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TRAGEDIES IN SOMALIA, YUGOSLAVIA, HAITI, RWANDA AND LIBERIA- REVISITING THE VALIDITY OF HUMANITARIAN INTERVENTION UNDER INTERNATIONAL LAW- PART II

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I. INTRODUCTION

In part I of this article,¹ Professor Ved Nanda presented a framework for determining the validity of unilateral humanitarian intervention under international law. The framework was based on an analysis of selected cases of humanitarian intervention that occurred during the Cold War. To fall within this category, the intervention had to be an assertion of a state's right to protect its "own nationals or a third state's nationals in another state, or even the nationals of the state against which coercive measures were undertaken."² Although a historical analysis of this doctrine was undertaken, the selected cases (the United States' 1965 intervention in the Dominican Republic, 1983 intervention in Grenada, and 1989 intervention in Panama; India's 1972 intervention in East Pakistan; Tanzania's 1979 intervention in Uganda; and Vietnam's 1978 intervention in Cambodia) all occurred in the post-United Nations Charter period.

Based on these case studies, five criteria for evaluating humanitarian intervention were enumerated: (1) the necessity criterion, whether there was genocide or gross, persistent, and systematic violations of basic human rights; (2) the proportionality criterion, the duration and propriety of the force applied; (3) the purpose criterion, whether the intervention was motivated by humanitarian consideration, self-interest, or mixed motivations; (4) whether the action was collective or unilateral; and (5) whether the intervention maximized the

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1. Ved Nanda, *Tragedies in Northern Iraq, Liberia, Yugoslavia and Haiti- Revisiting the Validity of Humanitarian Intervention Under International Law - Part I*, 20 DENV. J. INT'L L. & POL'Y 305 (1992).

2. *Id.* at 309.

best outcome.³ These criteria were then applied to determine the validity of United Nations ("U.N.") intervention in Iraq to protect the Kurds in North Iraq and the Shiites in the South. However, since the publication of Part I of this article, several additional interventions on humanitarian grounds have occurred. For the most part, these interventions were undertaken collectively by multinational forces, under the auspices of the U.N. or other regional arrangements. In the case of Bosnia-Herzegovina, the international security organization, NATO, led the intervention.

For the current study, we have selected the following five cases: Somalia, Bosnia, Haiti, Rwanda, and Liberia. Our purpose is to explore the current trends of humanitarian intervention and to make some tentative observations on its future direction. We will, however, begin with a few preliminary remarks highlighting the pertinent geopolitical changes in the recent past which have a significant bearing on how the doctrine is perceived and shaped.

II. THE UNITED NATIONS IN THE POST-COLD WAR WORLD

The end of the Cold War was accompanied by hopeful signs that the dream of collective security for the maintenance of international peace and security would perhaps become a reality. To repel the Iraqi aggression against Kuwait, an effective marshaling of forces drawn from several countries occurred pursuant to the Security Council ("Council") mandate that Member States "use all necessary means . . . to restore international peace and security in the area."⁴ This effort reflected the ability of the Security Council's permanent members to work together as never before and created widespread hope that the U.N. would, at last, function as the framers intended.⁵

Subsequently, in January 1992, a Council summit took place with a request to the Secretary-General to submit a report on the U.N.'s peacekeeping activities.⁶ A few months later, Boutros Boutros-Ghali, then Secretary-General, complied with the request and submitted *An Agenda for Peace*,⁷ a blueprint for future U.N. action. An ambitious vision of the U.N.'s role in the maintenance of international peace and security, this vision included four types of activities: preventive diplomacy before disputes escalate; peacemaking under Chapter VII when hostile parties have not yet reached an agreement; peace-keeping; and post-conflict peace-building.⁸ The Secretary-General emphasized the pros-

3. *Id.* at 330.

4. S.C. Res. 678, April 5, 1991, *reprinted in* 30 I.L.M. 858 (1991) [hereinafter S/678].

5. James A.R. Nafziger, *Self-Determination and Humanitarian Intervention in a Community of Power*, 20 DENV. J. INT'L L. & POL'Y 9, 28 (1991).

6. Statement by the President of the Council in the section entitled "Peacemaking and peace-keeping," U.N. Doc. S/23500 (1992).

7. U.N. Doc. A/47/277, S/24111, June 17, 1992.

8. *Id.* para. 20.

pects for the U.N.'s ability to maintain peace in the post-Cold War world and characterized the new spirit of cooperation in the Security Council as a "second chance to create the world of our Charter."⁹ Initially, the permanent members of the Security Council shared this enthusiasm, which they expressed by creating an unprecedented number of new operations. To illustrate, while there were just thirteen peacekeeping operations from the U.N.'s inception to 1985, they jumped to thirty by the end of 1994.¹⁰

The prospects for a more effective U.N. role in the maintenance of the international order were, however, short-lived. The Gulf War became at best a distant memory after severe setbacks to U.N. peacekeeping efforts in Somalia;¹¹ a display of sheer helplessness by U.N. peacekeepers in Bosnia;¹² a withdrawal of the U.N. peacekeeping force from Rwanda, which led to disastrous results in that country—including genocidal acts, hundreds of thousands of deaths and casualties, and a million refugees and displaced persons;¹³ and an ineffective U.N. partnership with the intervening forces of the Economic Community of Western African States (ECOWAS) in the Liberian civil war.¹⁴

Meanwhile, the United Nations came under heavy attack in the U.S. Congress on charges that it suffered from cumbersome bureaucratic bungling and wasteful duplications and redundancies.¹⁵ The outcome was that the U.N. had its share of financial woes, causing the organization nearly to go bankrupt.¹⁶ Moreover, there was no enthusiasm

9. *Id.* para. 75.

10. See VICTORIA K. HOLT, BRIEFING BOOK ON PEACEKEEPING—THE U.S. ROLE IN UNITED NATIONS PEACE OPERATIONS 1-4 (2d ed. 1995).

11. See generally Jarat Chopra, *Achilles' Heel in Somalia: Learning from a Conceptual Failure*, 31 TEX INT'L L.J. 495 (1996) [hereinafter Chopra].

12. Roger Cohen, *U.N. Mission in Bosnia: A Painful Lesson in Limits*, N.Y. TIMES, Dec. 20, 1995, at A10.

13. The United Nations had difficulties establishing a peacekeeping force in the wake of the Rwandan violence. See Paul Lewis, *Boutros-Ghali Angrily Condemns All Sides for Not Saving Rwanda*, N.Y. TIMES, May 26, 1994, at A1. Once established, the peacekeeping force failed to provide security against human rights violations. See Donatella Lorch, *U.N.-Rwanda Ties Sour as Mandate Nears End*, N.Y. TIMES, May 21, 1995, at A8; Barbara Crossette, *Send the Peacekeepers Home, a Ravaged Rwanda Tells U.N.*, N.Y. TIMES, June 8, 1995, at A9.

14. See section III(E) *infra* and Clement T. Adibe, *The Liberian Conflict and the ECOWAS-U.N. Partnership*, 18 THIRD WORLD Q. 471 (1997). Adibe alleges that the U.N.'s effort in Liberia was "indifferent and purposeless" and that many Liberians were not even aware of the U.N.'s presence there. *Id.* at 485.

15. Several outspoken members of the U.S. Congress criticized the United Nations as bloated and ineffective. Such sentiments, coupled with a perception that he opposed reform, motivated the American opposition to Boutros Boutros-Ghali's serving a second term as Secretary-General. See John M. Goshko, *U.S. Sides against Second Term for U.N. Chief in Informal Vote*, WASH. POST, Nov. 19, 1996, at A13. Dissatisfaction with the management of the United Nations also underlies Congressional objections to paying the U.S.' debt to the United Nations. See *Plan to Fund U.N. Draws Helms' Fire*, WASH. POST, Jan. 30, 1997, at A6.

16. Barbara Crossette, *U.N. Juggles Funds to Stay Afloat, Expert Says*, N.Y. TIMES,

among major players at the United Nations for building the organization's capacity to enable it to effectively discharge its primary function of maintaining international peace and security. The Secretary-General's plea for the U.N. to have a rapid deployment force and for sound financing came to naught.

A major outcome of the end of the Cold War and especially the rapprochement between the U.S. and Russia was the closing of the chapter on superpower intervention and proxy wars on ideological grounds. The U.S. would now define its national interest quite narrowly, retreating from its earlier preference for assertive multilateralism as the focus of its foreign policy. The change in policy was articulated in May 1994 in Presidential Decision Directive ("PDD") 25¹⁷ enunciating the criteria by which President Clinton's administration would determine whether or not to support U.N. sponsored peacekeeping operations. Henceforth the criterion for U.S. action or support would be the extent to which U.S. interests would be advanced. Among other factors were the severity of the threat to international peace and security, including the gross violation of human rights, the clarity of objectives, the capacity to accomplish those objectives, the consequence of inaction, and the anticipated duration of the mission.¹⁸

In light of these developments, it remains doubtful whether collective intervention could be realistically expected to occur even in the face of egregious violations of human rights, if the major powers in the U.N., especially those with veto power in the Security Council, did not find it in their national interest to authorize the use of force for such intervention. Rwanda is a case in point, as are Burundi and Liberia. As a result, in order to prevent and deter further transgressions against humanity, there must be room for unilateral intervention on humanitarian grounds.

Sept. 13, 1995, at A8.

17. White House Press Release, *The Clinton Administration Policy on Reforming Multilateral Peace Operations*, undated.

18. For a thoughtful analysis of PDD 25, see generally Glenn T. Ware, *The Emerging Norm of Humanitarian Intervention and Presidential Decision Directive 25*, 44 NAVAL L. REV. 1 (1997).

III. CASE STUDIES

A. *Somalia*¹⁹

1. The Conflict

Somalia gained its independence in 1960 from colonial powers Britain and Italy.²⁰ For nine years immediately following independence, Somalia enjoyed a stable democratic government.²¹ However, in 1969, allegations of fraud by the elected government prompted Major General Mohamed Siad Barre to seize power through a military coup.²² By manipulating Somalis' clan loyalties, repressing opposition groups, and corruption, Barre maintained his grip on Somalia for over two decades.²³

Because of Somalia's strategic location near the Gulf of Aden, both superpowers sought Somalia's allegiance during the Cold War by providing Barre with foreign aid.²⁴ Playing Somalia's strategic geographical position to his advantage, Barre courted the U.S. and the Soviet Union alternately.²⁵ After coming to power in 1969, Barre declared his government to be Marxist in order to receive foreign aid from the Soviet Union.²⁶ In 1977, the Soviet Union signed a treaty with Ethiopia, Somalia's historical rival.²⁷ Consequently, Barre sought and received foreign aid from the U.S..²⁸

By the mid-1980s, the U.S. started decreasing its aid to Somalia, which fell from \$34 million in 1984 to \$8.7 million by 1987, a 75 percent

19. See generally JOHN L. HIRSCH & ROBERT B. OAKLEY, *SOMALIA AND OPERATION RESTORE HOPE* (1995); I.M. LEWIS, *A MODERN HISTORY OF SOMALIA: NATION AND STATE IN THE HORN OF AFRICA* (1980); D.D. LAITIN & S.S. SAMATAR, *SOMALIA: NATION IN SEARCH OF A STATE* (1987); TERRENCE LYONS & AHMED I. SAMATAR, *SOMALIA: STATE COLLAPSE, MULTILATERAL INTERVENTION, AND STRATEGIES FOR POLITICAL RECONSTRUCTION* (1995); M.S. OMAR, *THE ROAD TO ZERO: SOMALIA'S SELF-DESTRUCTION* (1992); A.I. Samatar, *Destruction of State and Society in Somalia: Beyond the Tribal Convention*, 30 J. MOD. AFR. STUD. 625 (1992).

20. Modern Somalia existed as two separate colonies, Italian Somaliland and British Somaliland. These two colonies merged into Somalia upon independence in 1960. S.S. SAMATAR, *HISTORICAL SETTING*, IN *SOMALIA: A COUNTRY STUDY 3* (Helen Chapin Metz ed., 1993)[hereinafter SAMATAR].

21. *Id.* at 26.

22. *Id.* at 36-37.

23. SAMUEL M. MAKINDA, *SEEKING PEACE FROM CHAOS: HUMANITARIAN INTERVENTION IN SOMALIA* 17 (1993)[hereinafter MAKINDA].

24. Keith B. Richburg, *Orphan of the Cold War: Somalia Lost its Key Role*, WASH. POST, Oct. 15, 1992, at A24 [hereinafter Richburg].

25. *Id.*

26. SAMATAR, *supra* note 20, at 42.

27. Richburg, *supra* note 24.

28. *Id.*

decline in just three years.²⁹ By 1988, the U.S. and the European Community, except for Italy, had virtually abandoned Somalia.³⁰ After the end of the Cold War, Somalia's strategic position ceased to have value, and the international community's interest in the country diminished still further.³¹ This undermined Barre's political position within his own country. Inter-clan rivalries, corruption within Barre's government, and weariness of political repression erupted into full-fledged civil war. Even before the final collapse of Barre's government in January 1991, the Somali state had ceased to fulfill its institutional, political, and economic functions.³² After the final defeat of Barre, the United Somali Congress ("USC") appointed Ali Mahdi Mohamed as Somalia's interim president.³³

The USC draws its support from Somalia's largest clan, the Hawiye. However, Mohamed Ali Mahdi faced opposition from General Mohamed Farah Aidede, a member of a different Hawiye sub-clan.³⁴ During the course of their struggle for control, the factions supporting Ali Mahdi and Aidede destroyed most of Mogadishu.³⁵ The ongoing civil war between the USC factions, along with the presence of violent armed gangs in the country, resulted in the collapse of an effective government in Somalia. The situation was further exacerbated by a severe drought, which exacted a terrible toll on Somalia—approximately 300,000 persons perished.³⁶ These conditions captured the world's attention and prompted a response from the international community.

2. The Intervention

The United Nations first addressed the situation in Somalia in January, 1992. Recognizing the gravity of conditions within Somalia and terming them a threat to international peace and security, the Security Council imposed a complete arms embargo on Somalia and called for increased humanitarian aid.³⁷ Beyond this marginal commitment to ending the military strife and resulting widespread famine, this resolution did little more than espouse commonplace rhetoric with no clear hopes of bringing about an end to the crisis.

