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Leonard v.B. Sutton Award Paper

Military Intervention in Bosnia-Herzegovina: Will World Politics Prevail Over the Rule of International Law?*

MICHAEL P. ROCH**

"International law is that thing which the evil ignore and the righteous refuse to enforce." — Leon Uris

I. INTRODUCTION

Sarajevo, only three years ago a bustling Central European city, is today a mixture of rubble, bodies, and bullets. The Serbs have murdered more than several hundred thousand Bosnian Muslims¹ and have systematically raped countless Muslim women² in their effort to maintain the utopia of a "Greater Serbia" to encompass much of Yugoslavia's territory.³ Nearly one half of Bosnia-Herzegovina's pre-war population of 4.4 million has become refugees⁴ to avoid the count-

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Events prior to January 15, 1995 form the historical basis of this article.

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1. Fred McCloskey, *The U.S. is Appeasing Fascism and Genocide*, CHRISTIAN SCI. MONITOR, December 31, 1992, at 19.

2. See Laurel Fletcher et al., *Human Rights Violations Against Women*, 15 WHITTIER L. REV. 319, 352-355 (1994); see also John Webb, *Genocide Treaty — Ethnic Cleansing — Substantive and Procedural Hurdles in the Application of the Genocide Convention to Alleged Crimes in the Former Yugoslavia*, 23 GA. J. INT'L & COMP. L. 377, 380 (1993); Chuck Sudetic, *Jet Attacks Bosnian Town; 10 Deaths Reported*, N. Y. TIMES, November 10, 1994, at A8.

3. See *infra* notes 51 and 64 and accompanying text.

4. Roger Cohen, *Balkan Moral Order Upset As Victim Becomes Victor*, N. Y. TIMES, November 6, 1994, sec. 4, at 1 [hereinafter *Balkan Moral Order*]; David Binder, *Pariah as Patriot; Ratko Mladic*, N. Y. TIMES, September 4, 1994, sec. 6, at 26;

less violations against human rights.⁵ Thousands are still to die in the most inhumane of ways. All this under the watchful eyes of United Nations (U.N.) observatory troops who are powerless to intervene.

Although the international community promised during the conflict's early stages to quickly end this war, little has been accomplished to make good on that promise. This crisis stretches the limits of the United Nations and of peace negotiations on a daily basis. Yet the political will of key nations to put a quick end to the war using the only medium that will accomplish peace, United Nations military intervention, is missing.

This article analyzes the possibilities of and strongly advocates military intervention in Bosnia-Herzegovina under the United Nations charter. It provides first a historical introduction to the ex-Yugoslav region, focusing on Bosnia-Herzegovina and on Serbia, and to the events of the conflict through the end of 1994.⁶ Second, it provides a brief introduction to the intervention concept.⁷ Third, it applies the possibilities of legal military intervention under the United Nations Charter to the war in Bosnia-Herzegovina.⁸ The last section evaluates the peace making efforts to date and makes final observations.⁹

Larry Pressler, *Justice Must Be Demanded for 'Ethnic Cleansing' Crimes*, CHRISTIAN SCI. MONITOR, Dec. 29, 1992, at 19; Anna-Patricia Kahn, *Wo sind die bosnischen Kinder?* (Where are the Bosnian children?), FOCUS, May 16, 1994, at 108.

5. See generally Human Rights Watch, WAR CRIMES IN BOSNIA: A HELSINKI WATCH REPORT, (1993). In two volumes, this work represents a compilation of such violations across all areas and enclaves in Bosnia-Herzegovina. Alleged offenses include rape, mutilation, summary executions, and castration. The atrocities are described in varying levels of detail.

For example, in one, now well-publicized 1992 account, an officer in charge of the Omarska facility named Dusko Tadic ordered one young boy held prisoner to bite off the penis of another inmate. *Id.* at 187. After Tadic's capture in Germany early 1994, a former inmate at the same camp reported that "[e]very day, after Dusko Tadic was finished in the interrogation room, we had to wash blood from the floor . . . In a garage he himself cut off men's genitals. He was a butcher." Stephen Kinzer, *Germans Arrest Serb as Balkan War Criminal*, N. Y. TIMES, February 14, 1994, at A6. The same inmate reported that Tadic laughed as he watched his victims bleed. *Id.*

Another, undocumented report includes the case of a refugee who reported to her treating doctor in Germany that Serbs raped her nine-year-old niece in the woman's house in Bosnia; after they had satisfied themselves, the same perpetrators allegedly gouged out her husband's eyes before quartering him and burning him in the fireplace. Interview with Dr. med. Peter Blosch, Ottobeuren, Germany (April 1993).

