervene?

H A HARRISON DINNISS

ABSTRACT	2
I. INTRODUCTION	3
II. GENERAL PRINCIPLES.....	5
<i>A. Domestic jurisdiction</i>	5
<i>B. Sovereignty</i>	7
<i>C. Threat or Use of Force</i>	8
III. THE RISE AND FALL OF INTERVENTIONISM.....	9
IV. THE EVOLVING NATURE OF 'THREAT TO THE PEACE'	14
<i>A. Iraq</i>	16
<i>B. Bosnia-Herzegovina</i>	18
<i>C. Somalia</i>	21
<i>D. Rwanda</i>	25
<i>E. Haiti</i>	28
V. HUMANITARIAN INTERVENTION AS A SEPARATE AUTHORIZATION.....	30
PART TWO	33
VI. A DUTY TO ACT	33
VII. PROXIMITY AND RISK.....	37
VIII. CONSEQUENCES.....	41
IX. CONCLUSION	45
X. BIBLIOGRAPHY.....	47

ABSTRACT

The Genocide Convention imposes a duty on States to prevent and punish the crime of genocide. Article 24 of the Charter of the United Nations gives the Security Council the primary responsibility for maintaining and restoring international peace and security.

Since the end of the Cold War the United Nations Security Council has found a new freedom to act. Using this the Security Council has widened the definition of threat to international peace and security to include widespread violations of human rights, including genocide. By classifying genocide as a threat to international peace and security the Security Council has assumed the primary responsibility for its suppression and therefore has a duty to intervene in defence of humanity.

International law is supplemented by the general principles of domestic law. As such a comparison with a domestic duty to rescue, with the role of the Security Council in mind is useful in establishing the scope of such a duty; consequently comparisons with authorized security officers will be more salient than with civilian rescuers. The concepts of proximity and risk normally present in the duty to rescue in domestic law must be reevaluated for the international law.

The consequences of this duty are far reaching. The questions of what will constitute a breach and what sanctions there might be for a breach are addressed.

Imposing sanctions on individual Member States who block Security Council action will promote intervention at any cost and threaten the legitimacy of Security Council decision making.

The text of this paper (excluding contents page, footnotes, bibliography and annexures) comprises approximately 11,975 words.

I. INTRODUCTION

On May 20 1998 United States President Bill Clinton stood in Kigali, the capital of Rwanda and stated that the international community should have acted sooner to prevent the genocide that took place there in 1994.¹ In making his statement, Clinton spread blame liberally among the members of the international community. This assumption of partial responsibility four years later has underscored the movement of international thinking toward the conclusion that the international community must act when genocide and other gross breaches of human rights occur.

With the end of the Cold War and the demise of the essentially bipolar world, the Security Council has found a new freedom to act. In 1991, the success of the coalition forces in Iraq, under the auspices of the United Nations, signaled the Security Council's apparent willingness to intervene in defence of humanity. Since then the Security Council has authorized various interventions either under United Nations command or State command with UN backing, in an attempt to forcibly rectify what have largely been internal, rather than inter-state conflicts. It appears that the Security Council, in authorizing these interventions, has included widespread deprivations of human rights in an expanded mandate to determine 'threats to the peace'.

The Tribunal for War Crimes in the Former Yugoslavia has stated "It can be said that there is a common understanding manifested by the 'subsequent practice' of the membership of the United Nations at large, that the 'threat to the peace' of Article 39 may include, as one of its species, internal armed conflicts".² Many writers have concluded that this practice of the Security Council has established a 'right' to forcibly intervene in the affairs of a State

¹ "Remarks honouring Genocide Survivors in Kigali, Rwanda" March 28 1998, 34 Weekly Comp Pres Doc 495 [Genocide Survivors].

² *Prosecutor v Dusko Tadic*, Decision on the defence motion for interlocutory Appeal on Jurisdiction. UN Doc IT-94-1-AR72 (Oct 2, 1995) para 30; (1996) 35 ILM 35.

where citizens are subject to massive and widespread human rights violations.³

While strong arguments have been presented for the right of the UN to collective humanitarian intervention, opinion is still sharply divided on the right of unilateral intervention by another state.⁴ This is primarily due to the high risk of abuse. This paper concentrates on the right to collective humanitarian intervention by the United Nations. While recognizing that intervention takes place in many forms along a continuum of political, economic and military options, for the purposes of this paper the definition has been narrowed. Humanitarian Intervention refers to the threat or use of force by an international actor for the purpose of alleviating a widespread deprivation of internationally recognized human rights, in particular the right to life. Collective Humanitarian Intervention is the use of such force by an international organization, or group of states to achieve those ends.

The paper aims to take the interventionist view one step further. It is my contention that not only does the UN in the form of the Security Council have the right to intervene in defence of humanity, it has a legal duty to do so. The question of a duty to intervene has been examined in the past, and concluded that a duty has not yet been established at international law.⁵ However, as the 10th anniversary of the end of the cold war approaches, it is time to revisit the topic in light of a decade of Security Council practice and United Nations humanitarian intervention.

³ See for example, Fernando Tesón "Collective Humanitarian Intervention" (1996) 17 Mich J Int'l L 323, 327. [Tesón]; Mark Hutchinson "Restoring Hope: UN Security Council Resolutions for Somalia and an expanded doctrine of Humanitarian Intervention" (1993) 34 Harv. Int'l LJ 624, [Hutchinson].

⁴ Tesón above n3, 323.

⁵ Nigel Rodley "Collective Intervention to Protect Human Rights and Civilian Populations: the Legal Framework" in Nigel Rodley (ed) *To Loose the Bands of Wickedness* (Brassey's (UK) Ltd, London, 1992) 14, 35 [Rodley].

II. GENERAL PRINCIPLES

At the outset, it is necessary to outline the General Principles of International law that apply to humanitarian intervention. Article 2(7) of the Charter of the United Nations reads as follows:

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

This provision enunciates one of the core principles of international law, the principle of non-intervention. Traditionally the principle of non-intervention was based on the idea that anything that happened within the borders of a State was no other State's formal business. The United Nations interpreted the 'domestic jurisdiction' rule broadly and the accompanying human rights promotion clauses narrowly.⁶ States could argue that anything that happened within their borders was within the domestic jurisdiction of that state and therefore immune from international debate let alone intervention.

A. Domestic jurisdiction

There are two schools of thought on the domestic jurisdiction of states. The first, the essentialist view, proposes that the essential nature of a sovereign state requires that some matters, usually those closely related to the sovereignty of the state, be left to the states own sovereign judgment.⁷ This position has some inherent flaws. With the movement toward concepts of popular sovereignty rather than the sovereign's sovereignty the argument becomes circular. Domestic jurisdiction derives from the essential attributes

⁶ Rodley above n5, 18.

⁷ Tesón above n3, 327.

of sovereignty; however, sovereignty (at least of the popular kind) is derived from the people, who form the domestic jurisdiction.

The second school of thought is the legalist theory, which states that the domestic jurisdiction of a state is a relative matter, which depends on international law at any given moment. That is, where a rule of international law regulates an issue, it automatically ceases to be a matter of exclusive jurisdiction for any state bound by that rule. For example, while there may be a presumption that human rights form part of the domestic jurisdiction of a state, where the state has bound itself internationally, through custom or treaty with respect to the issue, the presumption of domestic jurisdiction is rebutted.⁸ However, the 'domestic jurisdiction ends where international jurisdiction begins' theory does not provide clear answers because of the fluid nature of international law. Rosalyn Higgins has proposed that domestic jurisdiction ends where a state's "actions cause substantial international effects".⁹ This theory seems attractive in explaining increasing international 'interference' in a world that is becoming increasingly globalized, and where states are more interdependent than ever before. Fernando Tesón feels this concept is outmoded.¹⁰ He cites as proof the development of human rights away from the domestic jurisdiction, despite the fact they seem to constitute what he calls the paradigm of an 'essentially domestic' matter since they define the relationship between government and subjects, and have little direct external effect.

The movement of human rights from within the domestic jurisdiction began well before the post Cold War era. In 1967 the UN Commission on Human Rights sought and obtained authorization to consider "consistent patterns of gross violations of human rights".¹¹ Following this an ad hoc working group of experts on Southern Africa was established and several other

⁸ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States) (1986) ICJ 14, 131.

⁹ Rosalyn Higgins "The Development of International Law Through the Political Organs of the United Nations" (Oxford University Press, London, New York, 1963) 62.

¹⁰ Tesón above n3, 329.

¹¹ ECOSOC Res. 1235 (XLII) 6 June 1967.

investigations commenced. More recently, the General Assembly has passed resolutions on the human rights situation in Bosnia-Herzegovina, El Salvador, Iraq, Burma, Afghanistan, Israeli Occupied Territories, Haiti and Iran.¹² It is now accepted that human rights are no longer part of the exclusive domestic jurisdiction of a state.

B. Sovereignty

Traditionally, the substantive meaning of sovereignty in international relations has mandated the legal independence and self-determination of states.¹³ However in recent times there has been a movement from traditional sovereignty, the sovereign's sovereignty, to a more populist based sovereignty. 'Popular Sovereignty' has permitted interference, under certain circumstances, in what were traditionally the domestic affairs of states.¹⁴

Popular sovereignty is the concept that the basis for authority and the legitimizing force of sovereignty is the consent of the people in the territory in which it purports to exercise power.¹⁵ It follows that if the rights of the people are being violated by the state, the state is no longer fulfilling its purpose, namely to allow society to function peacefully and effectively. When this becomes the case the government is no longer legitimate, and the people can call in their 'loan' of sovereignty.¹⁶ Philip Allot provides a similar view:

"If you claim to have legal power, if you seek to act on the basis of a legal power, you acknowledge the legal system which creates the power and which it confers on you, and you acknowledge that the power is in

¹² UN GAOR, 46th Sess. (1992).