Three months later, after a cease-fire agreement was signed by the

29. SAMATAR, *supra* note 20, at 46.

30. MAKINDA, *supra* note 23, at 56.

31. *Id.* at 89.

32. ROBERT G. PATMAN, THE U.N. OPERATION IN SOMALIA, IN A CRISIS OF EXPECTATIONS: U.N. PEACEKEEPING IN THE 1990'S 87 (Ramesh Thakur & Carlyle A. Thayer eds., 1995)[hereinafter PATMAN].

33. MAKINDA, *supra* note 23, at 31.

34. *Id.* at 31.

35. Keith B. Richburg, *Aidede: Warlord in a Famished Land*, WASH. POST, Sept. 8 1992, at A1.

36. PATMAN, *supra* note 32, at 85.

37. S.C. Res. 733, U.N. SCOR, 47th Sess., 3039th mtg., U.N. Doc. S/RES/733 (1992).

warring parties in early March 1992, the Security Council acted again by adopting Resolution 746.³⁸ In addition to calling on the combatants within Somalia to cease their activities, Resolution 746 accepted the U.N. Secretary-General's recommendation that a technical team be sent to Somalia with the goal of observing the administration of humanitarian aid and brokering a peace agreement between the parties.³⁹ The team was to report back to the Security Council. However, the inadequacy of these measures soon became apparent, the situation continued to deteriorate, and the Security Council was forced to take additional measures. Thus it adopted Resolution 751,⁴⁰ which foreshadowed the formation of the United Nations Operation in Somalia ("UNOSOM"). The resolution authorized the Secretary-General to appoint a special representative for Somalia, deployed fifty troops to monitor the cease-fire, and "in principle" established a security force "to be deployed as soon as possible."⁴¹ In August 1992, the Security Council acted again in light of further deteriorating conditions in Somalia, authorizing an airlift of humanitarian aid through Resolution 775.⁴² This resolution seemed to reflect the Security Council's view that UNOSOM had enjoyed some success and that the deployment of additional U.N. forces would perhaps suffice to bring peace to the region.⁴³

Months later, nearly one year after its original recognition of the human rights abuses in Somalia, the Security Council acknowledged the ineffectiveness of the embargo and the previous deployment of forces. In Resolution 794, the Security Council determined that the conflict in Somalia constituted a threat to international peace and security,⁴⁴ and endorsed the recommendation of the Secretary-General that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a more secure environment for humani-

38. S.C. Res. 746, U.N. SCOR, 47th Sess., 3060th mtg., U.N. Doc. S/RES/746 (1992).

39. *Id.* See also Report of the Secretary-General, U.N. SCOR, 47th Sess., 3039th mtg., at 16, U.N. Doc. S/23963 (1992). This approach was tenable, given the U.N.'s success in negotiating Soviet withdrawal from Afghanistan in 1988, ending the eight year war between Iran and Iraq in 1988, and South Africa's withdrawal from Namibia in 1989.

40. S.C. Res. 751, U.N. SCOR, 47th Sess., 3069th mtg., U.N. Doc. S/RES/751 (1992).

41. On July 27, 1992, Security Council Resolution 767 acknowledged the arrival of the fifty observers. S.C. Res. 767, U.N. SCOR, 47th Sess., 3101st mtg., U.N. Doc. S/RES/767 (1992). It is also noteworthy that Resolution 751 established a committee to monitor the arms embargo, a seemingly moot initiative considering the embargo's inconsequential effect on the human rights situation in Somalia to that point. See Rajendra Ramlogan, *Towards a New Vision of World Security: The United Nations Security Council and Lessons of Somalia*, 16 HOUS. J. INT'L L. 213, 235 (1993).

42. S.C. Res. 775, U.N. SCOR, 47th Sess., 3110th mtg., U.N. Doc. S/RES/775 (1992); see also *Security Council Approves More Troops to Somalia*, AGENCE FRANCE PRESSE, Aug. 29, 1992, Lexis, Nexis Library, AFP File, at 2. This action was taken on the Secretary-General's recommendation. The Situation in Somalia: Report of the Secretary-General, U.N. SCOR, 47th Sess., at 7, U.N. Doc. S/24480 & Add. 1 (1992).

43. See Ramlogan, *supra* note 41.

44. S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg. at 1, U.N. Doc. S/RES/794 (1992).

tarian relief operations in Somalia.⁴⁵ This resolution could be considered a watershed because it marked the first time that the Security Council invoked its Chapter VII powers and acted under Article 42 on humanitarian grounds.⁴⁶

To illustrate, Resolution 794 broke new ground in two significant ways. First, in light of the internal turmoil and the lack of a functioning government, the Council was forced to intervene without the consent of the government.⁴⁷ Second, Resolution 794 seemed to extend the scope of Chapter VII to include human rights abuses, for in invoking its Chapter VII powers, the Security Council stated that "the magnitude of human tragedy caused by the conflict in Somalia . . . constitutes a threat to international peace and security."⁴⁸ This aggregation of gross violations of human rights within the borders of a country with a threat to international peace and security expanded the scope of Chapter VII action considerably.

Just as the decision to use force in Somalia broke new legal ground, the implementation also featured a new model of collective humanitarian intervention which could become possible only after the end of the Cold War. While the early stages of U.N.-led intervention were successful in providing food and medical care to those in need, the U.N. lacked the necessary resources and political will to create another U.N. force. Thus, Resolution 794 empowered a U.S.-led coalition, the Unified Task Force ("UNITAF"), to use "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."⁴⁹

Before opting for the U.S.-led coalition, the Council, however, considered five options to address the Somali crisis, as outlined by Boutros Boutros-Ghali in his letter to the Council.⁵⁰ Two of these options envisioned direct U.N. intervention.⁵¹ But, as noted earlier, the U.N. lacked the necessary resources, the logistical and contingency planning infrastructure, and the organizational capability to undertake an operation of this magnitude by itself. Moreover, the U.S. had offered to lead a

45. Letter Dated 29 Nov. 1992 from the Secretary-General Addressed to the President of the Security Council, U.N. SCOR, 47th Sess., U.N. Doc. S/24868 (1992)[hereinafter Secretary-General's Letter].

46. The Security Council adopted Resolution 794 as it was concerned with the starvation of civilians in Somalia, finding that a threat to international peace and security existed because of 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." *Id.*

47. Paul Lewis, *Key U.N. Members Agree to U.S. Force in Somalia Mission*, N.Y. TIMES, Dec. 3 1992, at A1.

48. S.C. Res. 794, *supra* note 44, at 1.

49. Michael Wines, *U.S. Launches Somalia Aid Mission*, PLAIN DEALER, Dec. 5 1992, at A1. It seems likely that without the U.S.'s offer, the U.N. may never have committed to a full peace force in the region. Ramlogan, *supra* note 41 at 237.

50. Secretary-General's Letter, *supra* note 45.

51. *Id.*

military force for delivery of humanitarian aid in Somalia.⁵²

UNITAF, established to end the humanitarian suffering in Somalia, consisted of 37,000 military personnel, 28,000 of whom came from the U.S.⁵³ This new operation enjoyed more success than its predecessor, and the parties agreed to a cease-fire on January 8, 1993, which permitted the full implementation of the U.N.'s 100-Day Action Program.⁵⁴ There was an increased U.N. and non-governmental organization ("NGO") presence in Somalia. The Addis-Ababa agreements of January 8-15 that year committed Somali clan leaders to cooperate in the creation of a cease-fire monitoring group and the collection and destruction of weapons.

With its limited resources and personnel, the U.N. would not have achieved these results without the help of the U.S.. However, the U.N.'s decision to defer control of UNITAF to the U.S. also entailed some costs. The U.S., having achieved the immediate goal of restoring some peace and stability, was unwilling to remain in an increasingly hostile environment longer than necessary.⁵⁵ By contrast, the Secretary-General clearly wished for the U.S.-led UNITAF to remain in place longer, stating that "[i]t would be a tragedy if the premature departure . . . of the Unified Task Force were to plunge Somalia back into anarchy and starvation."⁵⁶

On March 26, 1993, the U.N. Security Council adopted Resolution 814, which established the United Nations Operation in Somalia ("UNOSOM II") in hopes of promoting a prompt, smooth, and phased transition from the Unified Task Force to a U.N.-led intervention.⁵⁷

52. *Id.* For a discussion of these options, see Mark R. Hutchinson, *Recent Development - Restoring Hope: U.N. Security Council Resolutions for Somalia and an Expanded Doctrine of Humanitarian Intervention*, 34 HARV. INT'L L.J. 624, 629-32 (1993).

53. By comparison, UNOSOM consisted of only 500 personnel. In his December 8, 1992 address, the Secretary-General stated that Operation Restore Hope's goals were "to feed the starving, protect the defenseless, and prepare the way for political, economic, and social reconstruction." Statement of the Secretary-general to the People of Somalia on United Nations Action on Security, Humanitarian Relief, and Political Reconciliation in Somalia, U.N. Press Release SG/SM/4874, December 8, 1992.

54. See 100-Day Action Programme for Accelerated Humanitarian Assistance for Somalia, October 6, 1992, which called for, among other things, massive infusion of food aid, provision of basic health services, urgent provision of clean water, delivery of shelter materials, and prevention of future refugee outflows.

55. Keith Richburg, *Top U.N. Officer in Somalia says Tactics were Apt*, WASH. POST, Jan. 23 1993, at A12. In areas controlled by UNITAF, food and medical supplies resumed movement and agricultural workers once again began production. Robert Oakley, *Mission Accomplished in Somalia*, WASH. POST, Mar. 21 1993, at C7.

56. Further Report of the Secretary-General Submitted in Pursuance of Paragraphs 18 and 19 of Security Council Resolution 794 (1992), U.N. SCOR, 48th Sess., U.N. Doc. S/25354 and add. 1 & 2 (1993) (proposing that UNITAF extend its operations to the whole of Somalia and disarm the factions before handing over operational responsibility to a new U.N. peacekeeping operation.). See also U.N. Doc. S/24992, Dec. 19, 1992.

57. S.C. Res. 814, U.N. Doc. SCOR, 48th Sess., 3188th mtg., at 1, U.N. Doc. S/Res/814 (1993).

Taking into consideration UNITAF's limited success in creating a stable peace in Somalia, the Security Council again acted under Chapter VII and expanded UNOSOM II's size and mission. The Security Council gave UNOSOM II responsibility for consolidating, expanding, and maintaining a secure environment throughout all of Somalia, with a special eye to disarmament and demanding that the Somali parties abide by the Addis Ababa agreements of January 1993.⁵⁸ This included such nation-building efforts by the U.N. as the establishment of regional councils and a police force. Given UNOSOM II's mandate, it is appropriate to conclude that, while it typified a traditional peacekeeping mission, UNOSOM II was conceived as a peace enforcement mission.⁵⁹

In response to an attack on Pakistani troops serving as part of UNOSOM II, in which over 20 soldiers were killed and over 50 wounded, the Security Council passed Resolution 837.⁶⁰ The Resolution reiterated the Secretary-General's prior authorization under Resolution 814 to take all necessary measures including investigation, arrest, detention, and prosecution of all those responsible. The U.N. action entailed, *inter alia*, attacks upon Aideed's headquarters.⁶¹ Several civilian casualties occurred and efforts were taken to find and prosecute Aideed. These actions, however, alienated segments of the local population.⁶² Subsequently, the U.S. withdrew its forces, several European countries followed suit, and eventually in January 1995, UNOSOM II troops, conceding the failure of the mission, began withdrawing. By early March, all UNOSOM II forces had departed from Somalia.⁶³

58. *Id.*

59. See Kenneth Freed, *Somali Civil War is Over, Rivals Vow Peace*, L.A. TIMES, Dec. 29, 1992, at A1; John M. Goshko, *U.N. Chief Favors Use of Force in Somalia: Plan Offers Radical Change from Group's History of Passive Peace Keeping*, WASH. POST, Dec. 1, 1992, at A1; Robert Greenberger, *Troop Strength: Outspoken U.N. Chief Takes Strong Role, Irking Some Nations*, WALL ST. J., Dec. 17, 1992, at A1.

60. S.C. Res. 837, U.N. SCOR, 48th Sess., 3229th mtg. at 1-3, U.N. Doc. S/Res./837 (1993).

61. See Donatella Lorch, *U.N. Says Attack Dealt Heavy Blow to Somali Faction*, N.Y. TIMES, June 13, 1993, at A1; Keith B. Richburg, *U.S. Planes Hit Mogadishu Again*, WASH. POST, June 13, 1993, at A1.

62. See Donatella Lorch, *Aidid's Forces Still Strong, U.N. Aides in Somalia Say*, N.Y. TIMES, June 21, 1993, at A6; Keith B. Richburg, *Somali Mob Kills Three Journalists, Melee Follows Raid on Militia Forces*, WASH. POST, July 13, 1993, at A1.

63. See Donatella Lorch, *As U.N. Girds to Leave Somalia, Renewed Fighting*, N.Y. TIMES, Feb. 27, 1995, at A3; Donatella Lorch, *Marines Cover U.N.'s Pullout from Somalia*, N.Y. TIMES, Feb. 28, 1995, at A1; *Farewell to Africa*, FIN. TIMES (LONDON), Feb. 28, 1995, at 19. See also Report of the Secretary-General on the Situation in Somalia, Submitted in Pursuance of Paragraph 13 of Security Council Resolution 954 (1994), U.N. SCOR, U.N. Doc. S/1995/231 (1995); Report of the Secretary-General on the Situation in Somalia, U.N. SCOR, U.N. Doc. S/1996/42 (1996).