6. See *infra* part II.

7. See *infra* part III.

8. See *infra* part IV.

9. See *infra* part V.

II. YUGOSLAV HISTORY: WAR AND OPPRESSION FOLLOWED BY LIBERAL SOCIALIST RULE

Many of the factors which caused this war are imbedded in the Yugoslavs' complex history. Since a thorough discussion of that history is not possible here, the following pages are limited to the relevant historical events which led up to the situation as it existed at the beginning of 1994 and are confined to the Bosnia-Hercegovinan and Serb regions.

Before the disintegration of the Socialist Federal Republic of Yugoslavia¹⁰ (Yugoslavia), which immediately preceded and partially caused the Bosnian war, Slovenians, Croats, Serbs, Montenegrins, Bosnians, Macedonians, and Albanians lived peacefully in Yugoslavia; each enjoyed its own culture and history until the signing of the Declaration of Corfu in 1917 which formed the foundation for the Yugoslav state. As a whole, all Yugoslav nations combined to approximately 24 million people in an area of 256,000 km².¹¹

A. *Bosnia-Hercegovina and Serbia: From the beginnings to World War II*

From its beginnings, all of Yugoslavia suffered from constant foreign rule, most commonly exercised by the Austro-Hungarian Empire and the Ottoman Empire.¹² As is common among colonizing powers, each ruler attempted to impose his own culture on his new acquisition. Ethnic strife and revolt were common, resulting in migration and in the development of a strong need for independence by even the smallest of identifiable groups.

1. Bosnia-Hercegovina

The region of Bosnia-Hercegovina was settled by Croats and Serbs by the seventh century. Signs of Bosnian autonomy were evidenced by the rising of Bogolinism, a Catholic-Orthodox sect, around the twelfth century; by the fourteenth century, Bosnia had become an important state. Bosnian adversaries within the state founded a rival state, namely Hercegovina, in the late fourteenth century. Both Bosnia and Hercegovina were conquered by the Turks around 1483; the Turks

10. "Yugoslav" literally translated means "South-Slav," a seemingly appropriate name for the ethnicity of the peoples comprising this state. Bruce McFarlane, *YUGOSLAVIA: POLITICS, ECONOMICS AND SOCIETY* 4 (1988).

11. *YUGOSLAVIA: A COUNTRY STUDY* 301 (Glenn E. Curtis, ed., 1990) [hereinafter *COUNTRY STUDY*]. For a comparison, consider the size of the U.S. state of Wyoming of about 253,390 km² with a population of about 500,000.

12. James B. Steinberg, *International Involvement in Internal Conflicts*, in *ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS* 30 (Lori Fisler Damrosch, ed., 1993).

added Islam to the already historically divided region of the Eastern and Western Roman Empires of Diocletian and Theodosius which formed the dividing line between Catholicism and Orthodoxy.¹³ The Bogolian nobility converted to Islam in order to retain family land; the lower classes became serfs to the Bogolians and Ottomans. In the next four hundred years, Bosnia-Hercegovina became virtual chattel in the territorial games of Austrian, Russian, and Turkish nobility. In 1850, Turkey centralized the rule of Bosnia-Hercegovina in Sarajevo to settle ongoing unrest. Austria-Hungary annexed Bosnia-Hercegovina shortly after the 1878 signing of the Treaty of Berlin. In an attempt to increase the Catholic population, Austria-Hungary colonized the region with Catholic Slavs and Germans; these families again essentially reduced both Bosnia-Hercegovinans and Serbs to serfs.¹⁴

By 1878, the Hungarian crown ruled over much of Bosnia-Hercegovina, a rule that was very much resented by all of its three main ethnic groups. The Muslims wanted to remain with the Turks, the Croats feared "Hungarianization" of their culture, and the Serbs, still condemned to serfdom, screamed for recognition and alliance with Serbia in the south.¹⁵

2. Serbia

The Serbs lived under Byzantine dominion until the middle of the twelfth century, after which time Serbia enjoyed a fair amount of autonomy under the Byzantines. The Turks conquered the Serbs in 1459 and ruled Serbia until Austria took dominion of Serbian regions south of the Sava river in 1718. In the remaining areas, Turkish rule remained until the Serbs, in alliance with Russia, Romania, and Bulgaria, ousted the Turks in 1877. Austria-Hungary annexed Serbia only three years later, defeating the Serbian dream of an independent state. By that time, Serbs lived as minorities in many parts of Yugoslavia, a fact which remains true today.¹⁶

3. Formation of the Yugoslav state

During World War I, the area of Yugoslavia again became the playing-ground of the major European powers. In the secret 1915 Treaty of London, the Entente (consisting of France, Britain, and Russia) promised Istria, much of Dalmatia, and Slovenia to Italy. The time had come for an independent Yugoslav state, a thought which had been considered at times after the 1917 Bolshevik revolution, but one which could not be realized due to constant foreign occupation. Finally, the

13. Vojislav Stanovcic, *History and Status of Ethnic Conflicts Yugoslavia, in YUGOSLAVIA: A FRACTURED FEDERALISM* 24 (Dennison Rusinow, ed., 1988).