¹³ Michael Reppas "The Lawfulness of Humanitarian Intervention" [1997] 9 St. Thomas L Rev 463, 466.

¹⁴ W Micheal Reisman "Sovereignty and Human Rights in Contemporary International Law" [1990] 84 AJIL 866.

¹⁵ This is supported by Article 21(3) of the Universal Declaration of Human Rights, "The will of the people shall be the basis of authority of government".

¹⁶ K Mills "Sovereignty Eclipsed?: The Legitimacy of Humanitarian Access and Intervention" J Hum Ass <<http://www-jha.sps.cam.ac.uk/a/a012.html>> (reposted 4 July 1997), n60 [Sovereignty Eclipsed].

principle limited, and you acknowledge the specific limits of the power. Thus those who are acting within the realm of the socially constructed state must accept the purposes of that entity in order to be able to claim legitimacy for their actions."¹⁷

C. Threat or Use of Force

Article 2(4) of the Charter prevents the threat or use of force against the territorial integrity or political independence of any state. However, this does not apply where the Security Council authorizes enforcement measures under Chapter VII of the Charter.¹⁸ Further, the threat to use force will be illegal in circumstances where the actual use of force would be contrary to international law.

The use of force is governed by the restricting principles of necessity and proportionality. The principle of necessity, established in the *Caroline* case,¹⁹ dictates that no measures short of armed force would be sufficient to stop the human rights violations in question. In effect this means that all other measures should have been exhausted, except in cases where this sort of delay would mean irreparable harm.²⁰ When dealing with interventions by the Security Council, Article 42 of the Charter also requires that the Security Council have determined that non-forceful measures would be inadequate or have proved inadequate.

The principle of proportionality requires that the degree of intervention taken is proportionate to the gravity of the situation. Kenneth Campbell has argued that the degree of force that is required in a humanitarian crisis is

¹⁷ Philip Allott *Eunomia: New Order for a New World* (New York, Oxford University Press, 1990) 313, cited in Sovereignty Eclipsed above n16.

¹⁸ Article 2(4) UN Charter.

¹⁹ *The Caroline Case* (1837) 29 BFSP 1137; 30 BFSP 195.

²⁰ Rodley above n5, 37.

directly proportional to the intent of the human actors.²¹ That is, in crises that are the result of natural phenomena, for example, drought or seismic activity, force will be ineffectual and unnecessary. On the other hand, mass atrocities perpetrated by human actors (such as genocide) call for swift military action to end the suffering as quickly as possible and bring the actors to the negotiating table. This theory recognizes that the primary role of military force is as an instrument to change human behaviour.

Thus, humanitarian crises are arranged on a scale between those with criminal human intent and therefore most vulnerable to force, and those least dependent on human intent. The possible responses range from overwhelming military force in situations of genocide (human made, premeditated, mass murder), through deployment of UN peacekeepers for example in situations of mass starvation as the unintended byproduct of internal conflict, to no military force for natural disasters.

This typography of humanitarian crisis proves a useful scale in judging the merits of each intervention and the type of intervention most likely to succeed.

III. THE RISE AND FALL OF INTERVENTIONISM

While some find the erosion of the non-intervention norm to be impermissible, history shows that strict adherence to and support for the principle has ebbed and flowed with the tide of world order.²² Levels of support for a right of intervention have been rising since the 1970's as new exceptions erode the traditional prohibition against intervention.²³ Kegley et al have described circumstances where intervention has traditionally been perceived as more permissible:

²¹ Kenneth J Campbell "The Role of Force in Humanitarian Intervention"(1997) 3(2) *Airman-Scholar*. <<http://www.usafa.af.mil/wing/34edg/airman/campbe~1.htm>> (last accessed 30 September 1998), [Campbell].

²² Charles Kegley et al "The Rise and Fall of the Non-intervention Norm" [1998] 22 *Fletcher F World Aff* 81, 82 [Kegley]; see also: Thoman Biersteker & Cynthia Weber *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996).

²³ Kegley above n22, 89.

"Generalising, it would appear that international society's acceptance of the right to intervene has risen in periods when (1) political transitions from one type of authority structure within states were frequent or expected; (2) the great powers' governing institutions were growing increasingly similar and homogeneous; (3) the threat of war between sovereign states was low; (4) the incidence of civil wars within sovereign states was high, and (5) issues surrounding the maintenance and territorial integrity of the state and the authority structures of governments were uppermost on the global agenda."²⁴

These circumstances describe almost exactly the movement of world order since the end of the cold war and the disintegration of the former USSR.

Governments are becoming increasingly more democratic as the influence of communist Russia has decreased. Regional and continental associations of states are evolving ways to deepen co-operation and ease some of the contentious characteristics of sovereign and nationalistic rivalries.²⁵ At the same time advancing technology, greater communications and global trade are blurring the boundaries of nations. This 'globalisation' of the world is also assisted by decisions of states to join larger political associations, yielding some of their sovereign powers in the process. The emergence of the European Union as a strong political player and the development of the common currency are a case in point. This has the effect of making state's governing institutions increasingly homogenous, thereby lowering the risk of interstate conflicts.

In a 1995 supplement to his Agenda for Peace, United Nations Secretary General Boutros Boutros Ghali commented on the increasing occurrence of intra-state violence:

²⁴ Kegley above n22, 92.

²⁵ An Agenda for Peace: Report of the Secretary General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992. (17 June 1992) UN Doc A/47/277 - S/24111.

"[S]o many of today's conflicts are within states rather than between States. The end of the cold war removed constraints that had inhibited conflict in the former Soviet Union and elsewhere. As a result there has been a rash of wars with in newly independent states, often of a religious or ethnic character and often involving unusual violence and cruelty. The end of the cold war seems also to have contributed to an outbreak of such wars in Africa. In addition, many of the proxy wars fueled by the cold war within states remain unresolved. Inter-state wars, by contrast, have become infrequent."²⁶

Further, increased attention to the principle self determination has brought the issue of territorial integrity to the fore of the global agenda. As the process of 'blue-water' colonial self determination comes to an end, the international community has struggled with issues of self determination for peoples within established international frontiers. Issues of sovereignty and the appropriate authority structures for distinct ethnic groups, communities and populations within states are once again high on the agenda of the international community.

The current move towards a right of humanitarian intervention is part of a movement that started in the 1970's. While some commentators view this transition with skepticism and more than a little apprehension,²⁷ it must be viewed in its appropriate context. Support for intervention has always fluctuated with the state of the world order; As such, this current push for interventionism is simply the product of a global transition from the post cold war order, which has dominated world politics for so long.

It may perhaps be argued that, much as the principle of non-intervention is causing problems for pro-interventionists now, imposing a duty to intervene on the United Nations interferes with the natural fluctuation. This would

²⁶ Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Fiftieth Anniversary of the United Nations (1995) UN GAOR, 50th Sess, UN Doc. A/50/60.

²⁷ See generally; Jim Whitman "A Cautionary Note on Humanitarian Intervention" J Hum Assistance, <<http://www-jha.sps.cam.ac.uk/a/a022.html>> (posted 15 September 1995).

result in an unacceptable precedent as world opinion once again shifts towards non-intervention.

While there is merit in this argument, several factors in the current world situation have pushed us to a point where return to a strict non-intervention norm is no longer possible.

Firstly, the population of the world has increased steadily during the past decade and is set to continue in this manner. As countries struggle to cope with the demands of their own increasing populations they have less ability to cope with any influx of displaced persons fleeing conflict in a neighboring state. Intervention early on in conflict minimizes the numbers of refugees and hence the impact of these displaced persons on host states' economies and environmental resources. The Republic of Congo has experienced these effects first hand as a million refugees fled Rwanda, crossed the border into what was then Zaire. Food prices soared and the labor market crumbled as a massive surplus of labor hit the economy. These effects led to strained relations within the host state providing an environment ripe for new conflicts to emerge.

Secondly, the threat of conflicts spilling over into neighboring states has increased as the physical size of states has decreased. Containment of conflict remains important to states, as states break up into ever-smaller 'component states'. Further, the current global salience of self-determination means that the number of small states is likely to increase rather than decrease. As the process of self determination of blue-water colonies is completing, many of these new 'independence struggles' have an increased propensity for violence.