3. Appraisal

The United Nations intervention in Somalia extended the scope of Chapter VII to include violations of human rights. The intervention began with the objective of providing humanitarian assistance. Subsequently, its focus was shifted to follow the traditional role of U.N. peacekeeping missions of seeking reconciliation among the warring factions, and still later to undertaking enforcement action. The U.N. mission failed in Somalia primarily because it lacked a coherent policy to identify its objectives and to marshal adequate resources to accomplish those objectives. To illustrate, the task of building or rebuilding institutions in Somalia with the goal of political reconstruction and nation building that the U.N. undertook through resolution 794 required the investment of considerable political capital, resources and know-how, and skillful operation in the effort to bring about Somalia's political transformation. Also, the U.N. mandate to disarm the warring factions and to take enforcement action under Chapter VII resulted in heavy reliance on armed forces and a disproportionate emphasis on a military approach to address the crisis. The U.N. found itself wanting on both accounts as it sought to meet these goals.⁶⁴

B. Former Yugoslavia

The U.N. intervention in the former Yugoslavia is by far the best known, and perhaps least understood, of all U.N. actions since the end of the Cold War. The huge toll in human life and property damage captured the attention of the world.⁶⁵ In addition, the U.N. operation that responded to this crisis was the largest to date.⁶⁶ Despite its high visibility, the complexities of the dispute made it difficult to understand, especially because the conflict involved numerous ethnic, linguistic, and religious factors, and because the positions of the parties changed from time to time.

1. The Conflict

Beginning after World War II and until its eventual collapse, Yugo-

64. For an incisive analysis of the failure of the U.N. mission, see generally Chopra, *supra* note 11.

65. The estimated death toll for 1995 ranges from 167,000 (Bosnian Institute of Public Health) to 250,000 (Country Reports on Human Rights).

66. U.N. involvement in the former Yugoslavia was authorized by several Security Council resolutions and consisted of 44,000 military and civilian personnel. Nearly \$4 billion was assessed to U.N. Member States. Peace Operations- Update on the Situation in the Former Yugoslavia, GAO Report, May 9, 1995, at 3. For incisive accounts of the conflict and the intervention, see generally SUSAN WOODWARD, BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR (1995); SUSAN WOODWARD, IMPLEMENTING PEACE IN BOSNIA AND HERZEGOVINA: A POST-DAYTON PRIMER AND MEMORANDUM OF WARNING (1996).

slavia provided a system of peaceful compromise for the many nationalities within its borders, in spite of the conflicting, multifaceted, and perennial national questions they posed.⁶⁷ Yugoslavia's creation in 1918 marked the first occasion of Serbs and Croats living together in the same state,⁶⁸ and the interdependence of these two largest ethnic groups in the country helped to maintain the stability of the Yugoslav system.⁶⁹ Still, Yugoslavia never succeeded in constituting itself as a political community, and was always forced to compete with its subsidiary national communities and their desires for statehood.⁷⁰

The death of Tito in May 1980, after thirty-seven years of rule, marked the beginning of the end of the Yugoslav state. With Tito's death, the political center in Yugoslavia weakened, and new pressures for change began to surface.⁷¹ Serbian nationalism would come to play a significant role in Yugoslavia's eventual disintegration and the ensuing war. In 1984, the League of Communists of Serbia introduced the first comprehensive reform package since Tito's death.⁷² Key among its provisions was the rolling back of the provinces' autonomy within Serbia.⁷³

In 1987, the triumph of conservative factions in the League of Communists of Serbia and the rise of Slobodan Milosevic bolstered a nascent nationalist movement.⁷⁴ Milosevic introduced measures calculated to increase Serbian national pride, such as increasing use of the Cyrillic alphabet, and adopting a new, militant national anthem that had been banned during Tito's lifetime.⁷⁵ The leaders of this movement sought to arouse nationalist fervor by portraying Serbs as persecuted within the Yugoslav state and threatened in the wake of its collapse.⁷⁶ This enmity of other Yugoslav peoples formed the bedrock of the Serbian national identity.⁷⁷ Serbian leaders used extreme measures to mobilize Serbian *diaspora* in support of Serb nationalism, including rumors of planned genocidal attacks against Serbs living in other republics.⁷⁸

Open conflict erupted in the former Yugoslavia in June 1991, when

67. VESNA PESIC, SERBIAN NATIONALISM AND THE ORIGINS OF THE YUGOSLAV CRISIS 1 (1996)[hereinafter PESIC].

68. SABRINA PETRA RAMET, BALKAN BABEL 1 (1996) [hereinafter RAMET].

69. PESIC, *supra* note 67, at 1. Historically, Croatia favored greater autonomy from Yugoslavia, while Serbia supported greater centralism. These antagonistic positions exhibited during Yugoslavia's existence help to explain the course of the post-Yugoslavia conflicts. *Id.* at 8.

70. *Id.* at 5.

71. RAMET, *supra* note 68, at 7.

72. *Id.* at 14.

73. *Id.*

74. PESIC, *supra* note 67, at 14.

75. RAMET, *supra* note 68, at 26.

76. PESIC, *supra* note 67, at 14.

77. *Id.*

78. *Id.* at 21.

two former Yugoslav republics, Slovenia and Croatia, declared their independence.⁷⁹ The dominant Serbian republic, with the weight of the Yugoslav National Army behind it, joined with the ethnic Serbs living in Croatia who opposed Croatian independence.⁸⁰ The U.N. responded by imposing an arms embargo on all of Yugoslavia's successor states⁸¹ and by sending an envoy to help mediate an end to the fighting. The U.N.'s special envoy, former Secretary of State Cyrus Vance, was able to broker an end to this initial conflict, and the parties agreed to an unconditional cease-fire in November 1991.⁸² In January 1992, the U.N. Security Council sent a small contingent of fifty troops to Yugoslavia for the purpose of overseeing the fragile cease-fire.⁸³ One month later, the Council increased the size of this force by twenty-five.⁸⁴ Finally, in February 1992, after it was satisfied that the major obstacles to the establishment of a peacekeeping force had been removed, the Security Council established the United Nations Protection Force ("UNPROFOR") through Resolution 743.⁸⁵

By July 1992, the situation in Croatia seemed relatively secure, and the U.N.'s attention turned to the newly-created Bosnian Republic. The hostilities between Bosnia and Serbia developed independently of those between Serbia and Croatia. While Yugoslavia existed as a state, both Serbs and Croats inhabited Bosnia-Herzegovina, and both the Serbian and Croatian republics had historical claims to the region.⁸⁶ As early as November 12, 1991, Bosnian President Alija Izetbegovic warned of the inevitability of war and requested the immediate dispatch of U.N. peacekeeping forces.⁸⁷ After the Bosnian Serbs proclaimed the existence of the Bosnian Serb Republic on December 20, 1991, President Izetbegovic made another futile appeal for the deployment of a peacekeeping force along the Bosnian border.⁸⁸ On March 3, 1992, the Izetbegovic government declared the independence of Bosnia after a referendum.⁸⁹ Within a month, conflict broke out between Bos-

79. For a detailed account of the history leading up to the decision to declare independence, see RAMET, *supra* note 68.

80. Slovenia was mostly spared from direct military confrontation because only a small number of ethnic Serbs lived in Slovenia.

81. S.C. Res. 713, U.N. SCOR, 46th Sess., 3009th mtg., U.N. Doc. S/RES/713 (1991).

82. S/RES/721 (1991), adopted by the Security Council at its 3018th meeting, on 27 November 1991.

83. S/RES/727 (1992), adopted by the Security Council at its 3028th meeting, on 8 January 1992.

84. S/RES/740 (1992), adopted by the Security Council at its 3049th meeting, on 7 February 1992.

85. S/RES/743 (1992), adopted by the Security Council at its 3055th meeting, on 21 February 1992.

86. See PESIC, *supra* note 67, at 2.

87. The Security Council received this warning coldly, stating in its Resolution 724 (S/RES/724) that the situation in the former Yugoslavia had not escalated to a level warranting a U.N. peacekeeping force.

88. RAMET, *supra* note 68, at 245.

89. *Id.* at 246.

nian Muslims and Bosnian Serbs. Because the Serbs enjoyed the support of the Yugoslav Army,⁹⁰ by the end of 1992 they controlled seventy percent of Bosnian territory.⁹¹

Meanwhile, Bosnian Croats were working to consolidate their hold on the western part of Bosnia-Herzegovina.⁹² Although the Croats had initially supported the Bosnian government, they eventually seized approximately twenty percent of Bosnia-Herzegovina's southwestern territory.⁹³ Ironically Serb and Croat troops, who had been fighting against each other less than six months earlier, were now working together to carve up the territory of Bosnia-Herzegovina.⁹⁴

2. The Intervention

Two months after the outbreak of full-scale conflict between Serbia and Bosnia, the Security Council adopted a resolution on May 30, 1992,⁹⁵ that imposed trade sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro – hereinafter “Yugoslavia”) for supporting aggression. This resolution also expanded the UNPROFOR mandate to Bosnia and enlarged the duties of the mission.⁹⁶ The regional involvement in the intervention began in July 1992 when the Western European Union (“WEU”) and the North Atlantic Treaty Organization (“NATO”) effectuated compliance with the Security Council mandate through their naval operations.⁹⁷

The U.N.'s and European Community's diplomatic efforts, led by Secretary Vance and Lord David Owen, to resolve the Yugoslav crisis failed.⁹⁸ Meanwhile in November 1992 the Security Council adopted a resolution calling upon states, acting unilaterally or through regional organizations, to enforce the embargoes.⁹⁹ A month earlier, the Security Council had resolved to ban military flights in Bosnian air space and called upon states, acting individually or through regional organizations, to help UNPROFOR enforce the ban.¹⁰⁰ Subsequently, in

90. *Id.*

91. *Id.* Although Milosevic had agreed to withdraw the Yugoslav Army, only 14,000 of 89,000 troops actually left. Milosevic transferred the remaining 75,000 troops to the command of Radovan Karadzic and renamed them the “Army of the Serbian Republic of Bosnia-Herzegovina.” *Id.*

92. PESIC, *supra* note 67, at 247.

93. RAMET, *supra* note 68, at 248.

94. *Id.* at 251.

95. S. RES/757, adopted by the Security Council on May 30, 1992.

96. *Id.*

97. *See* THE CHANGING FUNCTIONS OF THE WESTERN EUROPEAN UNION: INTRODUCTION AND BASIC DOCUMENTS 155-58 (A. Bloed ed., 1995). NATO's intervention in former Yugoslavia is described in Davis Brown, *The Role of Regional Organizations in Stopping Civil Wars*, 41 A.F.L. REV. 235, 260-65 (1997).

98. *See generally* RAMET, *supra* note 68, at 249-50.

99. S/RES/ 787 (1992).

100. S/RES/781 (1992).

March 1993, the Security Council adopted another resolution to extend the no-fly zone to all aircraft and authorized states to take "all necessary measures" to enforce it.¹⁰¹ The next month it passed another resolution imposing total economic and diplomatic sanctions on Yugoslavia.¹⁰² NATO and WEU responded by expanding their operations.

The Security Council adopted several more resolutions, creating U.N. Safe Areas, "free from armed attacks and from any other hostile act,"¹⁰³ empowering UNPROFOR to protect them and promote the withdrawal of military forces by using force,¹⁰⁴ and inviting the Secretary General to take necessary steps to ensure respect of the Gorazde Safe Area.¹⁰⁵ The Council also authorized air power to assist UNPROFOR,¹⁰⁶ in response to which NATO conducted air strikes. After the Bosnian Peace Agreement, signed in Dayton, Ohio, in December 1995,¹⁰⁷ the Security Council authorized member states to establish a multinational implementation force ("IFOR") under unified command and control and acting through or in cooperation with NATO, and to take "all necessary measures . . . in defense of IFOR or to assist the force in carrying out its mission."¹⁰⁸ It phased out the arms embargo and suspended sanctions against Yugoslavia.¹⁰⁹

3. Appraisal

Initial attempts by the United Nations to intervene and bring about peace in the former Yugoslavia were again hampered by the lack of adequate resources at its command, coupled with the lack of political will of member states to make concerted efforts toward that end. Subsequently, it was the U.S. leadership and intervention by NATO forces that imposed peace in the region.

C. Haiti

Although the Haitian crisis did not receive the same media attention as Somalia or Bosnia, it represents another instance in which massive violations of human rights compelled the U.N. to authorize forcible intervention.¹¹⁰

101. S/RES/816 (1993).

102. S/RES/820 (1993).

103. S/RES/824 (1993). The Safe Areas were Sarajevo, Tuzla, Zepa, Gorazde, Bihac, and Srebrenica.

104. S/RES/836 (1993).

105. S/RES/913 (1994).

106. See S/RES/836 (1993) and S/RES/958 (1994).

107. General Framework Agreement for Peace in Bosnia and Herzegovina, *reprinted in* 35 I.L.M. 75 (1996).

108. S/RES/1031 (1995).

109. S/RES/1020 (1995); S/RES/1022 (1995).

110. By the time the Security Council adopted a resolution to intervene on July 31, 1994, there were independent reports of widespread massacres of those allegedly suppor-

1. The Conflict

The Haitian crisis began in September 1991, when newly-elected President Jean-Bertrand Aristide was ousted from office and forced to flee to the United States.¹¹¹ Aristide had been elected by an overwhelming majority of Haitian voters in the first free election in Haiti's history.¹¹² After Aristide's overthrow by a military junta, widespread human rights abuses ensued. Over 3,000 Haitians were murdered, and others were raped, arbitrarily arrested, and tortured.¹¹³ These violations spurred a massive flight of Haitian citizens who took to makeshift vessels in hopes of reaching the U.S..

The Organization of American States ("OAS"), with its long history of intervention in Haiti,¹¹⁴ was the first to impose sanctions against the military regime. In an emergency meeting held on September 30, 1991, the OAS "recommended action to bring about the diplomatic isolation of those who hold power illegally in Haiti."¹¹⁵ The Permanent Council of the OAS went further and called for an economic embargo to isolate Haiti from the rest of the Western Hemisphere.¹¹⁶ Meanwhile, the U.N. General Assembly passed a resolution supporting these sanctions and condemning the coup and the ensuing human rights abuses.¹¹⁷ The U.N. was also instrumental in universalizing the sanctions originally imposed by the OAS. At the urging of Western governments, the U.N. Security Council expanded the OAS embargo of Haiti to include all U.N. member states.¹¹⁸ However, the U.N. did little else to oust Haiti's mili-

tive of the ousted Haitian President Aristide. *Amnesty Reports, Haiti-Human Rights: Increase in Violations*, GLOBAL INFORMATION NETWORK, Aug. 24, 1994, at 1 (Lexis/Nexis News File).