14. COUNTRY STUDY, *supra* note 11, at 22-24.

15. *Id.* at 25.

16. *Id.* at 16-22.

Declaration of Corfu, uniting Serbia, Croatia, and Slovenia, was signed in July, 1917, in an attempt to neutralize the effects of the Treaty of London. By the end of World War I, the international community recognized the Kingdom of the Serbs, Croats, and Slovenians (SKS).¹⁷

The Declaration of Corfu promised equal recognition of the Cyrillic and Latin alphabets¹⁸ and recognition of all three nationalities, including democratic representation. Notwithstanding these provisions, Croats and Serbs soon clashed about the issue whether governmental rule should take federal or centralized forms; Serbia argued strongly for the latter.¹⁹ The conflict between Croatia and Serbia was fueled by the Ustaše, a Croat nationalist group.²⁰ Ethnic hatred and civil strife, also due to the number of non-slavic minorities which the SKS inherited, divided the young nation. Lack of experienced leadership led to the violent suppression of Albanian and Macedonian minorities after numerous uprisings. The Serbs' self-declared king unsuccessfully tried to impose unity upon ethnic groups, but by 1931 allowed limited democracy to calm the spirits.²¹

World War II ensued, and after several small attempts to ally, leaders of the SKS' quasi-democratic cabinet and SKS' economy became more and more closely knit with Germany. The fascist salute and green shirts became the policy of one cabinet member's group. The annexation of Austria strengthened Germany's grip on the SKS. In desperate search for an ally, the SKS finally recognized the Soviet Union in 1940, a move which proved to be too little, too late. On March 25, 1941, the SKS was forced into signing the Tripartite Pact with Germany which assured non-aggression from the Axis powers; on April 6, 1941, the first bomb fell on Belgrade, and eleven days later the SKS surrendered to German rule.²²

Germany, Italy, Hungary, and Bulgaria dismembered the Yugoslav kingdom during the War, and all imposed cultural terror. Germany created a puppet state, the Independent State of Croatia, which roughly encompassed Croatia and Bosnia-Herzegovina. Having refused to fuel the Axis war machine, two million Serbs, Jews, and Gypsies were eliminated by means of religious conversion, deportation, and

17. *Id.* at 27.

18. Serb uses the Cyrillic alphabet. Croatian and Slovenian, although Slavic languages, use the Latin alphabet, a phenomenon due to Western occupants and the Catholic religion which became predominant in both Croatia and Slovenia; Serbs are largely Orthodox. The Latin alphabet was imposed on Bosnia-Herzegovina prior to the conversion to Islam.

19. COUNTRY STUDY, *supra* note 11, at 29.

20. Steinberg, *supra* note 12, at 31.

21. COUNTRY STUDY, *supra* note 11, at 34.

22. *Id.* at 36-37.

violence. Albanians and Hungarians, two abused minorities under the SKS, also took turns massacring Jews and Serbs.²³

From the Yugoslav resistance movement arose the Socialist idealist Josip Broz Tito. Tito arranged in 1944 for the Soviet Union to enter Yugoslav territory. This move meant the end of the War, and the council supporting Tito's resistance endeavors formed the post-World War II basis for Yugoslavia's government. World War II left 1.7 million people or eleven per cent of the pre-war population dead, second in death rate only to Poland.²⁴ Tito and his cabinet instituted communist rule, and, after mock elections, dissolved the SKS and established the "Federative People's Republic of Yugoslavia" on November 29, 1945; that name was changed in 1963 to "Socialist Federal Republic of Yugoslavia."²⁵ The new government adopted a Soviet-style constitution which established a strong central government under the Serbian Belgrade and divided regions of the nation, more or less along ethnic lines, into states.²⁶

B. *From World War II to 1990: Events leading to war*

1. Ethnicity and self-government

Yugoslavia's diversity problems were three-fold; Catholicism and Orthodoxy divided the country into East and West, and the disparity of economic growth and level of development split the country into North and South.²⁷ Join non-Slav minority nations in majority enclaves (such as Albanians and Hungarians) with Slavic tribal minorities, each with their own history of ethnic hatred, foreign rule, and injustice, and diversity becomes a three-dimensional phenomenon which is very difficult to manage. Even the United States of America arguably faces diversity today on only one level, namely ancestral national origin.

In order to overcome the distrust among the various ethnic groups after World War II, Tito placed much propaganda effort in unity and equality of the new state.²⁸ While this effort was necessary and helped to promote the self-management concept, bureaucracy on all governmental levels later hindered the inherent autonomy in such a concept.²⁹

Tito's government also attempted some reforms in the early 1960s. These reforms were designed to please the Croats who were quite up-

23. *Id.* at 36-37.

24. *Id.* at 42.