The globalization of the international community plays a large part in the push for interventionism. Increased globalization of trade and economics further prohibits a return to a strict non-intervention norm. Conflicts pose a threat to international markets for goods both in preventing access to the particular state in conflict but also in disturbing trade routes and other established practices. Regional trade alliances such as GATT and the EC

would not be impressed by the disruption of productive economic relations as a result of civil conflict. Intervention to resolve the conflict as quickly as possible and with minimal damage to production plants means those economic relations can be restored promptly.²⁸

The push for interventionism is particularly affected by modern telecommunications and electronic media access. In what has been dubbed the "CNN Effect" television footage of suffering victims of humanitarian disasters intruding into the sanctity of people's living rooms, mobilizes and encourages populations to support and call for intervention. The hideous destructiveness of war is now beamed to us in graphic multicolored detail and in a virtual electronic simultaneity.²⁹ Events happening half a world away now have the proximity of the neighborhood and have become part of our consciousness. Added to this is the fact that news coverage, at least in New Zealand, is not censored for violent content, but rather, left to editorial discretion. As Michael Reisman points out "the wars that are presented most graphically are also presented - often with inane apologies for 'graphic material', as if the media had no alternative but to present the war - in terms of high moral drama, almost always with simplified glosses as to who are the righteous and who are the villains. The greater the graphic content, the greater the moral content.... This moralization of conflict puts great pressure on audiences to 'stop the carnage' in a particular conflict where the 'innocent victims' are suffering and losing"³⁰

As technology has advanced the population of the world has become more affected by conflict impinging on their consciousness. As this increased awareness continues it seems unlikely that populations, at least in democratic states, will allow their governments to sit idly by and do nothing

²⁸ It must be remembered that many of these wars may also prove economically and politically beneficial to some states who are not involved as belligerents, however the numbers are limited; W Michael Reisman "Stopping Wars and Making Peace: Reflections on the Ideology and Practice of Conflict Termination in Contemporary World Politics" [1998] 6 Tul J Int'l & Comp L 5, 8. [Reisman, Stopping Wars]

²⁹ Reisman, Stopping Wars above n28, 9.

³⁰ Reisman, Stopping Wars above n28, 10.

to help. For example, public pressure is credited with forcing the United States to finally act in Rwanda after news spread of a million people being hacked to death.

IV. THE EVOLVING NATURE OF 'THREAT TO THE PEACE'

Article 39 provides:

"The 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 Article 41 and 42, to maintain or restore international peace and security."

Article 39 gives the Security Council the discretion to determine what constitutes a threat to the peace. Thus by "employing a liberal construction of [Article 39] the Security Council may sanction collective security actions anywhere in the globe where humanitarian abuses constitute a threat to the peace".³¹ The Security Council has given the term threat to international peace and security a wide reading since the end of the cold war. Indeed the Security Council commented in 1992, "The absence of war and military conflicts amongst states does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security".³²

In response, Marc Boutin has formulated a test for determining what constitutes a threat to international peace and security, however his claim of objectivity cannot be sustained.³³ The test weighs the need for humanitarian intervention against impediments such as the logistics and availability of

³¹ Hutchinson above n3, 624-625.

³² Summit Statement Concerning the Council's Responsibility in the Maintenance of International Peace and Security (1992) 31 ILM 758, 761.

³³ Marc Boutin "Somalia: the Legality of UN Forcible Humanitarian Intervention" (1994) 17 Suffolk Transnat'l L Rev 138, 161-162.

resources. Member states of the Security Council come with a view of what situations require intervention coloured by their background, past experiences and political standing. It is this reality that provides much of the legitimacy of the Security Council's actions on the theory that the opposing views of member states will curb excesses in any one direction. To say that such a determination will not be subjective ignores this reality.

Further, the test confuses practicality and realpolitik with legal justification. Impediments such as logistics and supply of resources are relevant only to the question of what action, if any, will be taken, or the scale on which an action will take place, rather than the legality of such an action. The United Nations debacle over Rwanda is a case in point. The Security Council recognized the need for action, but lack of resources and the strength of the US disapproval meant the subsequent French intervention was too little, too late. That did not detract from the legality of the action.

Anti-interventionists argue that interference in humanitarian situations cannot be justified as the Security Council mandate refers only to "*international* peace and security" (emphasis added). The rebuttal to this argument is twofold. Firstly, it is a legal fallacy to say, in this age of globalization, that the effects of civil wars do not threaten international peace. In the civil wars in which the UN has intervened in this decade, thousands of refugees have fled from the brutality of their homeland into neighboring states. These massive displacements have a major impact on the host countries. For example, approximately one million refugees fled the fighting in Rwanda across the border in to what was Zaire,³⁴ a further 90,000 to Tanzania. In Zaire especially, this massive influx sent food prices soaring and created a surplus of labor. As well as the economic effect, the influx has caused a huge environmental impact on the region. The strain on resources also lead to the spread of ethnic violence in Zaire between Zairians and Rwandan refugees. In turn, this strained relations between Rwanda and Zaire, with the Zairian army blocking off entire refugee camps and forcibly returning refugees to Rwanda. Furthermore, according to Zairian

³⁴ Now called the Republic of Congo.

newspapers, Zaire also supplied arms to the Rwandan army-in-exile preparing for a re-invasion of Rwanda.³⁵ These cross border incursions are undoubtedly a threat to international peace.

Subsequent Security Council practice under Chapter VII of the Charter has expanded the definition of threat to international peace and security. A brief survey of the United Nations interventions since the end of the Cold War shows a greater willingness to treat failure to protect human rights as threats to peace and security.

A. Iraq

During the Gulf War military campaign, President Bush and other foreign leaders expressed optimism that Iraqi nationals would "take matters into their own hands" and remove Saddam Hussein from power.³⁶ At the end of the conflict, coalition forces had pushed the Iraqi army back from Kuwait and into southern Iraq. The resounding defeat of the Iraqi army, combined with this foreign encouragement stirred rebellion against the government amongst the Kurds in the north of Iraq and the Shiite Muslims in the southern marshes. As civil unrest broke out the government was left trying to curb insurrections on two fronts.

By March 16 1990, the Kurdish rebels claimed they controlled 80-90 percent of the land in the northern Iraqi province of Kurdistan.³⁷ However once the Iraqi military forces had quelled the rebellion in the south, Baghdad moved thousands of troops north to face the Kurdish threat.³⁸ The Iraqi government forces launched intensive air, missile and artillery attacks against Kurdish

³⁵ B Smith "Field Report: The Need for Humanitarian Intervention in Central Africa" (1996) 3 Human Rights Brief,

<<http://www.wcl.american.edu/pub/humright/brief/v3i3/rwanda33.html>>, [Smith].

³⁶ "Remarks to Raytheon Missile Systems Plant Employees in Andover, Massachusetts" 15 February 1991, 27 Weekly Comp Pres Doc 177.

³⁷ "US threatens to down any Iraqi Combat Aircraft" *Wash. Post*, March 16 1991, A1.

³⁸ "Kurds seize Iraqi Base and Work to Demoralise Saddam's Army" *Wash. Post*, March 28 1991, A1.

villages forcing millions of Kurds to flee into the mountainous countryside making for the Turkish border. Conditions in the mountains were severe. With no shelter or sanitation for the fleeing masses, the death rate rose to 1000 per day within weeks. The situation worsened as Turkey closed its border after some 20,000 - 40,000 Kurds had crossed into lower lying refugee camps. Troops were deployed along the border in an attempt to stop the flood of Kurds into Turkey from overwhelming their outlying provinces. Refugees continued to mass along the border, thus increasing the humanitarian emergency. Similar effects were being felt on the border with Iran, where an estimated 500,000 Iraqi nationals had crossed into Iran during the fighting. Both Turkey and Iran called on the international community to act.

In response the Security Council passed Resolution 688, noting its responsibility for the maintenance of international peace and security and found for the first time that the "massive flow of refugees towards and across international frontiers and to cross border incursions" threatened international peace and security.³⁹ Further, the resolution characterized Iraqi compliance with humanitarian demands as "a contribution to international peace and security in the region".

While the UN did not explicitly authorize the use of force in establishing 'safe havens' and 'no fly zones', some commentators have suggested that the allied coalition force was implicitly authorized by the Security Council as the "blossom of the seed planted by resolution 688".⁴⁰

The change in the official UN view of state sovereignty in the wake of operations Desert Storm and Provide Comfort is apparent in the speeches of UN Secretary General Javier Perez de Cuellar. Early on, the Secretary-General warned that the planned intervention would require approval by the

³⁹ SC Res 688 UN SCOR 46th Sess 2982 mtg, UN Doc S/RES/688 (1991). The resolution was passed 10 to 3 with 2 abstentions. China made reference to 'domestic jurisdiction' under Article 2(7) in abstaining from the vote.

⁴⁰ Sean Murphy *Humanitarian Intervention: The UN in an Evolving World Order* (University of Pennsylvania Press, Philadelphia, 1996) 194, [Murphy].

Security Council, noting that the situation posed a legal problem.⁴¹ However, in his Report on the Work of the Organization later that year, his tone had change somewhat:

" It is now increasingly felt that the principle of non-intervention with the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights can be massively or systematically violated with impunity...

We need not impale ourselves on the horns of a dilemma between respect for sovereignty and the protection of human rights... what is involved is not the right of intervention but the collective obligation of states to bring relief and redress in human rights emergencies".⁴²

Perez de Celluar's admission that state sovereignty must occasionally yield to human rights concerns was an important step for the UN in accepting humanitarian intervention as a principle of international law.⁴³

B. Bosnia-Herzegovina

The conflict in the former Yugoslavia was extremely complex and protracted. As the Soviet Union collapsed, the six republics of Yugoslavia, loosely held together since Tito's death in 1980, began the process of secession. Croatia and Slovenia declared their independence on June 25 1991. Almost immediately the Serb dominated Yugoslav Peoples Army (JNA) rolled tanks into the former republics beginning a civil war. Eventually cease-fires were established in both Slovenia and Croatia by the European Community and UN respectively.

⁴¹ Tesón above n3, 346.

⁴² *Report of the Secretary General on the Work of the Organisation* UN GAOR 46th Sess. Supp. No.1, 5; UN Doc A/46/1 (1991).