111. See generally INTERAGENCY AND APOLITICAL MILITARY DIMENSIONS OF PEACE OPERATIONS: HAITI - A CASE STUDY 10 (Margaret D. Hayes & Gary F. Wheatley eds., 1996); Report on the Situation of Human Rights in Haiti, Inter-Am. C.H.R., 85th Sess., O.A.S. Doc. OEA/Ser. L/V/II.85 (Feb. 11, 1994).

112. Aristide, a Catholic priest, garnered sixty-seven percent of the vote. Michael P. Scharf, *Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?*, 31 TEX. INT'L L. J. 1, 2 (1996).

113. AMNESTY INTERNATIONAL, HAITI: THE HUMAN RIGHTS TRAGEDY, HUMAN RIGHTS VIOLATIONS SINCE THE COUP (1992). President Clinton described the military junta as "plainly the most brutal, the most violent regime anywhere in our hemisphere . . . [The] brutal atrocities threaten tens of thousands of Haitians." Gene Gibbons, *Clinton Vows Haiti's Military Will Leave*, REUTERS, Sept. 14 1994, Lexis/Nexis Library; President Bill Clinton, Radio Address to the Nation, Sept. 17, 1994, Lexis/Nexis Library.

114. *Haiti: From Intervention to Invasion*, CURRENT AFFAIRS, Feb. 1995, at 54.

115. Support to the Democratic Government of Haiti, OAS Doc. MRE/RES 1/91 (October 3, 1991.)

116. *Id.* In May, 1992, the OAS passed a second resolution after failed attempts at negotiations asking member states to renew their commitment to the embargo by denying port access to ships violating the embargo, denying visa privileges to coup members, and freezing coup leaders' assets. O.A.S. Doc. OEA/Ser. G/CP/SA 896/92(8) (Apr. 1, 1992).

117. G.A. Res. 46/7, U.N. GAOR, 46th Sess., Supp. No. 49, at 13, U.N. Doc. A/46/L.8/Rev.1 (1992).

118. Diego Arria, *Diplomacy and the Four Friends of Haiti*, in HAITIAN FRUSTRATIONS:

tary regime.

Diplomatic attempts to find a negotiated settlement to the Haitian crisis began early the following year.¹¹⁹ In February 1992, representatives of Aristide and the military leaders met in Washington, D.C., and signed the Washington Accord, which called for the selection of a new Prime Minister as well as amnesty for the military leaders and others who were involved in the coup. Although the Washington Accord also acknowledged Aristide as the president, it did not make provisions for his return to Haiti. Soon after the signing of this agreement, both Aristide and the military regime denounced the Washington Accord, marking the failure of the first round of negotiations.

The collapse of the Washington Accord demonstrated that during the year following the coup little progress had been made toward a resolution of the crisis. The U.S. found itself addressing the issue of refugees fleeing the repressive Cédras regime and seeking asylum in the U.S. In May, President George Bush began the controversial policy of using the U.S. Coast Guard to turn back Haitian refugees intercepted on the high seas.¹²⁰ In September, the OAS sponsored further negotiations between representatives of the military regime and Aristide. Although no resolution was reached on the point of Aristide's return, the *de facto* military government did agree to allow human rights observers into the country.

Although another new year began with the military government still firmly in power, the newly-elected President Clinton made some attempts to resolve the crisis the following year. In March 1993, Clinton named Lawrence Pezzullo as a special advisor on Haiti to the Secretary of State. The following month the U.S. imposed new economic sanctions on Haiti, an oil embargo and a freezing of Haitian assets abroad. In this context of increased pressure on the military leadership, Cédras and Aristide signed the Governors Island Agreement. The Governors Island Agreement called for a new government and prime minister, the resignation of the military leaders, a general amnesty for those involved in the coup and U.N.-mandated training of Haiti's police and military. Most significantly, and unlike previous agreements, the Governors Island Agreement provided for Aristide's return to Haiti by October 30, 1993.

The signing of the Governors Island Agreement raised hopes for a peaceful solution to the crisis. In August, the international embargo against Haiti was lifted and apparent progress toward Aristide's return to Haiti was made. These hopes, however, were doomed to disappoint-

DILEMMAS FOR U.S. POLICY 95 (Georges A. Fauriol ed., 1995).

119. We have relied heavily upon sources cited in *supra* notes 111-114 for the following discussion of Haiti.

120. Although presidential candidate Bill Clinton denounced the Bush Administration's policy of forced repatriation during the campaign, President Bill Clinton would eventually continue the policy after taking office.

ment. In spite of the fact that both Aristide and the military leaders signed the Governors Island Agreement, they were not really in agreement, because the differences between the two sides had merely been "papered over."¹²¹ This lack of real consensus made itself clear shortly before the date set for Aristide to return. The prospects for Aristide's return to Haiti dimmed on October 11 when the American naval ship U.S.S. Harlan County was turned back from landing in Port-au-Prince.¹²² Two days after this setback, the U.N. re-imposed economic sanctions and an oil embargo, and the U.S. Navy sailed into Haitian waters to enforce the embargo. The date set in the Governors Island Agreement for Aristide's return passed without a resolution to the crisis. After the failure of the Governors Island Agreement, the U.S. had no immediate alternative policy, but the Clinton Administration still hoped for a negotiated resolution.

Negotiations began again in December when Haitian Prime Minister Robert Malval traveled to Washington to meet with Aristide. Malval, who had come into office in August as part of the Governors Island Agreement, faced intimidation by the Haitian military, and despite the fact that he and Aristide needed each other's support against the military government, a rift grew between the two of them.¹²³ Despite this tension, Malval decided to seek an agreement with Aristide to resolve the crisis. He traveled to Washington, D.C., where he proposed a plan which the Clinton Administration endorsed enthusiastically. Under the Malval Plan, a national conference would choose a new, more broadly-based government which could negotiate a resolution with the military leaders in order for them to comply with the Governors Island Agreement. The U.N., the OAS, the Four Friends of Haiti (Venezuela, France, the U.S., and Canada), and Haiti's political and business leaders all supported the Malval Plan. Aristide, however, rejected it on the ground that the military would still retain substantial power under this plan.

Despite Aristide's rejection of the Malval Plan, diplomatic efforts to resolve the crisis were not at an end. The Four Friends of Haiti sent a delegation to Haiti and issued a warning to Cédras that unless Haiti's military leaders stepped down by January 15, 1994, Haiti would face even tougher sanctions. In spite of this warning, the January 15 deadline passed without compliance by the Cédras regime. Attempts at a diplomatic resolution to the crisis continued in February 1994, when a Haitian parliamentary delegation traveled to Washington, D.C., to meet with Aristide. This delegation proposed another solution to the crisis,

121. Georges A. Fauriol and Andrew S. Faiola, *Prelude to Intervention*, in HAITIAN FRUSTRATIONS: DILEMMAS FOR U.S. POLICY 103 (Georges A. Fauriol ed., 1995)[hereinafter Fauriol & Faiola].

122. See generally Kate Doyle, *Hollow Diplomacy in Haiti*, 11 WORLD POL'Y J. 50 (1994).

123. See Fauriol & Faiola, *supra* note 121, at 104.

calling for a new Prime Minister and government, and the implementation of the remaining provisions of the Governors Island Agreement. Aristide also rejected this plan, and demanded tougher sanctions against the military leaders instead of further efforts at a diplomatic resolution.

Although the Clinton Administration still favored a diplomatic solution to the crisis, Aristide and his demands for tougher sanctions enjoyed support in the U.S. Senate. Under pressure from Aristide's American supporters the Clinton Administration subsequently announced its intention to seek tougher sanctions against Haiti, unless the Cédras regime gave up power and allowed Aristide to return. These new sanctions included a complete economic embargo and the closure of Haiti's border with the Dominican Republic. After the military leaders once more refused to step down, the U.N. imposed these new sanctions on May 21, 1995. Over the next month, the Clinton Administration took additional unilateral steps by cutting off all American flights to Haiti, restricting financial transfers to Haiti from the U.S., revoking all non-immigrant visas, and preventing Haitians from entering the country.

2. The Intervention

Unfortunately for the Clinton Administration, even these stricter sanctions failed to resolve the crisis and force the military leaders out of power. Hoping that a show of force would compel the military leaders to step down, the U.S. stationed 2,000 Marines off the Haitian coast, along with several assault ships and attack helicopters. This step may have had the unintended consequence of making a military intervention inevitable.¹²⁴ Doubts still remained, however, about taking the final step, an invasion of Haiti. Weighing against military intervention were concerns about the risks and commitment involved, as well as the precedent that such a measure could potentially set.¹²⁵ However, notwithstanding these concerns, the U.N. Security Council adopted Resolution 940, authorizing the use of "all necessary means" by a multinational coalition to restore the Aristide government in Haiti.¹²⁶

The following month President Clinton officially authorized plans for invasion, and a State Department representative met with the leaders of four Caribbean nations to form the multinational coalition which was to carry out the invasion. On September 15, over substantial domestic opposition from Congress, President Clinton delivered a televised address to the nation and discussed the plans to invade Haiti. Just when an invasion seemed inevitable and all hope for a peaceful

124. *See id.* at 112.

125. *See id.* at 112-13

126. S.C. Res. 940, U.N. SCOR, 49th Sess., 3413th mtg. at 23, U.N. Doc. S/RES/940 (1994).

resolution appeared lost, an eleventh hour attempt to find a diplomatic resolution succeeded.

Two days after President Clinton's televised address, an American delegation including former President Jimmy Carter, Senator Sam Nunn and General Colin Powell arrived in Haiti as a last-minute attempt to find a peaceful resolution to the crisis. The following day, the two sides reached a compromise. Cédras agreed that he and the other military leaders would step down by October 15, and that American troops could enter Haiti unopposed. On September 19, U.S. troops landed peacefully in Port-au-Prince. On October 12, Cédras officially resigned, and Aristide finally returned to Haiti on October 15, 1995. Although the consolidation of democracy in Haiti was far from complete, the crisis that the military coup had touched off was finally over.

3. Appraisal

The United Nations played a rather limited role in resolving the Haitian crisis. The OAS's role was equally limited. It is hard to imagine the military junta relinquishing power without the U.S.' threat to send armed forces into Haiti and the credibility of that threat as perceived by the junta. However, both the U.N. and the OAS had endorsed the U.S. leadership in mounting an interventionary force, and the outcome of the intervention was an end to the brutal repression of Haitians by the junta.¹²⁷

D. Rwanda

In a little over three months in the summer of 1994, between 500,000 and 800,000 Rwandans, mostly Tutus, died tragically in a genocidal campaign. While this slaughter took most of the world by surprise, there was sufficient early warning that such a massacre might occur. However, the United Nations and member states took no effective action to prevent the disaster. Nor did they intervene to stop the killings.¹²⁸ Rwanda had in fact suffered several massacres since the

127. For two opposite views on the Haiti intervention, see James Morell, *Haiti: Success Under Fire* (1995 Report of the Center for International Policy) (in support of intervention); Richard Falk, *The Haiti Intervention: A Dangerous World Order Precedent for the United Nations*, 36 HARV. J. INT'L L. 341 (1995).

128. See generally U.N. DEPARTMENT OF PUBLIC AFFAIRS, THE UNITED NATIONS AND RWANDA, 1993-1996 (1996)[hereinafter U.N. AND RWANDA]; STUDY 1-5, THE JOINT EVALUATION OF EMERGENCY ASSISTANCE TO RWANDA: THE INTERNATIONAL RESPONSE TO CONFLICT AND GENOCIDE: LESSONS FROM THE RWANDA EXPERIENCE (1996); GERALD PRUNIER, THE RWANDA CRISIS: HISTORY OF A GENOCIDE (1995); HUMAN RIGHTS WATCH AFRICA, GENOCIDE IN RWANDA: APRIL-MAY 1994 (1994); ARTICLE 19, BROADCASTING GENOCIDE - CENSORSHIP, PROPAGANDA AND STATE-SPONSORED VIOLENCE IN RWANDA (1990-1994) (1996); Holly Burkhalter, *The Question of Genocide: The Clinton Administration and Rwanda*, WORLD POL'Y J., Winter 1994/1995, at 44; Peter Rosenbloom, *Book Review: The United Nations and Rwanda, 1993-1996*, 10 HARV. HUM. RTS. J. 313 (1997).

1950s—in 1959, 1963, 1966, 1973, 1990, 1991, 1992, and 1993.¹²⁹ Despite this, the 1994 genocide was unprecedented. To provide an appropriate context for understanding the failure of the international community to prevent the 1994 massacre, we will briefly review Rwanda's post-colonial history, early U.N. and regional efforts aimed at halting violence in the region, and the events immediately preceding the summer of 1994.

1. The Conflict

Prior to the 1994 massacre, Rwanda was one of the most densely populated countries in the world. Within its population two major ethnic groups existed. The Hutus accounted for eighty-five percent of the total population, while the Tutsis comprised roughly fourteen percent of the population.¹³⁰ In spite of the fact that the Hutus formed the majority group, the Tutsis had ruled over the Hutus since the sixteenth century.¹³¹ Prior to colonization, the Tutsis had maintained "reciprocal obligations and allowed for a degree of social mobility," thereby quelling ethnic violence.¹³² After World War I, German and Belgian colonizers exploited ethnic differences between the Hutus and Tutsis, creating a system of ethnic stratification between two culturally and linguistically homogenous groups.¹³³

By 1959, Belgium, under pressure from the United Nations General Assembly, instituted democratic reforms in Rwanda, which had become a trust territory of Belgium under U.N. auspices. Democratization, as could be expected, met with strong support among the Hutu population, and fierce opposition among the Tutsi minority. Despite constitutional changes that gave the Hutus greater representation, the Tutsi minority retained control over Rwanda. During this period of post-colonial democratization, the first Hutu uprising claimed the lives of hundreds of Tutsis and drove thousands more from the country. Through this uprising, Hutus gained control of Rwanda upon its independence in 1961. Fear of this Hutu-led government caused over 200,000 Tutsis to flee to neighboring Uganda and other countries.