25. Mark Thompson, A PAPER HOUSE: THE ENDING OF YUGOSLAVIA 1 (1992).

26. COUNTRY STUDY, *supra* note 11, at 43.

27. Stanovcic, *supra* note 13, at 25.

28. *Id.*

29. *Id.* at 36.

set about earlier unity policies; these policies, for instance, outlawed Croatian as a language and adopted "Serbo-Croatian" as the official language of Croatia and Serbia. Severe bureaucratic "adjustments" attempted to shift economic planning from Belgrade to the individual states in response to economic difficulties,³⁰ allowing limited self-government in the regions,³¹ in an effort to diffuse debates of national self-rule versus federalism, debates which remained from the SKS³² and which would continue until the disintegration of the Yugoslav state in the late 1980s and early 1990s.

More important than resulting in a stimulated economy, the "Reform Crisis" allowed significant political change which continually forced Tito to give in to Croatia's demand for essentially a confederacy, which was a political structure for which Croatia had always pressed, especially since the end of World War II. By the early 1970s at the latest, Croatia's nationalism had spread to the other republics as well.³³ The Muslims in Bosnia-Herzegovina and the Albanians in Kosovo especially followed the Croatian model of demanding self-rule.

Ethnic divisions aside, the federal government largely neglected its citizens, especially with respect to individual rights.³⁴ For instance, Serbs frequently arrested liberals and state nationalists by 1971 as tensions began to worsen. A new and complex constitution was written and passed in 1974 aimed at controlling the increasingly difficult situation; the new constitution provided for a complex system of checks and balances for all types of groups present in Yugoslavia,³⁵ a possible beginning of the end.

2. Economics and Tito's death

The end of the state came one step closer after Tito's death in 1980, an event which again threatened political disharmony.³⁶ Various groups at that point in time often proposed drastic political reforms, many of which were anti-Serb.³⁷ A true leadership crisis developed in 1988, when Slovenia and Croatia boldly began to push for a market-economy in an attempt to solve the economic crisis and to repay \$21 billion in hard-currency debt.³⁸ By then, debates about the distribution of the national budget, allocation of transportation re-

30. Pedro Ramet, NATIONALISM AND FEDERALISM IN YUGOSLAVIA, 1963-1983, at 87 (1984) [hereinafter NATIONALISM AND FEDERALISM].

31. COUNTRY STUDY, *supra* note 11, at 43.

32. See *infra* note 19 and accompanying text.

33. See NATIONALISM AND FEDERALISM, *supra* note 30, at 122-125.

34. Stanovcic, *supra* note 13, at 36.

35. COUNTRY STUDY, *supra* note 11, at 54.

36. *Id.* at 56.

37. *Id.* at 182.

38. Stanovcic, *supra* note 13, at 2.

sources, et cetera, were flaming.³⁹ The true reason behind this push, however, was simple: Slovenia was the most productive of the regions,⁴⁰ its eight per cent population producing up to twenty per cent of the nation's GNP, with Croatia not too far behind.⁴¹ In this time of economic disparity, Slovenia and Croatia both longed back to the beginning 1970s, years that showed relatively high economic growth, an improving living standard, increasing ties to the west, and general commercial optimism.⁴²

3. Foreign policy

In matters of foreign policy, the alliance with the Soviet Union had severe ups and downs, especially later in light of the Soviet Union's invasions into Hungary in 1956 and into Czechoslovakia in 1968. It appeared that Yugoslavia soon went its own way, always cautiously eyeing its dominant ally, eventually allowing unrestricted travel and free flow of intellectual materials.

The fall of the Soviet Union in the early 1990s allowed the Yugoslavian states to make decisions with less fear of reprisal from Moscow. The Yugoslav states saw the Soviet Union's disbandment as their opportunity for independence.

C. *The beginnings of war*

Disintegration began with the December 23, 1990, vote of Slovenians for independence;⁴³ Slovenia's discontent with the federal state was largely due to the fact that the "federation virtually ceased to function as a unified state."⁴⁴ After a brief period of war and negotiations aided by the European Union⁴⁵ and the Conference of Security of Co-operation in Europe (CSCE),⁴⁶ Slovenia achieved peace around July 5, 1991.⁴⁷

39. See NATIONALISM AND FEDERALISM, *supra* note 30, at 195-202.

40. COUNTRY STUDY, *supra* note 11, at 206.

41. See NATIONALISM AND FEDERALISM, *supra* note 30, at 197.

42. Stanovic, *supra* note 13, at 2.

43. Croatia followed suit May 19, 1991.

44. Lenard J. Cohen, *Regime Transition in a Disintegrating Yugoslavia: The Law-of-Rule vs. The Rule-of-Law*, THE CARL BECK PAPERS IN RUSSIAN AND EAST EUROPEAN STUDIES, No. 908, at 31 (1992).

45. The European Community changed its name to the European Union on January 1, 1993. The term European Union is used throughout this article for consistency purposes.