⁴³ Tesón above n3, 347.

In Bosnia-Herzegovina, a referendum was held on February 29 and March 1, 1992 in which more than sixty two percent of the voters favored independence.⁴⁴ The government declared independence on March 3 1992. In April 1992 just days before the United States and other NATO countries recognised Bosnia-Herzegovina as an independent state, Serb forces launched an attack on Bosnia from Serbia,⁴⁵ supporting the efforts of the Bosnian Serb rebels to overthrow the government. The process of 'ethnic cleansing', creating ethnically pure areas in controlled territory, began. The atrocities committed, including indiscriminate vicious attacks on civilians, sieges of cities sheltering starving refugees, mass rape and inhumane treatment of prisoners equalled those of the Nazi party during World War II.⁴⁶

The first time that the Security Council contemplated authorising coercive measures to deal with the conflict was in the summer of 1992.⁴⁷ Resolution 770 called upon States to use "all necessary measures" to facilitate the delivery of humanitarian assistance to Bosnia-Herzegovina.⁴⁸ The resolution openly recognized that provision of humanitarian assistance was an important element in restoring international peace and security in the area. Given the similarity of the language to the 'all necessary means' language used in authorizing force in the Gulf War there was no doubt that the resolution was intended to serve as a basis for military intervention by member states to assist in the distribution of supplies, should they choose to do so. The debate surrounding the adoption of the resolution makes this clear. It is also clear that the commission of atrocities was foremost in the minds of the delegates and was a powerful motivation for their votes, clearly endorsing the doctrine of humanitarian intervention.⁴⁹

⁴⁴ "Bosnian Leader Warns Serbs to Respect Vote Verdict" *The Times* (London), March 4 1992, 8.

⁴⁵ Murphy above n40, 200.

⁴⁶ Murphy above n40, 200; Tesón above n3, 366.

⁴⁷ Tesón above n3, 367.

⁴⁸ SC Res 770 UN SCOR 47th Sess 3106 mtg, 24; UN Doc S/INF/48 (1993).

⁴⁹ Tesón above n3, 367.

In October 1992 the Security Council established a no-fly-zone in the airspace over Bosnia in order to protect humanitarian relief flights from Serbian attack. When this proved ineffective the Security Council passed Resolution 816 authorising member states "acting nationally or through regional organisations" to take "all necessary measures" to ensure compliance with the flight ban.⁵⁰ NATO's North Atlantic Council agreed to provide air support to enforce the ban.

In April and May of 1993 the Security Council established six 'safe havens' in former Muslim enclaves for the protection of Bosnian civilians. In addition they expanded the mandate of the United Nations force present on the ground (UNPROFOR) to enable it to deter attacks against those areas, occupy certain points to that end and reply to the continual bombardments by the Serbs against the safe-havens.⁵¹ Further, member states acting nationally or through regional organisations were authorised to take "all necessary measures, through the use of air power" in and around the safe-havens to protect Bosnian Muslims and in support of UNPROFOR.

The Bosnian Serbs continued to attack the UN declared safe-havens. After the shelling of a crowded open air market in Sarejevo which killed 66 and wounded more than 200, UN Secretary General Boutros Boutros Ghali sent a letter to NATO requesting that they decide whether to use air power as a response to the shelling.

NATO launched air strikes against Bosnian Serb positions, allowing UN troops access to the besieged town of Majec and preventing the safe-haven of Gorazde from being overrun. A cease-fire was established between the Bosnian Muslims and Croats allowing the Bosnian government army to focus its efforts on defeating the Serbian rebels. Former US president Jimmy Carter brokered a cease-fire in January 1995 which held until March, when the Bosnian government began a major offensive against the Serbian rebels, regaining significant area in Central and Northern Bosnia. The offensive

⁵⁰ SC Res 816 UN SCOR 48th Sess 3191st mtg, 4; UN Doc S/INF/49 (1994).

⁵¹ SC Res 836 UN SCOR 48th Sess 3228th mtg, 13; UN Doc S/INF/49 (1994).

prompted the Serbian rebels to move their heavy artillery back to Sarejevo and both sides resumed shelling. UNPROFOR threatened to conduct airstrikes if either side did not desist, and when the Serb rebels failed to do so, NATO jets were dispatched to bomb arms depots at the rebels' headquarters.⁵² Instead of backing down, the rebels proceeded to shell five of the six safe-havens and take more than 300 UNPROFOR troops hostage. They chained many of them at strategic locations as human shields against further NATO bombing.⁵³

The Bosnian-Serbs overran the safe-haven at Srebrenica on July 11 1995, forcing Muslim civilians to flee for their lives and trapping UN personnel in the former enclave. New evidence of Serb atrocities made the daily papers,⁵⁴ and within two weeks the rebels had overrun a second safe haven of Zepa. The combination of a Croatian offensive against Croatian Serbs and continued NATO attacks against Bosnian Serb positions forced the Serbs to the negotiating table and a countrywide cease-fire was declared on October 6, 1995. The Dayton-Paris peace accord was signed on December 14 1995.

While the original declaration of threat to the peace and security in the area was linked to the interstate conflict it became apparent that the atrocities being committed in Bosnia-Herzegovina were the major driving force behind the authorisation of force.

C. Somalia

Civil war broke out in Somalia in 1988 in an attempt to oust President Mohammed Siad Barre. After he was overthrown in January 1991, the factions and clans seeking his removal turned on each other, killing thousands of people, uprooting hundreds of thousands more from their homes, destroying the country's economy and infrastructure.⁵⁵ As the

⁵² "NATO Jets Bomb Arms Depot at Bosnian Serb Headquarters" *NY Times*, May 26, 1995, 1, cited in Murphy above n40, 211.

⁵³ "After a 2d strike from NATO, Serbs detain UN forces" *NY Times*, May 28 1995,1 cited in Murphy above n40, 211.

⁵⁴ See eg: "Witnesses Allege abuses by Serbs" *Wash Post* July 16, 1995, 1.

⁵⁵ Murphy above n40, 218.

world's media showed reports of mass starvation, various countries and organizations organized shipments of food and other supplies to the beleaguered state. However, the civil war raging within the country prevented effective distribution of relief supplies.

In January 1992, the UN Security Council passed a resolution stating that it was 'concerned' that the continuation of the situation in Somalia constituted a threat to international peace and security.⁵⁶ However the resolution does not refer to the movement of refugees out of the country although the Security Council was certainly aware of the fact. The preamble of the resolution expresses alarm at the "heavy loss of human life and widespread material damage" in Somalia and its "consequences on stability and peace in the region".

In March, a UN sponsored cease-fire agreement was signed by two warring factions which provided for a UN observer mission to stabilize the cease-fire on the understanding that one of the objectives of the mission would be to assist with the delivery of humanitarian aid.⁵⁷ The cease-fire was widely ignored.

Interim Prime Minister Omer Arteh Qualib (selected at a reconciliation conference in July 1991) appealed to the Security Council for an immediate meeting to discuss the rapidly deteriorating situation in Somalia. The appeal began a series of resolutions aimed at the peaceful settlement of the civil war and its impact on the Somali population. The resolutions gradually intensified as the previous initiatives failed, laying the legal foundation for the decision in December 1992 to use military force.

In December 1992, the United Nations estimated Somali deaths at more than 300,000; a further 900,000 Somalis had fled to neighboring Kenya, Ethiopia and Djibouti and to Yemen and Saudi Arabia.⁵⁸ The International Committee of the Red Cross (ICRC) estimated that 1.5 million Somalis faced imminent

⁵⁶ SC Res 733 UN SCOR 3039th mtg; UN Doc S/RES/733 (1992).

⁵⁷ SC Res 751 UN SCOR 47th Sess 3069th mtg, 2; UN Doc S/RES/751 (1992).

⁵⁸ Murphy above n40, 218.

starvation and three times that number were dependent on external food assistance.⁵⁹ On December 3 the Security Council passed Resolution 794 authorizing military force - "all necessary means" - to establish a secure environment for humanitarian operations in Somalia.⁶⁰

The resolution helped the Security Council build on the precedent set by the Iraqi crisis and again expanded the definition of threat to international peace and security. The resolution provides as follows:

"Determining that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security,

...

7. Endorses the recommendation by the Secretary-General in his letter of 29 November 1992 (S/24868) that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible;

...

10. Acting under Chapter VII of the Charter of the United Nations, authorises the Secretary-General and Member States co-operating to implement the offer referred to in paragraph 8 above to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia;⁶¹

Resolution 794 followed a United States offer of 20,000 troops to assist in ensuring aid distribution, as part of a multinational Unified Task Force. The US formally turned the project over to the United Nations on May 4 1993. Resolution 814, establishing UNOSOMII, is significant in that it is the first time that the United Nations deployed its own force with specific authorization to resort to all necessary means.⁶²

The implementation of the UN mandate took a turn for the worse as UNOSOMII took on 'nation-building' projects such as disarming factions and

⁵⁹ Tesón above n3, 349.

⁶⁰ SC Res 794 UN SCOR 47th Sess 3145th mtg, UN Doc S/RES/794 (1992).

⁶¹ Resolution 767 had previously asserted that the "situation in Somalia constitutes a threat to international peace and security" However no reference was made to specifics of the situation; SC Res 767 UN SCOR 47th Sess, 3101st mtg, UN Doc S/RES/767 (1992).