In 1973, General Habyarimana seized power in a military coup.

We have relied heavily on these sources for the following discussion on Rwanda.

129. See Preliminary Report of the Independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994), U.N. SCOR, U.N. Doc. S/1994/1125 (1994).

130. U.S. Agency for International Development, Rwanda—Civil Strife/ Displaced Persons 1 (Situation Report No. 4, 1994).

131. JASON A. DZUBOW, *THE INTERNATIONAL RESPONSE TO CIVIL WAR IN RWANDA* 513 (1994).

132. See generally GUY VASSALL-ADAMS, *RWANDA: AN AGENDA FOR INTERNATIONAL ACTION* (1994).

133. Linda Maguire, *Power Ethnicized: The Pursuit of Protection and Participation in Rwanda and Burundi*, 2 *BUFF. J. INT'L L.* 49, 52 (1995).

Habyarimana, a Hutu, governed Rwanda for the next twenty years through the National Republican Movement for Democracy and Development ("MRND"), Rwanda's sole political party. In part, he maintained control by refusing to repatriate Tutsi refugees living in other countries, invoking Rwanda's poor economic conditions. In 1990, however, efforts by the Organization of African Unity ("OAU") and the Office of the United Nations High Commissioner for Refugees ("UNHCR") compelled Habyarimana to enter into talks regarding political reform. But the process proved fruitless when the Rwandese Patriotic Front ("RPF"), comprising Tutsis who had earlier fled from Rwanda, invaded from Uganda, killing hundreds of Rwandans and displacing thousands more. In spite of the MRND's numerous human rights violations against Tutsis and moderate Hutus, the peace process resumed on October 17, 1990, and continued through the rest of the year.¹³⁴ Evidence suggests that Habyarimana, through a campaign of hate propaganda, promoted hatred and fear of Tutsis. The U.N. Special Rapporteur on the Question of Extrajudicial, Summary, or Arbitrary Executions stated that since the RPF attacks in 1993, all Tutsis within Rwanda had been labeled accomplices of the RPF and Hutu members of the opposition party were considered traitors. Between 1990 and the massacre in 1994, the Habyarimana government feigned cooperation with those interested in reform, while actually promoting ethnic hatred within Rwanda.

The floodgate of ethnic hatred opened on April 6, 1994, when Habyarimana's airplane was shot down as he was returning from a regional peace summit in Dar es Salaam. His death set off a chain reaction of indiscriminate killing of Tutsis and Hutu opposition members, led by the Presidential Guard. This massacre sparked renewed fighting between the RPF and the Rwandan Government Army which lasted until July 18, when the RPF took control of the country.¹³⁵ This armed conflict, coupled with the MNDR's inflammatory broadcasts, created widespread fear and displaced 1.5 million people. After gaining control, the RPF established a government with a broad representative base.

2. The Intervention

Early U.N. efforts were focused primarily on promoting cease-fire agreements between the Rwandan government and Tutsi guerrillas.¹³⁶ These efforts, while not addressing human rights violations in Rwanda, played a decisive role in promoting the Arusha Peace Agreement. The Arusha Peace Agreement sought the U.N.'s oversight of the installation

134. Africa Watch, *Talking Peace and Waging War* (1992); Africa Watch, *Beyond the Rhetoric: Continuing Human Rights Abuses in Rwanda* (1993).

135. Progress Report of the Secretary-General on the United Nations Assistance Mission for Rwanda, U.N. SCOR, 49th Sess. U.N. Doc. S/1994/1133 (1994).

136. See Kimberly D. Barnes, *International Law, the United Nations, and Intervention in Civil Conflicts*, 19 SUFFOLK TRANSNAT'L L. REV. 117, 136 (1995).

of a broad-based transitional government terminating upon national elections. The Agreement was designed to help unify the armed forces of the government and the RPF and to oversee the cease-fire as established by the Agreement. Both parties, under direction from Tanzanian President Mwinyi, requested U.N. assistance in implementing the Arusha Peace Agreement after its signing.

The U.N. had been previously involved in the region through the United Nations Observer Mission Uganda-Rwanda ("UNOMUR"), deployed in June 1993.¹³⁷ UNOMUR's primary purpose was to ensure that no military assistance from surrounding countries flowed into Rwanda. The Arusha Agreement served as an invitation for a U.N. peacekeeping operation and led to the establishment of the United Nations Assistance Mission for Rwanda ("UNAMIR"). UNAMIR's mission was to provide short-term peacekeeping operations involving monitoring of the Arusha cease-fire provisions, erecting safe zones, overseeing the transitional government, and providing a security presence in Kigali. The UNAMIR plan consisted of four phases. First, the U.N. would establish a broad-based transitional government in Kigali. Second, the armed forces would be demobilized and integrated. Third, the U.N. would expand and monitor the Demilitarized Zones ("DMZs") throughout Rwanda and along the Rwanda-Uganda border. Fourth, the mission would terminate with nationwide elections in Rwanda.

UNAMIR succeeded in meeting its early goals, but failed to bring lasting peace to the region. In the first ninety day phase, the Secretary-General reported to the Security Council that the political aspects were stabilizing under the leadership of the U.N. Special Representative, that steps toward demilitarizing Rwanda were underway, and that humanitarian relief efforts had commenced.¹³⁸ However, the Secretary-General also pointed out that during November 1993 two mass slayings in and around the DMZs occurred, humanitarian relief efforts had been interrupted by violence in Burundi, and a serious drought had occurred. The Secretary-General also stressed the importance of continued cooperation and support from Member States. However, as time passed and the crisis deepened, the support of U.N. Member States would falter, hindering U.N. efforts in Rwanda.

Security Council Resolution 893, passed on January 6, 1994, called for the deployment of a second battalion of U.N. troops ahead of schedule. Despite this increased U.N. presence, the creation of the transitional government was delayed, creating further tension within the country. By March 1994, a deadlock in the creation of the transitional government created tremendous impediments for the U.N..

One day before the fateful April 6 plane crash, the Security Council

137. See S.C. Res. 846, U.N. SCOR, 3244th mtg., U.N. Doc. S/RES/846 (1993).

138. Report of the Secretary-General on UNAMIR, U.N. Doc. S/26927, December 30, 1993.

passed Resolution 909, extending UNAMIR's mandate and calling for the parties to resolve their differences. The death of President Habyarimana and the ensuing genocide in its aftermath soon overwhelmed this call. Rather than taking immediate action, the U.N. reduced UNAMIR forces from 2165 to 1515.

In a memorandum Boutros Boutros-Ghali sent to the Security Council, he presented three options to the Council. The first was to massively expand the number of troops in Rwanda and enlarge its mandate under Chapter VII to authorize UNAMIR to "coerce" a cease-fire. This option would have required Security Council action and the provision of equipment and troops from Member States. Conversely, the U.N. could withdraw its forces completely. The third option, the intermediate alternative, was the one accepted by the Security Council in Resolution 912. Resolution 912 provided authorization to continue with the existing mission with reduced U.N. personnel of only 270, authorizing them to act as an intermediary between the Rwandan government and the RPF.¹³⁹

Continued massacres, however, compelled the U.N. to re-evaluate this decision, since Resolution 912 did not empower UNAMIR to bring an end to the grisly massacres taking place in Rwanda. Furthermore, this resolution seemed to convey the international community's lack of concern about the situation in Rwanda. Finally, on May 17, 1994, over a month after the commencement of the genocide in Rwanda, the Security Council adopted Resolution 918, under which it expanded UNAMIR personnel to 5,500. Acting under Chapter VII, the Security Council imposed an arms embargo on Rwanda. However, the unwillingness of Member States to contribute troops and equipment drastically delayed the deployment of this mission. After the Somali experience, the U.S. was reluctant to address U.N. intervention in Rwanda, and refused even to acknowledge the genocide, using instead the language that "acts of genocide may have occurred."¹⁴⁰

With efforts to revive UNAMIR stalled, the French government stepped forward with an offer to lead a multilateral force in Rwanda similar to the American-led UNITAF mission in Somalia. Part of this proposal required the Security Council to grant the Rwanda mission the right to use force under Chapter VII of the U.N. Charter. Two days later, Security Council resolution 929 authorized France to use "all necessary means" to achieve humanitarian objectives in Rwanda. This operation, known as "Operation Turquoise," represented only the second time that a non-U.N. force received authorization to use force for humanitarian reasons.

139. See U.N. AND RWANDA, *supra* note 128, at 43, Boutros-Ghali's version, and the actual memorandum, at 264-65.

140. See Douglas Jehl, *Officials Told to Avoid Calling Rwanda Killing "Genocide,"* N.Y. TIMES, June 10, 1994, at A8.

The French-led force was dispatched immediately. Operation Turquoise's first task was the establishment of safe zones for the fleeing Hutus. Despite the widespread skepticism that the French were not impartial and were in fact supporting the Hutus, this effort, in conjunction with the RPF's military victory, brought an end to the largest population movement in modern times.¹⁴¹ Once security had been established, UNAMIR and UNAMIR II troops took over from Operation Turquoise on August 21, 1994.

3. Appraisal

Could the genocide in Rwanda have been prevented? Could it have been halted by forcible intervention? Based on the evidence presented in the various studies mentioned earlier,¹⁴² the answer to both of these questions has to be in the affirmative. There is plenty of blame to go around – the Secretary-General, the U.N. and its member states, especially the Permanent Five members of the Security Council, with the U.S. in the lead share the blame. If there is a clear-cut case to be made for intervention, Rwanda was it. The Rwandan tragedy also makes a powerful case for the creation of a standing U.N. quick-reaction voluntary force.¹⁴³

E. Liberia

The Liberian civil war was the first case in which a sub-regional group and the United Nations intervened as partners. Although it was not an effective partnership, the Liberian experience aptly illustrates that the world community regards humanitarian intervention as a valid exception to non-intervention when egregious human rights violations occur within a state.

1. The Conflict¹⁴⁴

The roots of the Liberian civil war, which began in 1989, can be traced to perennial tribal animosities and conflicts,¹⁴⁵ or recurring abuse of power by the ruling elites who have always oppressed the citizenry.¹⁴⁶ Perhaps a combination of these factors was responsible for Master-Sergeant Samuel Doe's coup of April 12, 1980, which ended 130

141. U.N. AND RWANDA, *supra* note 128, at 56.

142. See the authorities cited in *supra* note 128.

143. For a persuasive proposal for such a force, see Carl Keyser & George W. Rathjens, *Send in the Troops: A U.N. Foreign Legion*, 20 WASH. Q. 207 (Winter 1997).

144. This is an adapted and updated version of Ved P. Nanda, *Civil War in Liberia: A Reexamination of the Doctrine of Nonintervention*, in AFRICA, HUMAN RIGHTS AND THE GLOBAL SYSTEM (Eileen McCarthy-Arnolds et. al. eds., 1996).

145. See, e.g., J. GUS LIEBENOW, *LIBERIA: THE EVOLUTION OF PRIVILEGE* (1970); J. GUS LIEBENOW, *LIBERIA: THE QUEST FOR DEMOCRACY* (1987).

146. See, e.g., MARTIN LOWENKOPF, *THE POLITICS OF LIBERIA* vii (1970).

years of the rule of Americo-Liberians, an elite group of descendants of freed American slaves who founded Liberia in 1847. Although the country was independent rather than colonized by any European power, the settlers were repressive and exploitative.¹⁴⁷ Doe toppled the authoritarian regime of President William Tolbert (1971-1980), which had become increasingly repressive in its effort to silence political dissent.¹⁴⁸

Despite its promises to institute fundamental structural reforms, the Doe regime came to be known as the most corrupt and brutal regime in Liberia's history. It imposed Draconian laws, violated human rights with impunity, and unleashed a reign of terror.¹⁴⁹ Doe was a member of the Krahn, a minority ethnic group from the east, and he promised to provide for the indigenous tribespeople of Liberia. This he failed to do for any but his own people, many of whom he promoted to power regardless of their complete lack of qualification.¹⁵⁰ In October 1985, his National Democratic Party of Liberia was declared the winner in national elections that were marked by fraud.¹⁵¹ Following four more years of Doe's severe repression, the stage was set for the bloody civil war in Liberia.

Charles Taylor, who had served under Doe as head of his procurement agency but fled to avoid being tried for corruption, launched a guerilla movement which invaded Liberia late in 1989. His goal was to quickly overthrow Doe, but instead Liberia became mired in a deadly and protracted civil war. Taylor, a member of the Americo-Liberian elite, began his rebellion in Nimba County, home of the Gio and Mano ethnic groups, which suffered greatly under Doe.¹⁵² As the rebel group, known as the National Patriotic Front of Liberia ("NPFL"), attracted thousands of followers, Taylor's soldiers targeted not only Krahn but also the allied Mandingo tribespeople with horrendous acts of brutality.¹⁵³ Eventually, Taylor overtook much of Liberia, including parts of the capitol, Monrovia.

The international community for the most part stood by while these atrocities took place. The United Nations did nothing, and the Organization of African Unity ("OAU") felt constrained by the principle of non-intervention. As Doe had announced he would not be a candidate for

147. See M.S. David, *The Love of Liberty Brought Us Here*, REV. AFRICAN POL. ECONOMY, No. 31, at 57 (1984); Gerald Bourke, *A Once-Proud Nation Looks Wistfully West*, INDEPENDENT, Aug. 21, 1990, at 11.

148. See generally George Klay Kieh, Jr., *The Causes of the Liberian Coup*, 6 TRANSAFRICA FORUM, No. 2, 1989, at 45.

149. See, e.g., LAWYERS' COMMITTEE FOR HUMAN RIGHTS, *LIBERIA: A PROMISE BETRAYED* (1986).

150. See *supra* notes 145 and 147.

151. See *supra* note 149, at 18.

152. See generally B. Berkeley, *Liberia: Between Repression and Slaughter*, ATLANTIC, Dec. 1992, at 52-64.

153. See *id.*

president in the next elections, the U.S. considered that there was some chance for a negotiated settlement¹⁵⁴ and ruled out direct intervention to impose a cease-fire and political settlement. Only the Economic Community of West African States ("ECOWAS") directly intervened, calling upon the fighting parties to end the conflict peacefully.