46. The CSCE has no enforcement powers and it bases its philosophy of resolving disputes largely on consensus-building. See Miriam Sapiro, *Dispute Resolution: General Methods and CSCE Mechanisms*, ASIL NEWSLETTER, September 1994, available in LEXIS, Lawrev library, Allrev file.

47. Marc Weller, *Current Development: The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 A.J.I.L. 569, 573 (1992).

The root of this and the Croatian conflict was largely grounded in the fact that the Serb leadership did not desire a loose federation and in the failure of negotiations to that effect.⁴⁸ Serb actions were doubtlessly encouraged by initial responses of the European Union and of the CSCE and subsequent responses of the United States, all of which favored territorial integrity of Yugoslavia at that early time in the conflict.⁴⁹

However, despite European Union observers, fighting broke out again, this time in Serbian majority enclaves in Croatia between ethnic Serbs and Croats. The Croatian Serbs were supported increasingly by Yugoslav National Army (JNA) forces;⁵⁰ these actions were justified by the Yugoslav federal government to protect the Serbs in an independent Croatian state.⁵¹ The United Nations Security Council remained silent, and even during its first meeting on September 25, 1991, it did nothing but express "deep concern" over the death and destruction and called for a military arms embargo against Yugoslavia as a whole.⁵² Cyrus R. Vance was appointed shortly thereafter as the Secretary-General's personal envoy to Yugoslavia.⁵³

Bosnia-Herzegovina followed Slovenia and Croatia on October 15, 1991, in its declaration for independence; this vote was supported by virtually all Muslims but was boycotted by the Bosnian Serbs.⁵⁴ On February 24, 1992, a make-shift Bosnia-Herzegovinan government asked the JNA to leave Bosnia-Herzegovina's territory.⁵⁵ Around March 9, 1992, initial United Nations Protection Force (UNPROFOR) troops entered Yugoslavia;⁵⁶ by that time, however, a massive amount

48. *Id.* at 569.

49. *Id.* at 570. Whenever parts of nations desire to secede, it appears that the West favors territorial integrity and tolerance of minorities instead of secession by the minority. See Barbara Crossette, *What is a Nation?*, N. Y. TIMES, December 26, 1994, sec. 1, at 10.

50. See, e.g., Binder, *supra* note 4 (discussing the Yugoslav army's transfer of experienced officers to lead Bosnian Serb forces). See also Barbara Crossette, *U.N. Eases Curbs on Yugoslavia After Serbian Peace Concessions*, N. Y. TIMES, September 24, 1994, at 1. (reporting Yugoslavia shipping military items across the Drina River into Bosnian Serb territory).

51. *Id.* See also Weller, *supra* note 47 at 574. Recent evidence suggests that the Serbs prepared for war against Croatia as early as 1986. Philip J. Cohen, *Ending the War and Securing Peace in Former Yugoslavia*, 6 PACE INT'L L. REV. 19, 27 (1994) [hereinafter *Ending the War*].

52. S.C. Res. 713, U.N. SCOR, 3009th mtg., U.N. Doc. S/23067 (1991).

53. Amy Lou King, *Bosnia-Herzegovina — Vance-Owen Agenda for a Peaceful Settlement: Did the U.N. Do too Little, too Late, to Support this Endeavor?* 23 GA. J. INT'L & COMP. L. 347, 352 (1993).

54. Webb, *supra* note 2, at 377-378.

55. Weller, *supra* note 47, at 597.

56. *Id.* at 585.

of military armor already had been transferred from federal Serb troops to the local Serb fighters.⁵⁷

After Bosnia fulfilled certain conditions to protect minority groups by placing the respective clauses in its provisory constitution,⁵⁸ the European Union finally recognized Bosnia-Herzegovina independence on April 6, 1992,⁵⁹ despite Bosnian Serb opposition and fierce fighting.⁶⁰ Despite the fact that one month earlier 40 of 102 United Nations Military Observers were placed in Bosnia-Herzegovina (the remainder was stationed throughout Yugoslavia),⁶¹ war between Bosnian Serbs and Bosnian Muslims broke out April 7, 1992, as Radovan Karadzic, leader of the Bosnian Serbs, declared independence from the new state⁶² with full support from Slobodan Milosevic, President of the Yugoslav Serbs,⁶³ the ultimate objective being joinder of the Bosnian and Yugoslav Serbs.⁶⁴

The Serbian Yugoslav government, together with Montenegro, formed the Federal Republic of Yugoslavia, essentially becoming the de facto successor of the Socialist Federal Republic of Yugoslavia, on April 27, 1992.⁶⁵ This new state "was no longer open to the former central authorities, now totally dominated by Serbia, to claim a right to exercise authority within non-Serbian parts of the former [Yugoslavia]."⁶⁶

Fighting soon became intense and wide-spread; Bosnian Serb militia were supported, both directly through manpower and indirectly through weaponry, by JNA forces.⁶⁷ Alija Izetbegovic, president of Bosnia-Herzegovina, soon appealed to the European Union, CSCE, and United Nations⁶⁸ to stop the slaughter committed by the much stronger Serb forces. Inaction by those three bodies marks the stalemate which is still in effect today: the international bodies would try to negotiate peace with Serbian forces and would order Serb withdrawal from the region; the Yugoslav Serbs would insist that they were not interfering with the hostilities; the Bosnian and Yugoslav Serbs would

57. *See id.* at 586.