⁶² Res 794 authorised a United States force.

arresting faction leaders.⁶³ This increased effort resulted in conflict with one of the faction leaders Mohammed Farah Aideed, leaving 24 Pakistani UN troops dead and 54 wounded in the worst single attack in UN peacekeeping history. Recurring conflict between UN forces and Somali gunmen occurred throughout 1993. In all, 100 UN troops were killed during the mission,⁶⁴ including 18 elite US rangers in a failed mission to capture Aideed for the violence visited upon the UN forces.

The death of the US rangers and subsequent television footage of one of the bodies being dragged through the streets of Mogadishu, brought home to the American public the risks of engagement in humanitarian missions. The ensuing surge of public outrage proved a catalyst for a change in US foreign policy regarding intervention.

The situation in Somalia allowed the Security Council to expand its interpretation of threat to international peace and security to include the human tragedy that was taking place.

Lack of effective government in Somalia assisted the Security Council in reaching its mandate under Chapter VII.⁶⁵ When no authorities exist capable of governing a country, the values of political independence and sovereignty normally at stake appear to be minimalised.⁶⁶ Without a legitimate authority that could speak for the entire state the Security Council could point to any number of smaller groups as a source of invitation for intervention.⁶⁷ It is not clear, however, that the international community would act in the same way had there been authorities fully in control of Somalia.

The most important aspect of the Security Council action was that it asserted it was acting under Chapter VII of the Charter to address a threat to international peace and security. However, neither resolution 794 or 814 mentions the massive flow of refugees across international frontiers, which

⁶³ Tesón above n3, 350.

⁶⁴ Tesón above n3, 350.

⁶⁵ Hutchinson above n3, 632.

⁶⁶ Murphy above n40, 238.

⁶⁷ Hutchinson above n3, 633.

was the impetus for action in the Iraqi crisis. Instead, they refer to the human tragedy taking place, the "internal catastrophe of violence and starvation inflicted on the Somali people... The sense of the debate over Resolution 794 was that the domestic situation alone warranted action and would anywhere that it might occur globally".⁶⁸

The Security Council was well aware of the ground breaking steps that it was taking in this regard and of the effect of precedent that this would have when viewed together with the interventions in Iraq in 1991 and Bosnia in 1992. The statements of governments and non-governmental groups during 1992-93 indicate acceptance of the legality of the intervention, although at various times there was criticism of the conduct of the operation.

D. Rwanda

In 1994, Rwanda was the site of one of the worst massacres of this century. Long-standing rivalry between Hutu and Tutsi tribes erupted into chaos after the death of the Rwandan President in a plane crash.⁶⁹ Hutu extremists took control of the government and incited violence against Tutsi and moderate Hutu alike. Militia, paramilitary groups and gangs of Hutu youths went on killing sprees using machete, panga (machete-like weapons) and sharpened sticks. Tutsi responded in kind and the Hutu government military forces were re-engaged by the Tutsi-led rebel Rwandan Patriotic Front (RPF).⁷⁰ By midsummer 1994 UN estimates of the number dead stood at 500,000, ICRC estimates put the figure closer to one million. Ugandan officials reported that as many as 10,000 bodies had floated down the Kagera River into Lake Victoria.

⁶⁸ Murphy above n40, 240.

⁶⁹ The cause of the plane crash is debated. Hutu militants claimed the plane was shot down by Tutsi rebels, however the Tutsi rebels denied this and said that Hutu extremists had downed the plane themselves out of disgust for the Moderate Hutu Presidents stance toward the Tutsi.

⁷⁰ Murphy above n40, 244.

At the outset of the fighting it became clear that the small UN force already in Rwanda was incapable of curbing the escalating violence. Despite calls from the UN Commander on the ground for more troops, after increasing the mission's mandate, the Security Council elected instead to reduce the number of troops present in the area. Senior UN officials have confirmed that this was in large part due to United States pressure and the strength of their position in the Security Council.⁷¹ As the violence continued, television footage of rivers and waterfalls choked with mutilated bodies floating to Lake Victoria shocked the world into a public outcry demanding action. The Security Council responded to the demand and approved intervention. The US, still opposed to the intervention, questioned all UN steps with regard to the conflict, slowing the response to the situation playing out in Rwanda.

On April 29, UN Secretary General Boutros Boutros Ghali urged the deployment of additional African peacekeeping forces to protect and assist refugees and aid workers. The US strongly resisted this move in the Security Council, pointing out that despite the Secretary General's best efforts, no state had made a firm offer to send their forces to Rwanda and that the Rwandan factions had not given unconditional consent to the UN operation.⁷² By May 17 several member states and the growing tide of public opinion in the face of graphic media footage compelled the US to drop some of its objections and allow the Security Council to authorize 500 more Ghanaian Peacekeepers with the expectation of more to follow.⁷³ A total of 5,500 soldiers were authorized on June 8 by Resolution 925,⁷⁴ however lack of resources and the lack of familiarity with the military hardware supplied resulted in additional delays in deployment.

On June 15 the French Government announced that it was prepared to intervene in the situation, and declared that there was a "real duty to

⁷¹ "US Inertia on Rwanda part of Policy" *The Dominion* March 27, 1998.

⁷² Murphy above n40, 245.

⁷³ SC Res 918 UN SCOR 49th Sess 3377th mtg, UN Doc S/RES/918 (1994).

⁷⁴ SC Res 925 UN SCOR 49th Sess 3388th mtg, UN Doc S/RES/925 (1994); Murphy above n40, 246.

intervene in Rwanda".⁷⁵ Although initially France had expected to have support from its main European and African allies, it soon became apparent that they would be acting alone. By June 21, a thousand French troops were positioned in what was then Zaire and the Central African Republic, however the French foreign minister asserted "we will do nothing without a UN green light".⁷⁶ On June 22 the Security Council passed Resolution 929 authorizing France to use "all necessary means" to protect "displaced persons, refugees and civilians at risk in Rwanda".⁷⁷ The preamble to the resolution stressed the strictly humanitarian character of the operation which "shall be conducted in an impartial and neutral fashion and shall not constitute an interposition force between the parties".⁷⁸ Even before the French intervention, the Security Council declared the civil strife in Rwanda a threat to the peace, and had done so with emphasis more on the slaughter of Rwandan nationals than on their flight into neighboring countries.⁷⁹

Rwanda suffered, in large part, from occurring only six months after the UN intervention in Somalia. Following the tragic killing of 18 US Rangers in the failed attempt to capture Mohammed Aided, the US congress lost its stomach for United Nations humanitarian intervention, adopting a policy change only days after the ambush. In a speech to the General Assembly, President Clinton declared that the "UN simply cannot become engaged in every one of the world's conflicts. If the American people are to say yes to UN peacekeeping, the UN must learn to say no". As the bloodshed began on April 6 1994, this 'learn to say no' policy was rapidly being implemented into official US policy by the finalization of Presidential Decision Directive 25 (PDD25).⁸⁰

⁷⁵ Murphy above n40, 248.

⁷⁶ Murphy above n40, 249.

⁷⁷ SC Res 929 UN SCOR 49th Sess 3392nd mtg, UN Doc S/RES/929 (1994).

⁷⁸ The specific mention of the need for impartiality was to address scepticism from some member states that France would favour the Hutu factions. France had been responsible for arming and training the previous Hutu government forces.

⁷⁹ SC Res 918 UN SCOR 49th Sess 3377th mtg, UN Doc S/RES/918 (1994); Murphy above n40, 257.

⁸⁰ The US, still reeling from casualties in the UN operation in Somalia, was putting the finishing touches on Presidential Decision Directive 25 (PDD-25). PDD25 stipulates stringent

E. Haiti

In December 1990, Jean-Bertrand Aristide was elected president of Haiti after decades of dictatorial rule. A radical reformist, Aristide alienated the economic and military elites of the country and less than eight months after the internationally supervised elections in which he gained a 67 percent majority, he was ousted in a coup led by the leaders of the armed forces and police force.

The Organization of American States (OAS) responded quickly, formally condemning the coup and recommending that its members impose economic and diplomatic sanctions against Haiti. While the UN Security Council met twice on the matter, they failed to adopt a resolution denouncing the coup, although all members separately denounced it and expressed strong support of the OAS action. This inaction was purportedly because China and certain non-aligned states were concerned about increasing involvement in matters traditionally considered within a state's domestic jurisdiction.⁸¹

The General Assembly addressed the situation and strongly condemned the coup stressing that any entity resulting from the coup would be unacceptable.⁸²

In June 1993 the defacto military leaders of Haiti had still refused to reinstate President Aristide and his government and the Security Council finally adopted coercive measures. Acting under Chapter VII of the Charter, the Council imposed economic sanctions against Haiti and affirmed that the solution on the island should "take into account the above mentioned

standards and guidelines regarding US support for UN peacekeeping missions with or without US troop participation. It is also clear that President Clinton banned State Department officials from calling the situation developing in Rwanda a 'genocide' despite evidence that the killings in Rwanda were well organised, planned and on a massive scale. President Clinton finally signed PDD25 on 3 May 1994.

⁸¹ Tesón, 355: UN SCOR 46th Sess 3011th mtg UN DOC S/PV.3011 (1991).