Religious leaders brokered and mediated cease-fire talks between Doe's and Taylor's forces in Freetown, Sierra Leone, with no success. Then in August 1990, under the auspices of ECOWAS, six of its member West African states agreed on a plan to send in military contingents from Sierra Leone and Guinea, assisted by a smaller Nigerian contingent, with the intent of preventing further bloodshed and restoring basic security.¹⁵⁵ Three of the six states, Gambia, Mali, and Togo, were members of the ECOWAS standing mediation committee, and Sierra Leone and Guinea were already involved in sheltering thousands of Liberian refugees. Together with Nigeria, they hoped to assist in installing an interim government in Monrovia with opposition participation, and also to facilitate elections within six months. In order to do so, they would need to prevent Taylor from seizing power. It was considered that "[h]e may be invited to join the interim government; though unlikely to welcome the ECOWAS initiative, he may have no option but to accept."¹⁵⁶

One reporter proposed that the initiative was undertaken because "none of the member states likes the idea of a fellow West African government coming to power as a result of civil war."¹⁵⁷ The U.S. government was reported at that time to be privately supporting the initiative¹⁵⁸ while France openly backed it.¹⁵⁹

The plan, however, came under attack from Taylor and others who considered that the action "would be nothing less than an invasion," and criticized the ECOWAS initiative as an attempt to "show citizens in other African nations that it would be futile to attempt to overthrow dictatorial governments in their own countries."¹⁶⁰ But the Nigerian government stated that "Nigeria and other countries could not sit by

154. See Statement from U.S. Embassy, Freetown, Sierra Leone, *quoted in* REUTERS, June 21, 1990, BC cycle. Earlier, thousands of Liberians had danced and sung in the streets during a heavy tropical downpour to demand U.S. intervention. *Intervention Call*, INDEPENDENT, June 15, 1990, at 10.

155. See Naomi Wimbourne, *Nigeria Tells Liberia It Plans Military Intervention*, REUTERS, Aug. 3, 1990; Robert Powell, *West Africa to Demand Ceasefire from Liberian Rebel Leader*, REUTERS, Aug. 15, 1990.

156. Michael Knipe, *West African States May Send Troops Into Liberia*, THE TIMES, July 6, 1990.

157. *Id.*

158. *Id.*

159. See *France Backs Liberia Intervention Force*, XINHUA GENERAL NEWS SERVICE, Aug. 3, 1990.

160. Comments by Ellen Johnson Sirleaf, a finance minister in the overthrown government of President Tolbert and by Tom WoWeiyu, Washington-based spokesman for NPFL. Michael Knipe, *Liberia Rebel 'No' to Intervention*, THE TIMES, July 7, 1990.

while their nationals were trapped in the war-torn country without food, water, or medical facilities."¹⁶¹ The first aim was evacuation of its nationals, but it also "aim[ed] to restore peace and stability in Liberia and end a conflict which, if left unchecked, would endanger regional security."¹⁶² Accordingly, Nigeria announced it would intervene.¹⁶³

Complicating the situation was the involvement of another rebel faction led by Prince Yormie Johnson, a former commander under Charles Taylor who had a fall out with Taylor's main rebel army. The reasons for the split between Prince Johnson and Mr. Taylor were not clear, but the rivalry was serious enough that skirmishes and even one significant battle took place early on between the two rebel leaders' troops.¹⁶⁴

While pressure mounted upon the U.S. to intervene,¹⁶⁵ the OAU seemed unwilling to take any action to respond to the crisis.¹⁶⁶ Charles Taylor "continue[d] to insist that this [was] an internal matter."¹⁶⁷ Taylor denounced both the Nigerian promise to intervene and the possibility of U.S. intervention as infringements of national sovereignty.¹⁶⁸ At the same time, he said that the U.S. must share some of the blame for Samuel Doe's "crimes," as it had given such substantial aid to Doe during his 10-year rule,¹⁶⁹ and charged unofficial parties in the U.S. with supporting Prince Johnson against the main NPFL.¹⁷⁰ Prince Johnson, on the other hand, stated that he would welcome intervention by the United Nations, or an African force.¹⁷¹

As ECOWAS convened a mini-summit in Gambia in early August to endorse just such an intervention of Liberia, the Ghanaian High Commissioner in Lagos said that the action could no longer be considered a violation of sovereignty because there was no effective government in Liberia.¹⁷² Charles Taylor's rebel forces orchestrated a massive demonstration of civilian refugees to show support for his opposition to

161. *Nigeria Considers Intervention in Liberia*, REUTERS, Aug. 3, 1990, BC cycle.

162. Naomi Wimborne, *Nigeria Tells Liberia it Plans Military Intervention*, REUTERS, Aug. 3, 1990, AM cycle, quoting a senior government source in Lagos.

163. *Id.*

164. See Robert Powell, *Liberia's Rival Rebel Vies for Supremacy*, INDEPENDENT, July 31, 1990.

165. See Pope *Urges Liberia's Allies to Help End Civil War*, Aug. 1, 1990, REUTERS, BC cycle. Up to 600 civilians taking shelter in a church in Monrovia were reported to have been killed by government troops.

166. See *Intervention in Liberia*, FINANCIAL TIMES, Aug. 1, 1990, at 16.

167. *Id.*

168. See Gill Tudor, *Rebel Leader Vows to Resist Foreign Intervention in Liberia*, REUTERS, Aug. 3, 1990, AM cycle.

169. *Id.*

170. *Id.*

171. See Michael Roddy, *Liberian Rebels Fight Government Troops Through Capital Streets*, REUTERS, Aug. 4, 1990, BC cycle.

172. See Naomi Wimborne, *Wide Support Expected for Nigerian-Led Intervention in Liberia*, REUTERS, Aug. 4, 1990, BC cycle.

any outside involvement. The demonstrators were part of 200,000 refugees who had been sheltered at a University campus near Monrovia, and the NPFL had assumed responsibility for their well-being, but it was unable to actually take care of them for lack of provisions. Thus, as the refugees were marched out by the rebels to express their defiance with placards proclaiming to the ECOWAS meeting, "We want no so-called peacekeepers," and "We can handle our own affairs," one reporter called it "a pathetic, unconvincing charade."¹⁷³ Many West African nationals at the refugee camp feared for their lives after six Nigerians were killed there by the NPFL.¹⁷⁴

The intervention was announced by ECOWAS as a "humanitarian intervention,"¹⁷⁵ to ensure that food and medical supplies got to those who needed them and to safely evacuate ECOWAS and other foreign nationals.¹⁷⁶ It was noted, as the news broke about the finalizing of the peace-keeping force that both Doe and Prince Johnson had indicated that they would welcome the ECOWAS force.¹⁷⁷ Taylor did not object outright, as he was reassessing his position and his chances at overtaking Doe alone and the probability that if not for the combined action of ECOWAS, Nigeria and Guinea would act on their own.¹⁷⁸ But a few days later about 1,800 Nigerians taking refuge in the Nigerian Embassy in Monrovia were forced to flee when forces believed to be tied to Taylor's rebels ransacked the building.¹⁷⁹ The U.S., which continued to stress that it would not take sides, sent 225 marines into Monrovia to reinforce security and evacuate the U.S. embassy.¹⁸⁰ The Liberian ambassador to Nigeria accused the U.S. of arming the Liberian anti-government forces and undertaking other activities in support of the rebels against the Doe government.¹⁸¹

The Taylor forces launched a last-minute attack on the presidential mansion in an attempt to oust Doe before the arrival of the ECOWAS peace-keeping force. In the process of moving into the mansion area from the eastern suburbs, they also had to fight Prince Johnson's forces on the port side of Monrovia.¹⁸² As the ECOWAS forces prepared to

173. Gerald Bourke, *Liberia's Refugees Caught Between Army and Rebels*, INDEPENDENT, Aug. 7, 1990, at 10.

174. *Id.*

175. See *ECOWAS to Dispatch Intervention Force to Liberia*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Aug. 7, 1990, Item No. 0807024.

176. *Id.*

177. *Id.*, citing Ghanaian Foreign Secretary Obed Asamoah, returning from the Banjul, Gambia meeting of ECOWAS.

178. *Id.*

179. See *Nigeria Says its Monrovia Embassy Ransacked by Rebels*, REUTERS, Aug. 9, 1990, AM cycle.

180. See Robert Powell, *West African Peacekeeping Force to Move into Liberia Next Week*, REUTERS, Aug. 10, 1990, BC cycle.

181. See *Liberian Ambassador Accuses Washington of Backing Anti-Government Forces*, XINHUA GENERAL NEWS SERVICE, Aug. 11, 1990.

182. See *Liberian Anti-Government Forces Launch Final Attack on Presidential Man-*

move into Liberia, Taylor clearly was one of the most serious obstacles facing them.¹⁸³ Observers noted that the West seemed to be holding back in supporting the African countries' effort, perhaps doubting that the operation was viable because of inadequate planning.¹⁸⁴

2. Intervention

As the ECOWAS troops—now known as ECOMOG (ECOWAS Cease-Fire Monitoring Group)—poised to move into Monrovia under the command of Ghanaian General Arnold Quainoo, one observer reported that Taylor announced he was willing to participate in the cease-fire and that ECOWAS and the OAU did have a role to play toward a meaningful solution of the conflict.¹⁸⁵ He accepted an invitation to talks led by the ECOWAS mediation committee.¹⁸⁶ Taylor, however, simultaneously appeared to be consolidating his hold on Monrovia as he blocked roads and refused to let expatriates of any of the West African countries involved in the peace-keeping mission leave Liberia.¹⁸⁷

Liberians and nationals from other countries were fleeing over land, while some were evacuated by sea, including a U.S. evacuation of nearly 2,325 foreigners.¹⁸⁸ Guineans and Nigerians, however, were not permitted to leave,¹⁸⁹ as evidenced by the two thousand Nigerians reported to be trapped in the Nigerian embassy.¹⁹⁰ Taylor contended that Guinea and Nigeria had militarily supported the Liberian army and that their participation in the peacekeeping force meant that it could not be construed as neutral.¹⁹¹ Meanwhile, Taylor failed to show up for the ECOWAS talks which he had agreed on in Gambia, due to an automobile accident. The talks were rescheduled.¹⁹²

Taylor's troops tried to prevent the 4,000-man peace-keeping force from landing as it arrived by flotilla in Monrovia port on August 25,

sion, XINHUA GENERAL OVERSEAS NEWS SERVICE, Aug. 11, 1990.

183. See Robert Powell, *Troops for Liberia Peace-Keeping Force Gather in Sierra Leone*, REUTERS, Aug. 12, 1990, AM cycle.

184. See William Keeling and Michael Holman, *Tough Logistical Obstacles Face Liberia Task Force*, FINANCIAL TIMES, Aug. 13, 1990, at 4.

185. See *Three Warring Parties in Liberia Agree to ECOWAS' Military Intervention*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Aug. 14, 1990.

186. *Id.*

187. See Gill Tudor, *West Africans Refused Passage from Liberia as Diplomats Leave*, REUTERS, Aug. 1, 1990, BC cycle.

188. See Gill Tudor, *Taylor Will Attend Peace Talks, Liberian Rebels Say*, REUTERS, Aug. 19, 1990, BC cycle; *Peace Force of 3,000 Ready to Sail to Monrovia*, INDEPENDENT, Aug. 22, 1990, at 10.

189. See Robert Powell, *U.S. Navy to Evacuate 400 Indians from Liberia by Helicopter*, REUTERS, Aug. 16, 1990, BC cycle.

190. *See id.*

191. See Gerald Bourke, *Liberians Must Agree to Truce*, INDEPENDENT, Aug. 17, 1990, at 8.

192. See Robert Powell, *Liberia Peacekeeping Force Bigger than Anticipated*, REUTERS, Aug. 17, 1990, BC cycle.

1990. But Prince Johnson's fighters held the port and after a 13-hour battle between Taylor's and Johnson's men, the peace-keepers were able eventually to dock without opposition.¹⁹³ The Taylor-led rebels, continuing to accuse Guinea and Nigeria of supporting Doe, attempted to widen the mediation efforts, calling upon all 16 members of ECOWAS to become involved in a summit to end the war.¹⁹⁴ A split in ECOWAS between English speaking countries such as Nigeria and Ghana and Franco-phone nations such as Senegal and Burkina Faso frustrated attempts to gain progress toward a cease-fire.¹⁹⁵ Senegal appeared to have no interest in the peace-keeping move and Burkina Faso, charged with supporting the Taylor forces, had openly opposed the ECOWAS military intervention.¹⁹⁶ Diplomatic efforts were attempted with heads of the dissident countries,¹⁹⁷ as Taylor declared war on ECOMOG on September 3.¹⁹⁸

The French government was formally charged through its ambassador to Nigeria with supporting the Francophone countries' opposition to the ECOWAS peace-keeping force.¹⁹⁹ Taylor's rebels were said to possess French arms supplied through the Ivory Coast and Burkina Faso.²⁰⁰ The Nigerian government also expressed its fears that the resistance by the Francophone countries would result in a split in ECOWAS itself.²⁰¹ France denied that it was behind the arms supply.²⁰²

Prince Johnson's troops captured Samuel Doe when he made an unscheduled visit to the ECOMOG headquarters building on September 9²⁰³ and shot him in both legs. Johnson's reported intention was to hold Doe for court martial. He told the press that Doe had surrendered control of the country,²⁰⁴ but shortly thereafter the Doe faction announced a replacement for Doe as head of the government.²⁰⁵ On September 10, Doe was reported to have died of his gunshot wounds and possibly tor-

193. See Robert Powell, *Liberia Peacekeeping Force Clashes with Taylor Rebels*, REUTERS, Aug. 25, 1990, BC cycle.

194. See *Rebels Ask for West African Summit on Liberian Civil War*, REUTERS, Aug. 26, 1990, BC cycle.

195. See *ECOWAS Leaders to Hold Emergency Meeting on Liberian Crisis*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Sep. 6, 1990.