58. A *Statement of Principles for New Constitutional Arrangements for Bosnia and Herzegovina* to that effect was passed March 18, 1992. *Id.* at 597.

59. *Id.* at 593; Webb, *supra* note 2, at 378.

60. Weller, *supra* note 47, at 597.

61. *Id.* at 586.

62. *Id.* at 593; Webb, *supra* note 2, at 386.

63. Judy Dempsey, *Bosnians Seek U.N. Force to Stop Spread of War*, FIN. TIMES, Nov. 20, 1991, at 2.

64. Danilo Türk, *Remarks Concerning the Breakup of the Former Yugoslavia*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 50, 52 (1993); *Ending the War*, *supra* note 51, at 32; Steinberg, *supra* note 12, at 47.

65. *See* Dept. of State Dispatch, *Chronology: Developments Related to the Crisis in Bosnia, March 10-August 28, 1992*.

66. Weller, *supra* note 47, at 596.

67. *Id.* at 597.

68. *Id.*

insist that, although Bosnia-Herzegovina is a recognized nation, the conflict was internal⁶⁹ and would maintain that intervention in internal affairs of a state is illegal under the United Nations charter.⁷⁰ In the meantime, reports of systematic efforts by the Bosnian Serbs to "ethnically cleanse" Bosnia had been confirmed;⁷¹ at latest by September, 1991, the European Union, CSCE, and the United Nations had full knowledge of the various atrocities ongoing in Bosnia-Herzegovina.⁷²

The United Nations Secretary-General informed the Security Council on April 29, 1992, that a feasibility study of deploying United Nations peacekeeping forces would be conducted.⁷³ The Security Council rejected Bosnia-Herzegovina's request for 15,000 peace enforcement troops and instead demanded the usual cease-fire, and, for the first time, demanded free passage of humanitarian aid efforts under Chapter VII.⁷⁴

Later, the United Nations Security Council adopted sanctions.⁷⁵ These, however, came much too late, and proved ineffective due to many logistics problems in border enforcement⁷⁶ and willful disregard for the embargo.⁷⁷

The first reports of regional organizations' involvement other than the European Union and CSCE appeared August 7, 1992, when the Organization of the Islamic Conference (OIC) first began pressuring the United Nations for action.⁷⁸ However, extended OIC actions could fuel Serbian propaganda that long claimed that the Bosnian Muslims desired to turn Bosnia-Herzegovina into an Islamic fundamentalist

69. *See id.* at 597-603.

70. *See infra* note 105 and the accompanying text.

71. The Serb leadership would later point to the cruelty committed against the Serbs in Yugoslavia's early history by the Muslim and Croatian forces. *Unter den russischen Flügel gedrängt* (Forced under the Russian wing), DER SPIEGEL, March 3, 1994, at 144-145 (in an interview with Bosnian Serb leader Radovan Karadzic).

72. *See King, supra* note 53, at 351.

73. Further Report of the Secretary-General Pursuant to Security Council Resolution 749 (1992), U.N. Doc. S/23900 (1992).

74. Weller, *supra* note 47, at 602; *see also infra* notes 120 and 130 for the pertinent sections of Chapter VII.

75. S.C. Res. 757, U.N. SCOR, 47th Sess., 3082 mtg., U.N. Doc. S/res/757 (1992), reprinted in 31 I.L.M. 1453 (1992).

76. United States General Accounting Office, *Report to the Honorable Edward M. Kennedy, U.S. Senate, Serbia-Montenegro: Implementation of U.N. Economic Sanctions 6* (April 1993) [hereinafter *GAO Report to Senator Kennedy*].