⁸² GA Res 7, UN GAOR 46th sess, Agenda item 145, UN Doc A/RES/46/7 (1991).

resolutions of the Organization of American States and the General Assembly of the United Nations" is the restoration of democracy in Haiti.⁸³

The Governors Island agreement was signed in July 1993 by the military junta which agreed to return Aristide to the presidency under democratic rule, and the sanctions against Haiti were subsequently lifted. However violence erupted again on the island in September 1993 and the agreement collapsed. The Security Council reestablished economic sanctions,⁸⁴ and authorized member states to use military force to enforce them.⁸⁵

On July 31 1994, the Security Council adopted Resolution 940 that authorized member states "to form a multinational force [and]...to use all necessary means to facilitate the departure from Haiti of the military leadership".⁸⁶ The resolution provides:

"Gravely concerned by the significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties, the desperate plight of Haitian refugees and the recent expulsion of the staff of the International Civilian Mission (MICIVIH), which was condemned in its Presidential statement of 12 July 1994(S/PRST/1994/32),

...

Determining that the situation in Haiti continues to constitute a threat to peace and security in the region,

...

4. Acting under Chapter VII of the Charter of the United Nations, authorises Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that

⁸³ Tesón above n3, 356.

⁸⁴ SC Res 873, UN SCOR 48th Sess 3291st mtg, UN Doc S/RES/873 (1993).

⁸⁵ SC Res 875, UN SCOR 48th Sess 3293rd mtg, UN Doc S/RES/875 (1993).

⁸⁶ Tesón above n3, 35; SC Res 940, UN SCOR 49th Sess 3413th mtg, UN Doc S/RES/940 (1994).

will permit implementation of the Governors Island Agreement, on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States;⁸⁷

The United States and other member states threatened the military junta indicating that military invasion was a near certainty. A team of US Diplomats led by former president Jimmy Carter persuaded the leadership to agree to surrender power to Aristide and leave the country. This agreement was reached only hours before the invasion forces landed in Haiti.⁸⁸ International reaction was almost universally positive to the agreement brokered by Carter and the subsequent US occupation.

V. HUMANITARIAN INTERVENTION AS A SEPARATE AUTHORIZATION.

None of the interventions since the end of the cold war have relied solely on a doctrine of humanitarian intervention as a justification for intervention. These resolutions indicate that the Security Council's favoured formula for justifying any intervention on humanitarian grounds is to draw a link between massive human suffering and international peace and security and then authorize an operation to deliver humanitarian relief.⁸⁹

In Iraq, the consequences of human rights violations that is, the massive flow of refugees towards international frontiers, was determined to pose a threat to international peace and security.

In Bosnia-Herzegovina, the international community generally failed to take forceful action even in the face of demonstrated genocide. Hundreds of thousands died and over two million refugees were displaced. For three years after the discovery of genocide, the NATO attacks were limited until the spring of 1995 when NATO expanded its airstrikes and forced the Serbs to negotiate an end to the war.

⁸⁷ SC Res. 940, UN SCOR 49th Sess 3413th mtg, UN Doc S/RES/940 (1994).

⁸⁸ Tesón above n3, 357.

⁸⁹ Diane Orentlicher "Should We Risk Lives to Save Lives" (1993) 18(6) Boston Review. <<http://bostonreview.mit.edu/BR18.6/risklives.html>>.

Here again humanitarian concerns were perceived as being important and within the mandate of the UN Security Council. At the same time, these concerns were "forced into the rubric of 'international peace and security' rather than standing on their own as justifications for UN action".⁹⁰ Somalia, Rwanda and Haiti were likewise classified as threats to peace and security.

While humanitarian intervention has not been recognized as a justification in its own right, it is clear that the international community has accepted a right to intervene in situations of mass violations of human rights, in particular the right to life, will take precedence over state sovereignty.

Some anti-interventionists have argued that because the UN Security Council has been selective about intervening in situations where humanitarian emergencies exist, it cannot mean that they believe they have the right to act. However, it must be understood that there are limits to the capability of any nation, group of nations or international organization to intervene. No one entity can address every crisis and the international community must employ a certain selectivity in addressing humanitarian crises.⁹¹ Such selectivity reflects lack of resources and logistical shortfall rather than lack of a mandate.⁹²

Campbell suggests that decisions about intervention should be made on the basis of criminal human intent. "The worst cases - those involving genocide - must be taken up first". While it seems likely that members of the international community will continue to support intervention in situations that affect their vital interests, it cannot be allowed to detract from those

⁹⁰ Sovereignty Eclipsed above n16.

⁹¹ Campbell above n21.

⁹² Thomas J Dolan "What difference if any, Will the United Nations Play in the Maintenance of International Peace and Security over the Next Fifty Years" [1996] 2 J Int'l & Comp L & Int'l Prac Notebook, <http://www.nsulaw.nova.edu/pubs/journal/vol2_3/3%20dolontext.html> (last accessed 30 September 1998).

situations which demand intervention, by their very nature. The world, for the moment at least, must take what it can get.⁹³

*If Rights don't require us to intervene, then it is difficult to see why they should be called rights.*⁹⁴

Part one of the paper has shown that the international community has established a right to intervene in situations of widespread human rights violations, in particular genocide. The current part investigates the idea that this right is in fact, a legal duty to intervene and investigates the consequences of this duty. Where there is a duty there must be a corresponding right. In this case humanity's inherent right to life is the most cogent choice.⁹⁵ This paper shows that the legal duty is established through the interplay between the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (Genocide Convention) and the Charter of the United Nations. As both of these treaties have assumed the status of customary international law, it may be argued that the duty to intervene is also established in customary law. Further, it will be shown that the existence of this duty is reinforced by the general principles of law recognized by civilized nations.

VI. A DUTY TO ACT

The Genocide Convention establishes a duty on states to prevent and punish the crime of genocide.⁹⁶ Article 1 of the convention confirms genocide as "a crime under international law which States undertake to prevent and punish". Further, Article 5 provides that "any contracting party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the

⁹³ Michael Weller "The Moral Standing of States: A Response to Four Critics" (1996) 9 *Phil & Pub Aff* 223 cited in *Reverendity Edmond*.

⁹⁴ Could also springboard off the right to live peacefully in one's homeland, or the right to not be discriminated against on the basis of race, religion.

⁹⁵ Glenn Ware "The emerging norm of Humanitarian Intervention and Presidential Directive 25" [1997] 44 *Naval L Rev* 1, [Ware].

PART TWO

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⁹⁴ Micheal Walzer "The Moral Standing of States: A Response to Four Critics" [1980] 9 Phil & Pub Aff. 223 cited in Sovereignty Eclipsed.

⁹⁵ Could also springboard off the right to live peacefully in ones homeland, or the right to not be discriminated against for reasons of race, religion.

⁹⁶ Convention on the Prevention and Punishment of the Crime of Genocide 1948 UNTS No.1021, Vol 78 (1951), 277 [Genocide Convention].

prevention and suppression of acts of genocide".⁹⁷ The Genocide Convention was adopted unanimously by the General Assembly on December 9, 1948 and entered into force on January 13, 1951 as such it may be considered as international customary law.⁹⁸

There is no doubt that Article 1 of the Genocide Convention imposes a duty on the contracting parties.⁹⁹ Originally, the duty to act was included in the final paragraph of the preamble to the Convention. However, during the proceedings of the sixth committee, the Belgian representative proposed that it should be incorporated into Article 1 to strengthen the obligation to prevent and punish the crime of genocide.¹⁰⁰ He explained "the Belgian proposal was to substitute for a purely declaratory statement a solemn commitment, of practical import, to prevent and suppress the crime".¹⁰¹ Further, the US representative noted "if a lawyer had to rely on the preamble ... he would have a more difficult task in court than if that statement were laid down in the operative part of the convention".¹⁰² Thus it can be seen that not only does Article 1 impose a duty on states; consideration was also given to the consequences of a breach of that duty and its enforcement. Indeed, US President Bill Clinton banned his state department officials from calling the situation in Rwanda 'genocide' lest the United States be called upon to fulfill an international legal obligation to intervene.¹⁰³

Article 24 of the Charter of the United Nations confers on the Security Council the '*primary responsibility*' for 'maintaining and restoring international peace and security'. The language of the article establishes the primacy of the Council for all actions within that definition. Part one has shown that the practice of the Security Council since the end of the Cold War

⁹⁷ Genocide Convention above n96.

⁹⁸ Genocide Convention above n96.

⁹⁹ Draft Convention and Report of the Economic and Social Council, Report of the Sixth Committee, UN GAOR, 3d Sess, pmb., at 9, U.N. Doc. A/760 (1948), [Sixth Committee Report].

¹⁰⁰ Sixth Committee Report above n99.

¹⁰¹ Sixth Committee Report above n99, 44.

¹⁰² Sixth Committee Report above n99, 50.

¹⁰³ "French Clique Blamed in Rwanda Massacre" *The Dominion* Friday 1 May 1998.

has established a wide reading of the concept of 'threat to international peace and security'. The concept has been used to incorporate mass flows of refugees, starvation, widespread human rights violations and 'ethnic cleansing' or genocide. By including genocide in the expanded definition of threat to international peace and security, the Security Council has placed it within the class of actions over which it has primary responsibility.

Article 24(2) also confirms that States agree that the Security Council will act on its behalf when exercising this responsibility. It thus follows that the Security Council has a duty to act on behalf of states and undertakes to prevent, suppress and punish genocide on their behalf. States likewise agree that in this regard the Security Council acts on their behalf,¹⁰⁴ and agree to accept and carry out their decisions.¹⁰⁵

A further argument suggests that the international community has allowed and supported collective humanitarian interventions in situations of genocide, indeed support for all of the interventions outlined above was almost unanimous. Further, it has accepted the Security Council's decision to class them as threats to international peace and security.¹⁰⁶ It may be contended that this is an implicit referral of all situations of genocide to the "competent organ of the United Nations" for "prevention and suppression" under Article 8 of the Genocide Convention.