196. See *id.*

197. See *ECOWAS Head Asks Burkina Faso to Speed Peace in Liberia*, REUTERS, Sep. 7, 1990, BC cycle.

198. See *id.*

199. See *Nigeria Warns Against French Involvement in Liberian Crisis*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Sep. 9, 1990.

200. See *id.*

201. See *id.*

202. See *id.*

203. See *Doe Captured, Rebel Leader Johnson Claims Control of Liberia*, REUTERS, Sep. 9, 1990, BC cycle.

204. See *id.*

205. See *Doe Associates Appoint Interim Leader of Liberia*, REUTERS, Sep. 10, 1990, BC cycle.

ture in questioning by Johnson's troops.²⁰⁶ His body was said to have been paraded at the ECOMOG headquarters where he had been shot.²⁰⁷

As time went on, news reports revealed that observers found the incident to be a result of ECOMOG's weaknesses: Doe had apparently arrived with a large contingent of bodyguards to see General Quainoo when Johnson arrived with his own men a few minutes later. Johnson's men invoked a truce between themselves and Doe's forces, persuading Doe's bodyguards to lay down their weapons, then opened fire on them.²⁰⁸ Apparently ECOMOG itself considered this a humiliation, and it soon appointed Nigerian Major General Joshua Dogonyaro as field commander to restructure the ECOMOG force.²⁰⁹

When Charles Taylor still would not accept any kind of cease-fire and instead continued to push rapidly toward the former Doe executive mansion, ECOMOG troops were given new orders in mid-September to return fire whenever they were attacked, rather than "stand[ing] by peacefully and get[ting] killed."²¹⁰ Thus ECOMOG was to be considered a "peace-enforcing force" rather than a "peace-keeping force."²¹¹ Taylor's troops on September 14 sacked the Nigerian embassy in Monrovia and took away thousands of Nigerian civilians who were camped inside.²¹²

On September 22, Charles Taylor unilaterally announced a truce, supposedly because of his expressed concern about the sufferings of the people of his country.²¹³ The heralded cease-fire was broken only eight days later as the factions resumed fighting with one another. Prince Johnson concluded that there was now no hope of peace talks to end the war. Declaring all-out war against Taylor on September 30, he stated: "Negotiations have failed. . . . I think that violence is the only solution to establish real democracy in Liberia."²¹⁴

ECOWAS convened a conference of Liberian exiles in late August, to elect an interim government led by Amos Sawyer.²¹⁵ Taylor, too, announced the formation of an interim government, with himself as its

206. See *Nigerian Officer to Restructure Liberia Peace Force*, REUTERS, Sept. 21, 1990, PM cycle.

207. See *Liberia: President Reported Killed*, INTER PRESS SERVICE, Sep. 10, 1990.

208. See Gill Tudor, *Taylor's Liberian Rebels Sack Nigerian Embassy, Sources Say*, REUTERS, Sep. 14, 1990, BC cycle.

209. See *Nigerian Officer to Restructure Liberia Peace Force*, REUTERS, Sep. 21, 1990, PM cycle.

210. *ECOMOG Ordered to Return Fire*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Sep. 14, 1990, quoting a senior ECOMOG officer.

211. See *id.*

212. See *id.*

213. See *ECOWAS Peace-Keeping Force to Enforce Ceasefire in Liberia*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Sep. 23, 1990.

214. *Liberian Rebel Leader Declares All-Out War*, REUTERS, Oct. 1, 1990, BC cycle.

215. See Clement E. Adibe, *supra* note 14, at 475.

president.²¹⁶ ECOMOG was now dragged into the conflict, joining Prince Johnson's INPFL (Independent National Patriotic Front of Liberia) army and the AFL (Doe's Armed Forces of Liberia) against Taylor.²¹⁷ The force, now numbering 7,000, had taken over Bensonville, near Monrovia, and was moving toward the area where 100,000 refugees were sheltered.²¹⁸ ECOWAS scheduled an emergency meeting to discuss the crisis, but the split between French-speaking and English-speaking interests resulted in the meeting again being postponed.²¹⁹

In the midst of the chaos, world aid organizations were struggling to support the half-million refugees and tens of thousands of displaced, sick, and starving civilians suffering from the war.²²⁰ Finally on November 28, 1990, at an extraordinary summit of ECOWAS in Mali, Taylor agreed to a cease-fire that would eventually hold for some 20 months.²²¹ The impetus for the agreement was pressure from West African foreign ministers upon supporters of Taylor's forces, particularly Burkina Faso, Libya and the Ivory Coast.²²² The cease-fire accord was also signed by representatives of Prince Johnson's INPFL, which supported the ECOMOG/Sawyer interim government, and the AFL.²²³ Under the accord, Taylor was not required to recognize Sawyer, leaving the implication that Taylor would have a part in the future interim government.²²⁴ The cease-fire led in October 1994 to the Yamoussoukro IV Accord.

This situation, more a stalemate than a truce, lasted about 20 months as the ECOMOG-supported government of Sawyer-administered Monrovia, and Taylor controlled most of the countryside.²²⁵ The cease-fire ended and the second war began when a new group of Doe loyalists, the United Liberation Movement of Liberia for Democracy (ULIMO), began full-scale fighting with the other factions in August 1992.²²⁶ Elections, tentatively scheduled for November 30 and agreed to by all the Liberian parties, were frustrated by the heightened tensions. The fighting expanded, causing over 3,000 new casualties.²²⁷

216. See *Fresh Fighting Delays Sawyer's Return to Monrovia*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Nov. 9, 1990.

217. See *ECOWAS Leaders to Meet in Cote D'Ivoire*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Oct. 13, 1990.

218. See *ECOWAS Chairman Defends ECOMOG Offensive in Liberia*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Oct. 17, 1990.

219. See *id.*

220. See *Guinea Reaffirms Commitment to Liberia Peace Force*, REUTERS, Oct. 19, 1990.

221. See Mark Huband, *Liberian Rebel Leader Forced to Sign Cease-Fire*, UPI, Nov. 29, 1990, BC cycle.

222. See *id.*

223. See *id.*

224. See *id.*

225. See Cindy Shiner, *Liberian Vote Under Fire*, AFRICA NEWS, Sep. 28, 1992.

226. See *id.*

227. See Ved Nanda, *The Libyan Nightmare is Not Yet Over*, DENVER POST, Nov. 22,

The conflict had a far-reaching effect, with the U.S. withdrawing its ambassador from Burkina Faso after it accused that country of continuing to supply Taylor with arms from Libya,²²⁸ and with the U.S. and France exchanging accusations of complicity.²²⁹

Until November 1992, the United Nations deferred to ECOWAS and ECOMOG. In 1990, then Secretary-General Javier Perez de Cuellar had approved ECOWAS's action in Liberia "as a welcome precedent for conflict resolution."²³⁰ With the latest developments, however, and with more members of ECOWAS uniting against the war, ECOWAS looked to the U.N. to avert a renewal of the bloodshed.²³¹

Initially several African countries were opposed to the U.N. Security Council involvement in the civil war in Liberia which they considered to be an internal African affair.²³² But in light of subsequent developments and at the urging of ECOWAS through the Organization of African Unity, which represented ECOWAS at the U.N., the Security Council took action. It met on November 19, 1992 and passed a resolution imposing an arms embargo on the rebel factions in Liberia and authorizing a fact-finding mission to assess the situation there.²³³ The U.N. endorsed the efforts of ECOMOG without specifically mentioning its military intervention.²³⁴

Several peace agreements followed without bringing an end to the conflict.²³⁵ The following is a brief account of the ECOWAS and U.N. efforts. This is unlike the preceding discussion, which detailed the conflict and the initiation of the ECOWAS intervention. It should be recalled that this intervention was in marked departure from the prior

1992, Section Perspective, at 4H; Richard Boucher, State Department Briefing, Nov. 2, 1992, Federal News Service, NEXIS Library.

228. See Tom Masland and Jeffrey Bartholet, *The Perils of Peacekeeping*, NEWSWEEK, Nov. 16, 1992, at 53.

229. See Joseph Fitchett, *Liberia's Crisis Tests U.S.-French Cooperation*, INTERNATIONAL HERALD TRIBUNE, Nov. 19, 1992.

230. See Peter da Costa, *Liberia: Peacemakers Look to the U.N. as Mediation Runs Out of Steam*, INTER PRESS SERVICE, Sep. 23, 1992.

231. See *id.*

232. D. Wippman, *Enforcing the Peace: ECOWAS and the Liberian Civil War*, in ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS (L. Damosch ed., 1993).

233. U.N. Doc. S/RES/788 (Nov. 19, 1992). See U.N. Council to Back West Africans on Liberia, Reuters, Nov. 18, 1992.

234. See *id.*

235. On the conflict and intervention, see generally Clement Adibe, *supra* note 14; Max Sesay, *Politics and Society in Post-War Liberia*, 34 J. MODERN AFRICAN STUDIES 402 (1996); Quentin Outram, *It's Terminal Either Way: An Analysis of Armed Conflict in Liberia, 1989-1996*, REV. AFRICAN POLITICAL ECONOMY, No. 73, at 355 (1997); Richard Carver, *Liberia: What Hope for Peace?* (Online), <http://www.unicef.org/unhcr/refworld/country/writenet/wrilbr.htm> (Oct. 1994); *Liberia*, 34 U.N. CHRONICLE, No. 1, at 17-18 (1997); Stephen Riley & Max Sesay, *Liberia: After Abuja*, REV. AFRICAN POLITICAL ECONOMY, No. 69, at 429 (1996); B. Nowrojee, *United Nations and Regional Peacekeeping - Lessons from Liberia*, 8 HARV. HUMAN RTS. J. 129 (1995).

African practice of nonintervention, for it overrode the concepts of sovereignty, territorial integrity, and nonintervention in internal affairs embodied in the OAU Charter.

In the Summer of 1993, the warring factions signed the Cotonou Agreement. Pursuant to the Agreement the U.N. Observer Mission in Liberia ("UNOMIL") was created. The Agreement also called for the establishment of the Liberian National Transitional Government replacing Sawyer's interim government, disarmament of the warring factions, and the holding of national elections. The Cotonou Agreement failed soon after it was initiated because,

[c]ontrary to the letter and spirit of the Agreement, ECOMOG was unable to expand its forces, partly because many of the African states were unable to fulfil their pledge to contribute troops for the mission. Worse still, ECOMOG was substantially downsized because of financial and domestic political uncertainties in Nigeria and continuing concerns in Ghana about the seriousness and good faith of the parties to the Liberian dispute.²³⁶

This was followed by the Akosombo Agreement of 1994, which also failed, and finally the Abuja Agreement of 1995.²³⁷ The Security Council, however, continued to extend UNOMIL periodically. Renewed fighting broke out in April 1996 and after protracted negotiations the leaders of various factions agreed on a revised version of the Abuja Accord.²³⁸ This led to at least partial disarmament and national elections in July 1997, with the inauguration in August of Charles Taylor as the elected President of Liberia.²³⁹

3. Appraisal

The Liberian civil war caused widespread devastation and a long period of suffering in the country. The intervention was a muddled affair, and as to the ECOWAS-U.N. partnership, Professor Adibe provides an insightful observation:

In Liberia, UNOMIL and ECOMOG maintained parallel command structures. This is especially surprising because the U.N. had been invited because of the particular deficiencies of the regional command structure. The weakness of U.N. deployments in the field frequently challenged the relative autonomy of the U.N.'s chain of

236. Clement Adibe, *supra* note 14, at 479.

237. See Stephen Riley & Max Sesay, *supra* note 235.

238. See Max Sesay, *supra* note 235, at 405.

239. Karen Lange, *In Liberia, The People Choose An Awful Hope for Peace*, WASH. POST, August 10, 1997, at C4; *Liberia Inaugurates Taylor as President*, WASH. POST, August 3, 1997, at A22; James Rupert, *Election May Signal an End to Liberia's Seven Years of Upheaval*, WASH. POST, July 28, 1997, at A14; Donald G. McNeil, Jr., *Liberia Gets a Free Vote, Courtesy of Unfree Neighbors*, N.Y. TIMES, July 22, 1997, at A9.

command, thus leaving the ECOWAS command structure as the only real source of authority to which Liberia's warring factions frequently referred. Consequently, the subordination of regional command structures to global authority was neither attempted nor achieved by UNOMIL. For this particular reason, UNOMIL was essentially redundant in Liberia as a participant in the process of conflict resolution.²⁴⁰

IV. THE LEGITIMACY OF HUMANITARIAN INTERVENTION REVISITED

These five case studies underscore both the increased need for humanitarian intervention and the often striking incapacity of the U.N. or regional organizations to take appropriate action. After the initial post-Cold War euphoria dissipated, the probability that the U.N. will not be able to respond to every humanitarian crisis became clear. Disinterest among the permanent members and the financial woes of the organization mean that many cries for help will go unheeded by the U.N.. Taking into consideration the increased need for humanitarian intervention after the end of the Cold War and the diminishing capacity of the U.N. to meet this need, there must remain some room for action by regional organizations and individual states.

A. *Who May Intervene?*

1. The United Nations

Collective humanitarian intervention, when undertaken or authorized by the U.N., now meets with little controversy.²⁴¹ In the case studies discussed above, the Security Council used its broad Chapter VII²⁴² powers to authorize military operations, notwithstanding claims that the matter was essentially within the domestic jurisdiction of the Member State under article 2(7) of the U.N. Charter, that were actually humanitarian in nature. In the Post-Cold War era, the United Nations should be able, if not always willing, to act when gross violations of human rights demand a forceful response.²⁴³

While the legality of humanitarian intervention by the United Na-

240. Clement Adibe, *supra* note 14, at 484.

241. James A.R. Nafziger, *Humanitarian Intervention in a Community of Power*, 22 DENV. J. INT'L & POL'Y 219 (1994); Fernando R. Teson, *Collective Humanitarian Intervention*, 17 MICH. J. INT'L L. 323 (1996). However, arguably, there are legal and not just political limits to the exercise of the enforcement role of the U.N. Security Council. See, e.g., Judith G. Gardam, *Legal Restraints on Security Council Military Enforcement Action*, 17 MICH. J. INT'L L. 285 (1996).