77. *Ending the War, supra* note 51, at 31. Greece is accused of deliberately violating the embargo as part of an arrangement with Yugoslavia to divide Macedonian territory and return part of it to Greece. Greece has long placed claims on Macedonia and refers to it as "the stolen jewels of Greece." *Id.*

78. Judy Dempsey, *Islamic Nations Press U.N. on Force*, FIN. TIMES, August 7, 1992, at 2.

state;⁷⁹ to date, none of OIC's actions have materialized. Throughout the remainder of 1992, indecision by the United Nations, the United States, and the European Union was blatantly apparent,⁸⁰ interrupted by a well-meant, but initially irrelevant, United Nations Security Council resolution dated August 13, 1992, that authorized use of force as a last measure to ensure relief convoys reach their destinations.⁸¹ By the end of 1992 and throughout 1994, the frustration of the United Nations personnel stationed in Bosnia-Herzegovina as to their inability to accomplish even the smallest of missions due to lack of authorization by the United Nations was blatantly obvious.⁸²

In the meanwhile, the Yugoslav Serbs engaged in a terror campaign of political intolerance within their own territory, one of the worst seen in Europe after German national-socialism, in order to silence the intellectual and urban minority against the war in Bosnia-Herzegovina.⁸³ Shortly thereafter, in the beginning of March, Vance and Lord Owen brought their first plan carving up Bosnia-Herzegovina into small enclaves.⁸⁴ It would soon become clear that the Bosnian Muslims would not agree to any such plan unless much of their territory was restored and they were given sea access through either Croatia or Serbia. Bosnia's position in this respect has not significantly changed through 1994.

The remainder of 1993 and all of 1994 continued to witness inaction and ineffective action,⁸⁵ until the United Nations called on NATO in early 1994 to commence air strikes against Bosnian Serb positions with the sole purpose of enforcing the earlier resolution ordering the Serbs to allow relief convoys to pass through to Muslim enclaves and refugee gathering points.⁸⁶ This operation took place as all European

79. *Id.*

80. Roger Matthews and Nancy Dunne, *U.N. May Back Force in Bosnia: Western Governments Strive to Resolve Differences of Scale of Military Involvement*, FIN. TIMES, Aug. 10, 1993, at 1.

81. Michael Littlejohn et al., *U.N. Agrees Force as Last Resort in Bosnia Aid Effort*, FIN. TIMES, Aug. 14, 1992, at 1.

82. See David White, *U.N. Fears It Can Only 'Ease the Passage of History': How Restricted Resources and Powers May Prevent U.N. Troops from Fulfilling their already Limited Tasks*. FIN. TIMES, December 5, 1992, at 2. See also Frances Williams, et al., *U.N. Tells Bosnian Factions to Allow Full Scale Relief*, FIN. TIMES, February 18, 1993, at 22. Examples include convoys being turned back by Bosnian Serbs, either through military force or by ordering women and children to crowd access roads to needy Muslim enclaves. *Id.*

83. Dusko Doder, *Yugoslavia: Nazi-style — Campaign of Terror*, THE AGE (Melbourne), February 15, 1993 (Reuter Textline).

84. David Gardner, *Serbs to Face U.N. Pressure on Peace Plan*, FIN. TIMES, March 9, 1993, at 2.

85. See, e.g., Chuck Sudetic, *Conflict in the Balkans: The Overview*, N. Y. TIMES, April 18, 1994, at A1 [hereinafter *Conflict in the Balkans*].

86. See, e.g., *Unter den russischen Flügel gedrängt*, *supra* note 71. Serb leader Radovan Karadzic decried the attack as "clearly anti-Serb," possibly preventing peace

nations, including Russia, held their breath in fear of an escalation of a "full-scale war in Europe."⁸⁷ Indeed, the fear of war is so great that some Europeans believe that Bosnia-Herzegovina should all but capitulate.⁸⁸

In addition, prosecution of war crimes and the possibility of granting amnesty to war criminals have become bargaining chips during peace negotiations as an incentive for the various factions to continue to participate in those talks.⁸⁹ Indeed, the Bosnia-Herzegovinan crisis may become one of the most outrageous examples of plea-bargaining in the history of transnational law.⁹⁰ The price for such bargaining will be permanent insecurity in the Balkans.⁹¹

At the end of 1994, the Serbs held approximately seventy percent of Bosnian territory.⁹² Casualties have been high, snipers continue to kill civilians, among them many women and children,⁹³ and camp leaders continue to torture their inmates,⁹⁴ all under the watchful eyes of United Nations peacekeepers and the United Nations itself,⁹⁵

based on diplomacy. *Id.*

87. Elaine Sciolino, *Contain Your Joy: Russia's Back on World Stage*, N. Y. TIMES, February 20, 1994, at A20 (citing a letter of Russia's President Boris Yeltsin's to U.S. President Clinton).

88. *Balkan Moral Order*, *supra* note 4. "We disapprove of the offensives now under way by the Sarajevo government and Bosnian troops even though the responsibility for the war lies with the Serbs." *Id.* (quoting Alain Juppe, France's Foreign Minister).

89. Sadruddin Aga Khan, *War Crimes Without Punishment*, N. Y. Times, at A23.

90. See *Balkan Moral Order*, *supra* note 4. As one commentator has written: "The current practice of forcing the victims of Serbian aggression to negotiate with their tormentors, while keeping the victims weak through an arms embargo, is morally reprehensible and politically unwise, and serves only to reward Serbia's aggression by legitimizing ill-gotten war gains." *Ending the War*, *supra* note 51, at 24 (1994).