Sean Murphy has argued that a duty to intervene in humanitarian crises cannot exist in international law in the present world system. He advances his argument by commenting that although the duty to rescue exists in many international jurisdictions, it does not exist in all of them. Further, he points out, a duty will not be found absent a special relationship between rescuer and rescuee. Murphy's analysis is flawed in several respects. Firstly, the

¹⁰⁴ Article 24(2) UN Charter.

¹⁰⁵ Article 25 UN Charter.

¹⁰⁶ An exception to this statement is China's steadfast refusal any attempt to classify intrastate conflicts, regardless of the magnitude of human suffering, as threats to international peace and security. They maintain that these are internal matters, and subsequently have abstained from all votes on the matter.

Why?

analysis rests on the duty of a civilian passerby to rescue another civilian. This analogy is inappropriate when dealing with the Security Council of the United Nations. An almost universal duty exists for authorized security personnel, for example police or fire officers, to protect the population they serve.

The Genocide Convention defines genocide as acts committed with the intent to destroy in whole or in part, a national, ethnical, racial or religious group.¹⁰⁷ A set 'body-count' is inappropriate in circumstances such as these but it seems that intention provides the key. The United States representative on the Ad Hoc Committee explained that "the intention was the important factor and the destruction of a fraction of the group would constitute genocide provided that the intention was to destroy the group totally".¹⁰⁸

Because the Security Council does not usually become seized of a matter before it develops into a major conflagration, the duty to prevent genocide will often be restricted to situations where conflict already exists. However, there may be some circumstances where the United Nations becomes aware of a situation before it eventuates. For example, in Rwanda, there is evidence that the United Nations knew of the plan to commit genocide but that somehow it got lost in the bureaucracy.¹⁰⁹ If this were the case then the Security Council would have a duty to prevent the genocide from ever

¹⁰⁷ In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical [sic], racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

¹⁰⁸ UN ESCOR Ad Hoc Comm on Genocide, 6th Sess, 13th mtg, 6; E/AC.25/SR.13 (1948) cited in Matthew Lippman "The 1948 Convention on the Prevention and Punishment of Genocide: Forty-five Years Later" [1994] 8 Temp Int'l & Comp LJ 1, 24.

¹⁰⁹ "UN was warned of Rwanda Genocide, Newspaper Says" Reuters [Online], November 25 1995, cited in *Sovereignty Eclipsed* above n16.

taking place. In that circumstance the situation may have been able to be resolved without force (hence gaining United States approval) and without the associated impact of mass refugee flows across borders into neighboring states.

VII. PROXIMITY AND RISK

Murphy voiced further objections that the duty to rescue in domestic jurisdictions requires the proximity of the rescuer to the rescuee. He argues that because humanitarian interventions often require force to be sent from half way round the globe they cannot meet this criterion. This argument fails to recognize the role of domestic law as a source of international law.

General principles of domestic law are often considered as supplements to customary international law. Further, the *travaux préparatoires* of Article 38 of the Statute of the International Court of Justice indicate that domestic law should only be applied internationally "if it seems appropriate in the different context of inter-state relations". The idea of proximity in the sense that is meant in the domestic duty to rescue is not one that translates easily to the domain of states or international organizations.

Consequently, any element of proximity must be reinterpreted for the international arena. In this respect a few points should be mentioned.

Firstly, the nature of humanitarian emergencies means that more time is available. They last for weeks rather than a one off event. Genocide in particular usually happens over a period of time. Even in Rwanda, where the Hutu extremists did their work five times faster than the mechanized gas chambers of the Nazi party during the Holocaust,¹¹⁰ the killing happened over a period of three months. In domestic law, the duty to rescue is usually applied to one off events, happening over a matter of hours or perhaps days rather than weeks or months, therefore the proximity of the rescuer is more crucial to the matter of rescue.

¹¹⁰ Genocide Survivors above n1.

Secondly, in this era of advanced technology, troop mobilization can happen very quickly once the decision to act has been taken. For example, France was in Rwanda within three days of receiving Security Council authorization. Given the greater time frame available for intervention on an international level, the short time that it takes to transport troops, *once prepared*,¹¹¹ again lessens the need for proximity.

A further point that must be made is that often it is those who are proximate to the crisis who provide assistance or are the instigators of UN action. For example, ECOWAS was the major intervenor in Liberia; Ghanaian UN troops assisted France in Rwanda; NATO in Bosnia etc. When Iraqi Kurds fled across borders to escape the government troops it was Turkey and Iran, both neighboring states who demanded action from the United Nations.

Finally, the influence of the United Nations is everywhere. While the headquarters may be in New York and Geneva, it is a global organization and therefore present where ever a member state is. Further, the United Nations has no standing force of its own and therefore must draw on personnel and equipment from around the globe. Arguing that the United Nations is not proximate presupposes the composition of the intervening force in any given situation. Given the past composition of intervention forces, usually based on proximity and ties to a particular region, it cannot be argued that the United Nations is not proximate in a sense that works in the international arena.

Murphy further comments that in domestic law a common requirement of those jurisdictions containing the duty to rescue, charges that the rescue must be able to be conducted with minimal risk of harm to the rescuer. He points out that humanitarian interventions pose a "substantial risk of death and danger to the intervening forces".¹¹² Again, this presupposes a civilian rescuer. There remains an almost universal duty on security personnel to

¹¹¹ The UN mission supporting the French operation in Rwanda took a long time to be organised as The African troops were unfamiliar with some western weaponry. The time taken in matching the UN troops to weapons they were familiar slowed down the UN troop deployment significantly.

¹¹² Murphy above n40, 296.

rescue civilians. Police have a duty to rescue people in trouble, as do Fire Officers when passing a fire. We expect these people to risk their lives to save others because that is their job. If UN troops are at risk, while we may fear for their safety and minimise the risk to which they are exposed, we must accept that death is part of the risk of their jobs. They are soldiers; their job is to go into the line of fire to protect others. General Douglas MacArthur made the same point in 1946 when he said:

"The soldier, be he friend or foe, is charged with the protection of the weak and unarmed. It is the very essence and reason for his being. When he violates this sacred trust, he not only profanes his entire cult but threatens the very fabric of international society. The traditions of fighting men are long and honorable. They are based upon the noblest of human traits – sacrifice!"

While any intervention in a conflict must carry some element of danger, the question becomes how much risk is acceptable. The standard will differ for every Member State who contributes troops to a particular intervention, each must assess and determine what level of risk they will expose their troops to.¹¹³ This brings us closer to the idea that member states should have forces specifically designated for UN engagements, perhaps as a double volunteer force, that is, volunteer for duty for your country and further volunteer for service to the UN.

The risk of danger in conflict situations is related to three main factors, military strength, conflict volatility and realistic conflict/response analysis. That is, the least risk will be posed when an intervention occurs at the right time, with sufficient troops and equipment, of the right type and with clear goals.

¹¹³ One US soldier is currently appealing a court-martial for refusing to serve in a UN force. His response was 'I am a US soldier not a UN soldier', he was convicted, however if his appeal is successful it may be that establishing units/corps of troops who have specifically volunteered for United Nations duty is the answer.

Conflict volatility. Most humanitarian interventions since the end of the Cold War have occurred at the last possible moment. Early intervention in a conflict reduces the risk to UN personnel and requires fewer resources than a later intervention. In Rwanda the UN commander on the ground General Dallaire pointed out that they could have saved hundreds of thousands of lives had the UN acted immediately with as few as 5000 troops.¹¹⁴ In the case of Rwanda, the French intervention was authorized only after several member states had prevailed on the United States to withhold its objections. The acceptance of a duty to act to prevent genocide may curtail such objections. Allowing intervention earlier lowers the level of conflict volatility troops are exposed to.

Military Strength. "Peace enforcement requires very different forces qualitatively and quantitatively than does peacekeeping. The result of confusing roles and forces has been most evident in the placing of the UNPROFOR peacekeepers in a war zone in Sarejevo, where the peacekeepers were placed in a peace enforcement situation and have proven - unsurprisingly - not to be up to a task for which they are unprepared".¹¹⁵ As well as having the correct type of troops for an intervention, it is important that they have enough troops with enough equipment. One commentator has pointed out that when genocide threatens only "complete invasion and occupation is likely to stop the crime".¹¹⁶ When the French intervened in Rwanda, they limited their mission to establishing a safe haven in the southwest of the country. The Commander quite bluntly stated "we only got hundreds of people here, and there are hundreds of thousands who need help, we cannot evacuate everybody".¹¹⁷

¹¹⁴ Ware above n93, 39.

¹¹⁵ Donald Snow "Peacekeeping, Peacemaking and Peace Enforcement: The US Role in the New International Order 1993 US Army War College, Strategic Studies Institute, <<http://carlisle-www.army.mil/usassi/ssipubs/pubs93e/peackeeep/peckepss.htm>>19.

¹¹⁶ Barry Posen "Military Responses to Refugee Disasters" cited in Ware above n93, 51.

¹¹⁷ R Bonner "Tutsi Refugees Reported Trapped in Rwanda" *NY Times*, June 30 1994, s1 at 5, cited in Murphy above n40, 252.