242. U.N. CHARTER, arts. 39-51.

243. Richard B. Lillich, *The Role of the U.N. Security Council in Protecting Human Rights in Crisis Situations: U.N. Humanitarian Intervention in the Post Cold War Era*, 3 TUL. J. INT'L & COMP. L. 1, 14 (1995).

tions today enjoys a broad consensus, the U.N.'s capacity to undertake such operations must be strengthened. This will entail sufficient financial resources and establishment of a rapid deployment force – a small force of 3,000 to 5,000 troops under direct U.N. command, supplemented by voluntary units designated by states for such operations to be undertaken by the United Nations. It must, however, be reiterated that the current situation cannot be ignored – that the U.N.'s ability to undertake humanitarian intervention is limited by its lack of resources and lack of political will among the permanent members of the Security Council.²⁴⁴

2. Regional Organizations

Regional organizations and arrangements played a significant role in interventions in three cases studied here—Haiti, Liberia, and the former Yugoslavia. In Haiti the initiative was taken by the OAS, which subsequently received endorsement, while in Liberia, a sub-regional organization, ECOWAS, was responsible for the intervention. In the former Yugoslavia, it was NATO (with WEU initially undertaking some functions as well) that implemented the Security Council mandates.

The authorization for regional involvement in enforcement actions is explicitly stated in the U.N. Charter. Under Article 52,

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.²⁴⁵

Article 52 further provides that “the Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority.”²⁴⁶ It also provides, however, that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the security Council.”²⁴⁷ Former U.N. Secretary-General Boutros Boutros-Ghali, in *An Agenda for Peace*, said that regional arrangements “possess a potential that should be utilized in serving the functions covered in this report: preventive diplomacy, peace-keeping, peacemaking, and post-conflict

244. Richard Falk characterizes the shift as one from an “initial unfounded enthusiasm” to “a more recent unwarranted disillusionment.” Richard Falk, *The Complexities of Humanitarian Intervention: A New World Order Challenge*, 17 MICH. J. INT’L L. 491, 513 (1996).

245. U.N. CHARTER, art. 52, para. 1.

246. *Id.* art. 53, para. 1.

247. *Id.*

peace-building."²⁴⁸ Subsequently, in the 1995 *Supplement to An Agenda for Peace*, he said that U.N.-regional cooperation could take several forms, such as consultation, diplomatic and operational support, co-deployment, and joint operations.²⁴⁹

During the Cold War era the prevailing climate of mistrust between the U.S. and the Soviet Union and hence the likelihood of a veto in the Security Council rendered moot the utilization of regional arrangements for enforcement purposes. But as interventions in Haiti, Liberia, and the former Yugoslavia illustrate, regional organizations and arrangements under the supervision of the Security Council can and should perhaps constitute a most important instrument of collective intervention.

3. Individual States

Although the right of individual states to carry out humanitarian intervention came under heavy fire during the Cold War, the U.N. Charter leaves room for such intervention. Critics interpret Article 2(4) of the Charter broadly to prohibit any unilateral use of force by states.²⁵⁰ However, the text of the Charter does not justify such an overly broad statement. Article 2(4) prohibits the use of force by states against the territorial integrity or political independence of a member state, or when such use is otherwise inconsistent with the purposes of the U.N..²⁵¹

For humanitarian intervention to be considered valid it is usually undertaken for a limited purpose and duration; it should not impair the political independence or territorial integrity of the target state.²⁵² However, assume that crimes against humanity, especially genocidal acts, are implicated and unilateral use of force on humanitarian grounds is aimed at changing the target state's policies or threatening those responsible for such violations. The goal of prevention or restoration when such violations have occurred might necessitate change in the structure of authority in the target state. Thus we contend that far from being inconsistent with the purposes of the U.N., humanitarian intervention furthers the U.N.'s purposes by protecting human rights.²⁵³

During the Cold War, the right to unilateral humanitarian inter-

248. Boutros Boutros-Ghali, *An Agenda for Peace*, para. 64. U.N. Doc. A/47/277, S/24111, June 17, 1992.

249. Boutros Boutros-Ghali, *Supplement to An Agenda for Peace*, para. 86, U.N. Doc. A/50/60, S/1995/1 (1995).]

250. See, e.g., IAN BROWNIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 338-42 (1963); Thomas M. Franck and Nigel S. Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 AM. J. INT'L L. 275 (1973).

251. U.N. CHARTER, art. 2, para. 4.

252. Thus, the Charter prohibition does not apply. *Id.*

253. See U.N. CHARTER arts. 1, para. 1, 55 and 56.

vention assumed special importance because the deadlock in the Security Council undermined the U.N.'s ability to respond to humanitarian crises.²⁵⁴ As stated earlier, in the post-Cold War era this right is likely to remain important because of the U.N.'s financial difficulties and the general lack of enthusiasm among the major powers for new humanitarian missions. The U.N. may be unable or unwilling to act,²⁵⁵ and there may be no regional organization that has the capacity or the will to intervene. In such cases, individual states should not be prohibited from doing what international organizations cannot.²⁵⁶

B. *Who Should Intervene?*

If intervention should be undertaken by the U.N., regional organizations, or individual states, the U.N. Charter does not provide a clear answer to the question of who should intervene among these actors. Chapter VIII of the Charter addresses the issue of regional arrangements,²⁵⁷ but the chapter does not specify whether the U.N. or the relevant regional organization should have primary jurisdiction over humanitarian crises.

The relationship of regional organizations to the U.N. is not clearly and consistently defined within the Charter. For instance, the Charter prohibits regional organizations from undertaking "enforcement action" without the consent of the Security Council.²⁵⁸ On the other hand, the Charter gives regional organizations priority over the peaceful resolution of disputes by requiring Member States to "make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council."²⁵⁹ Because humanitarian intervention utilizes military force, it cannot be considered pacific settlement. Neither is it an enforcement action, which would be taken against a state committing an act of aggression against another state.

Clearly, the answer to the question of who should intervene cannot be found within the text of the Charter, but should be reached bearing in mind the principles expressed in that text. The United Nations was founded to take collective measures to ensure international peace and security.²⁶⁰ Therefore, the U.N., rather than regional organizations,

254. See Richard B. Lillich, *Forcible Self-Help to protect Human Rights*, 53 IOWA L. REV. 325 (1967).

255. See Falk, *supra* note 244.

256. See, e.g., Byron F. Burmester, *On Humanitarian Intervention: The New World Order and Wars to Preserve Human Rights*, 1994 UTAH L. REV. 269 (1994); Steve G. Simon, *The Contemporary Legality of Unilateral Humanitarian Intervention*, 24 CAL. W. INT'L L. J. 117 (1993).

257. U.N. CHARTER, arts. 52-54.

258. *Id.* art. 53, para. 1.

259. *Id.* art. 52, para. 2.

260. See *id.* art. 1, para. 1.

should have primary jurisdiction over intervention in humanitarian crises. As the most universal and representative international organization, the actions of the U.N. enjoy the greatest legitimacy and are least likely to be motivated by the self-interest of a particular Member State.

If the U.N. explicitly delegates this authority to a regional organization, is unwilling to act on a crisis brought to its attention, or chooses not to address the crisis at all, then this authority should pass to the relevant regional organization if one exists. In some cases, there will be no relevant regional organization with the capacity, authority, or willingness to act on a humanitarian crisis. In such cases, states that are willing to intervene to prevent or respond to egregious violations of human rights should be able to do so. Any such action must, however, meet the customary international law requirements of necessity and proportionality. The intervening state must report to the Security Council the measures taken and must remain accountable for its actions. In addition, it must also comply with the standards discussed below.

C. When Should Intervention Take Place?

Any instance of humanitarian intervention must meet the criteria enunciated in Part I to be considered legitimate. These criteria are necessity, proportionality, purpose, nature of the actor(s), and maximization of the best outcomes.²⁶¹ Most of these criteria, such as proportionality and the maximization of the best outcomes, are fact-specific and can only be applied after the intervention has taken place. Only the necessity criterion can effectively be applied prior to the actual intervention.

As to its application, the existence of gross, persistent, and systematic violations of human rights which are likely to result in massive loss of life in any country would satisfy the necessity criterion and such state would be a potential target for intervention.

As we have noted, in the euphoria following the end of the Cold War the Security Council eagerly created new humanitarian operations in the glow of its new-found spirit of cooperation. Many of these operations yielded disappointing results, souring the short-lived enthusiasm of the U.N. for humanitarian intervention. This waning enthusiasm indicates the need for additional policy-oriented criteria for determining when humanitarian intervention would be not only legitimate, but prudent as well.²⁶²

The need to discriminate among potential cases based on the likelihood of success possesses an ethical as well as pragmatic foundation.

261. See Nanda, *supra* note 3.

262. See Ruth E. Gordon, *Intervention by the United Nations: Iraq, Somalia, and Haiti*, 31 TEX INT'L L.J. 43, 56 (1996).

States owe an overriding duty to defend the lives of their own citizens. In exceptional situations, such as self-defense or in cases of gross, persistent, and systematic human rights abuses abroad, especially if the cause involves genocidal acts or crimes against humanity, the state may determine that the potential outcome justifies risking the lives of its soldiers. However, to intervene in a situation with minimal prospects for success frivolously risks the lives of the state's soldiers, thereby compromising the obligation of the state to protect the lives of its citizens.

Determining the potential for an operation's success is not a scientific process, and some miscalculations will undoubtedly occur. However, because of their ethical obligations, states, and by extension the international organizations of which states are members, must endeavor to create standards by which potential cases will be evaluated. Evaluating the chances of success prior to intervening will also mitigate humanitarian fatigue resulting from unsuccessful operations or indifferent results.

Thus, the capability to marshal the necessary resources to accomplish the desired objective, the anticipated timeframe of the intervention, and the strategy for exit are all relevant policy-oriented criteria. In cases of failed states or situations such as Cambodia under the Pol Pot regime or the Rwandan genocide, bringing about a change in the regime might be appropriate if it appears likely that egregious human rights violations will cease with such change.

V. CONCLUSION

With the persistence of egregious violations of human rights in the post-Cold War era, humanitarian intervention will remain a fixture in international law for the foreseeable future. With the return of U.N. inactivity and incapacity after a brief period of activism, intervention by regional organizations and individual states will similarly remain an important part of the international system for the protection of human rights. Given the number of potential cases and actors, standards for evaluating the legitimacy of intervention will become more important than ever.

Taking into consideration limited material resources and waning political will, the U.N., regional organizations, and states must maximize the results of humanitarian intervention by applying resources and political will where they will accomplish the desired results.

VI. POSTSCRIPT

In March 1999, NATO forces launched air strikes against Yugoslavia,²⁶³ following unsuccessful attempts to negotiate settlement of the crisis in Kosovo. The crisis was caused by the Serbian crackdown on the Kosovo Liberation Army ("KLA"). The KLA, comprised of ethnic Albanians, is seeking secession from Yugoslavia. In a speech explaining these strikes, President Bill Clinton said:

We act to protect thousands of innocent people in Kosovo from a mounting military offensive. We act to prevent a wider war, to diffuse a powder keg at the heart of Europe that has exploded twice before in this century with catastrophic results. We act to stand united with our allies for peace. By acting now, we are upholding our values, protecting our interests and advancing the cause of peace.²⁶⁴

This NATO intervention, purportedly undertaken on humanitarian grounds—to protect the ethnic Albanian Kosovars—was taken without the U.N. Security Council's approval. In fact, the Security Council was paralyzed as two permanent members, Russia and China, were on record against the use of force in Yugoslavia, a sovereign state, combating secession in one of its parts, Kosovo. Thus, the Security Council was sidelined, although earlier it had adopted resolutions expressing concern over the deteriorating situation in Kosovo.

In light of the charges of ethnic cleansing by the Serb forces in Kosovo and the flight of hundreds of thousands of refugees to Albania, Macedonia and Montenegro, with an equally large number displaced within Kosovo, this crisis presents a powerful case in favor of humanitarian intervention. Applying the criteria stated earlier to judge the validity of such action, it could be argued that once the Security Council was unable to act, it was appropriate for a regional body to undertake humanitarian intervention. However, since the Security Council and the Secretary General were not allowed to play their intended role under the U.N. Charter in the maintenance of international peace and security, the precedent set by NATO is questionable because it was not directly authorized by the Security Council nor the Organization for Security and Cooperation in Europe with the approval of the Council.²⁶⁵

263. See Alexander Nicoll & Guy Dinmore, *NATO Forces Bomb Yugoslavia*, FIN. TIMES, Mar. 25, 1999, at 1, col. 3; Alexander Nicoll, *Operation Allied Force Attacks Serb Targets*, FIN. TIMES, Mar. 25, 1999, at 2, col. 1.

264. *Conflict in the Balkans; In the President's Words: We Act to Prevent a Wider War*, N.Y. TIMES, Mar. 25, 1999, at A15, col. 2.

265. On April 10, 1999, the Executive Committee of the World Federation of the United Nations Associations ("WFUNA"), meeting in Geneva, considered the situation in Kosovo and, expressing its concern for the suffering of the people and the potential dangers of a widening of the conflict, reiterated "the

United Nations Charter principles on the protection of human rights and the use of force," and

deplored the paralysis of the United Nations Security Council which has prevented it from playing its proper role in gaining the implementation of its earlier resolutions and in responding to developments in Kosovo. It calls for an end to this paralysis and in particular for the Security Council and the Secretary-General, each making full use of its powers under the Charter, to resume the search for a peaceful and negotiated solution to the problem of Kosovo, respecting the territorial integrity and sovereignty of the Federal Republic of Yugoslavia and the human rights of its people of all ethnic origins. In that context the committee noted the step taken on 9 April by the Secretary-General and encouraged him to continue to give a lead in the search for a solution.

The Committee concluded by underlining "the fact that a solution to the problem of Kosovo can only be found at the negotiating table. The UN should be enabled to play a significant and constructive role in reaching and implementing any such solution.

One of the authors of this article, Professor Ved Nanda, serves as the Vice-Chair of the WFUNA and was one of the drafters of the resolution. A copy of the text is on file with the *Journal*.