Clear Objectives. General John McInnis asserts that a force can only carry out the tasks for which it is trained and equipped. Anytime that mission "creeps" away from the original intent, then the effect will bring the mission to a standstill.¹¹⁸ The intervention in Somalia is a case in point. The original goals in Somalia were to provide assistance to the relief agencies working there. When the UN increased the mission's mandate to include 'nation-building' activities, they came under direct attack from the fighting factions and many UN and supporting personnel lost their lives. In comparison, the intervention in Rwanda by French forces had strict mission parameters from which the French refused to be drawn. As a result, the mission was successful.

It is within these bounds that the assessment of risk must be made. If the UN increases the risks associated with of intervention by its own actions or the actions of its member states, surely it cannot be used to negate a duty to intervene.

VIII. CONSEQUENCES

While accepting that this is a controversial area, it seems that international law has evolved to a position where the Security Council may have a duty to intervene in defence of humanity. If it is accepted that the law has indeed reached this point, there must be consequences for failure to act in a situation where it had a duty to do so. This section contemplates what these consequences might be, and the effect on the international community of finding that there is a duty.

The duty established by the Genocide Convention and Article 24 of the Charter is to prevent, suppress and punish genocide. Therefore, a breach of that duty will be the failure of the Security Council to prevent, suppress or punish genocide.¹¹⁹ However the question of what will constitute a breach is

¹¹⁸ John McInnis "Peacekeeping and Post-modern Conflict: A Soldiers View [1995] Mediterranean Q, 36, cited in Ware above n93, 21.

¹¹⁹ As far as punishment of genocide is concerned the Security Council has established War Crimes tribunals in both Rwanda and the former Yugoslavia to investigate and prosecute

more complex. Will complete inaction be the only breach, or will it be sufficient that the Security Council has not adopted all possible measures to suppress the crime?

The United Nations may act in ways that seek to end the conflict but do not entail the use of force. Indeed, Article 42 requires that the Security Council have established that non-forceful measures are, or will be, ineffective. While several commentators have argued that the only effective way to end genocide is by comprehensive military action.¹²⁰ However, if the Security Council adopts non-forceful measures even after it appears that the time for them has passed, and as a result several thousand lives are lost before they authorise military intervention, will the Security Council be liable to the victim state for those lives? This would seem to encourage the use of force at the outset, which, although some commentators would argue was appropriate, goes against the UN ideal of pacific settlement of disputes and preferred attempts to mediate and negotiate conclusions to conflict. Further, establishing liability on the Security Council for those deaths would militate against the principle of necessity. In Common Law jurisdictions at least, the police do not have a duty to the victim of a serial murderer for the failure to arrest the culprit before they have committed another murder.¹²¹ However, the question of whether they owed a duty to a person at special, distinctive risk from criminality has been left open. At first glance it would appear that genocide, where a particular ethnic or religious group are at special risk, would fit this category. However, the leading case on the topic held that the class of 'all young women' was too large to create a duty, it would appear that an entire ethnic group would also be too large, even allowing for the transition to an international law environment.

perpetrators of crimes under the Genocide Convention and other international documents. The Rome Statute establishing an International Criminal Court was adopted on 17 July 1998 in an unrecorded vote of 120:7:21. The International Criminal Court was established to deal specifically with genocide and crimes against humanity. UN Doc A/CONF 183/9.

¹²⁰ Campbell above n21 para 3, Posen in Ware above n93, 51.

¹²¹ *Hill v West Yorkshire Police* [1989] AC 53. The House of Lords concluded that the police could not be expected to protect all young women in the West Yorkshire area of England from the attacks of a murderer, because there was no sufficient relationship between the potential victims.

However, forcible interventions by the United Nations under UN command are not the only course of action open to the Security Council. In fact, Somalia remains the only instance where United Nations troops have intervened in a country with an express mandate to use 'all necessary means' for humanitarian ends. The United Nations has preferred to authorize interventions under the auspices of a member state. This solves the 'command and control' issues for the large states contributing troops to the interventions. However, smaller states have expressed concern at the lack of UN involvement. In answer to their concerns the UN established command and control procedures for the intervention in Bosnia, however reports later showed that the split command concept was proving an obstruction to effective engagement by NATO forces.¹²²

Leaving aside the thorny question of who may have jurisdiction over the Security Council, there remains the question of what penalties the UN will make to the Victim State.¹²³ Under the established rules of state responsibility, in the ILC draft articles, states make reparation or offer apologies for any act or omission that has caused harm. Damages may also be assessed for damage to dignity and other non-material damage.¹²⁴ If there is a duty to act and the Security Council does not, for whatever reason, then reparation and/or apologies must be made. It may be that Clinton's assumption of blame in Rwanda, rather than merely a political act, was a step toward that acknowledgement.

If the United Nations must pay reparations to a victim state, will they be able to levy a particular Member State when the Security Council is prevented from acting by one of its own members? During the crisis in Rwanda, it is

¹²² "Allies at Odds Prolonged Bloodshed" *The Guardian* 27 April 1996, cited in Tobias Vogel "The politics of Humanitarian Intervention" *Jnl of Hum Ass* <<http://www-jha.sps.cam.ac.uk/a/a018/htm>> (posted 3 September 1996).

¹²³ The question of judging the legitimacy of Security Council decisions is a lengthy one that cannot be dealt with in the constraints of this paper. See generally, Jose Alvarez "Judging the Security Council" [1996] 90 *AJIL* 1.

¹²⁴ *Rainbow Warrior Case* (1987) 81 *AJIL* 325; 74 *ILR* 241.

widely acknowledged that the United States, still reeling from its unexpected losses in Somalia, played a large role in preventing the Security Council from acting to suppress the slaughter occurring. This was due, in large part, to the development of Presidential Decision Directive 25 (PDD25), implementing a 'vital interests' policy on intervention. The US, putting the final touches on PDD25, insisted that the UN reduce the troop numbers already stationed in Rwanda and refuse General Dallaire's request for more troops and an expanded mandate. One writer has dubbed this change in policy "Somalia Syndrome" because of its obvious connection to the loss of 18 US Rangers in a botched raid during the Somalia intervention.¹²⁵

If one views the United Nations as a company, can we then 'pierce the corporate veil' and attach duty to individual member states, to facilitate Security Council intervention or at least not to prevent the Security Council from acting. Directors of companies can certainly be found liable where a company has been negligent; indeed a company is not presently capable of being found to have criminal intent.

If this view is correct, surely the outcome of this will be to make all states support intervention lest they be held to be responsible for the deaths of millions. This altering of attitudes effectively takes away the right of veto, and endangers the very reason for its existence. The permanent five members of the Security Council were given the veto because they were the major powers at the time and it meant that they could not be bound by anything that adversely affected their interests. By making them liable for lack of action, it takes away this right and forces them into a situation of not only supporting the intervention but paying for it as well.¹²⁶

Surely this cannot be right. The legitimacy of the Security Council comes from the fact that membership comes from different backgrounds which are supposed to provide counterweight and prevent extremes in any direction. If

¹²⁵ Tom Ashbrook "UN efforts everywhere turn to dust; downed helicopter in Somalia Doomed a New World Order; Who Will keep the peace" *Boston Globe*, April 30 1995, 1.

¹²⁶ Approximately 1/3 of all UN peacekeeping costs are met by the United States.

a state can be held liable for blocking UN intervention that undermines this very basic and essential concept.

For the people of Rwanda therefore, does it mean that the UN system with its panoply of rights and other instruments including the Charter and the Genocide Convention is always only there at the convenience of the Security Council system?

IX. CONCLUSION

The purpose of international law is to regulate internationally acceptable modes of behaviour between states. In 1948 the international community confirmed that genocide was an international crime and pledged themselves to the prevention, suppression and punishment of this ultimate crime against humanity. How much more so does this duty attach to the organisation, which has placed itself at the forefront of the fight to maintain and restore international peace and security and protect succeeding generations from the scourge of war. It makes no difference that the form of war has changed, indeed the change in methods of warfare, and the increased lack of discrimination between combatant and civilian, makes the UN's duty that much more salient.

This paper has made it clear that the Security Council may be under a duty to intervene in situations of widespread human rights violations, in particular, genocide. However, the scope and consequences of this duty remain unclear. It remains to be seen what the extent of the duty upon the Security Council is, however it is certain that total inaction, whether or not the Security Council is seized of the matter will incur liability. One matter which seems certain however, is that the international community will not be able to hold individual Member States liable for preventing the Security Council from acting, nor should they be able to.

International law has reached a point in its progression where a duty of humanitarian intervention is possible. With the increasing globalization of the international community, the advanced technology heightening our

awareness of human tragedy, the movement towards popular sovereignty, and the increased salience of non-colonial self-determination, we have converged on a point where the international legal community can act. We should not shrink from this opportunity to do so.

"Kurds seize Iraqi Base and Work to Demoralise Saddam's Army" *Wash. Post*. It is often easy to lose sight of the big picture, however the last decade has seen two genocides to rival the killing camps of Nazi Germany.¹²⁷ As I write this conclusion the Security Council has determined that the situation in Kosovo constitutes a threat to international peace and security. And again the international community girds its collective loins to intervene in defence of humanity.

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¹²⁷ The killing fields of Cambodia are not officially classified as genocide, as the Genocide Convention makes no provision for the destruction of political groups (politicide). See generally, Beth Van Schaack "The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot" [1997] 106 *Yale LJ* 2259.

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