91. This is because "[p]eace without justice cannot endure." Benjamin B. Ferencz (a prosecutor at the Nürnberg trials), Editorial, N. Y. TIMES, July 17, 1994, sec. 4, at 16. However, it may be idealistic to expect many war criminals to be tried, given the history of other, smaller conflicts since World War II and the subsequent Nürnberg trials. See Marc D. Charney, *Conversations / Telford Taylor; The Laws of War Are Many, but Self-Interest Is the Only Enforcer*, N. Y. TIMES, December 25, 1994, sec. 4, at 7. Since World War II, the responsible nation itself, not some international body, has tried individual offenders. See, e.g., *United States v. Calley*, 22 C.M.A. 534 (1973).

92. Roger Cohen, *Washington Might Recognize a Bosnian Serb State*, N. Y. TIMES, at 10.

93. See *supra* note 2 and accompanying text.

94. There have been recent discussions as to why camp leaders deem it necessary to engage in torture and rape, or, more broadly, why those in a superior position to others feel the need to abuse those inferior. For an excellent psychological and sociological discussion of this human phenomenon, see *Wo lernt man das denn?* (Where does one learn something like this?), DER SPIEGEL, January 17, 1994, at 70-91.

95. See, e.g., "Akashi paktiert mit den Serben" ("Akashi cooperates with the Serbs"), FOCUS, May 21, 1994, at 218.

helpless to stop the continuing breaches of local, periodically arranged cease-fires.⁹⁶ Little has been resolved as several additional peace proposals have been rejected either because Bosnia stood to lose too much or because Serbia had to give up too much conquered territory.⁹⁷

So much for the drab history of the war in Bosnia-Herzegovina through the end of 1994. The remainder of this article discusses the legal alternatives of military intervention in order to achieve peace as soon as possible under these burdening circumstances.

III. HISTORY, POLICY, AND CONDITIONS: MILITARY INTERVENTION IN INTERNATIONAL CONFLICTS

Since the writings of St. Augustine, people have distinguished "just wars," i.e. permissible wars, from unjust or impermissible ones; however, due to its inherent subjectivity, this line of distinction soon showed to be unworkable.⁹⁸ Between St. Augustine and World War I, war was considered a mere fact of life; collective military intervention into smaller states was primarily a tool employed by the larger empires to keep the established power distributed among the larger states.⁹⁹ For instance, the Holy Alliance of Austria, Russia, and Prussia used collective intervention to maintain absolute monarchy as *status quo* within a great part of Europe,¹⁰⁰ thereby reserving "the right to use force unilaterally to protect and vindicate legal entitlements."¹⁰¹

After World War I, the League of Nations required that states settle their disputes without war. Intervention was only permitted as a last measure after the League's efforts to remedy a given situation proved ineffective.¹⁰² This vague set of standards, coupled with the lack of enforcement power of the League of Nations,¹⁰³ among other factors, allowed Germany to create world war in order to achieve national objectives.¹⁰⁴

96. Among numerous reports of Serb factions breaking the countless cease fire agreements, see, e.g., Allied in Failure, *TIME*, December 12, 1994, at 28-32; Paul Quinn-Judge, *Serbs Tighten Grip in Spasm of Violence*, *THE BOSTON GLOBE*, Mar. 17 1993, at 2.

97. See *Conflict in the Balkans*, *supra* note 85, at A1; Bruce W. Nelan, *Return to Sender*, *TIME*, August 1, 1994, at 38. For a discussion on the dissection of Bosnia-Herzegovina, see, e.g., Christian J. Garris, *Bosnia and the Limitations of International Law*, 34 *SANTA CLARA L. REV.* 1039, 1052-1055 (1994).

98. John Norton Moore, *Legal Standards for Intervention in Internal Conflicts*, 13 *GA. J. INT'L & COMP. L.* 191, 192 (1983).

99. Drs. F. X. DeLima, *INTERVENTION IN INTERNATIONAL LAW* 17 (1971).

100. *Id.*

101. W. Michael Reisman, *Criteria for the Lawful Use of Force in International Law*, 10 *YALE J. INT'L L.* 279 (1985).

102. DeLima, *supra* note 99, at 30-32.

103. *Id.* at 162.

104. Moore, *supra* note 98, at 193.

In order to assure that the Second World War remained the last such war, the charter of the United Nations (the Charter) was adopted as the first instrument to prohibit all uses of unilateral force,¹⁰⁵ "thereby surpassing the 1928 Kellogg-Briand Pact's prohibition of going to war as a political means."¹⁰⁶ However, the writers of the Charter clearly intended to prohibit war across international boundaries, not "insurgency, terrorism, mixed civil-international conflict, conflicts within nations divided by a cold war, wars of unification, wars of succession, wars to create states where none previously existed, and competitions among various groups indigenous to the sovereign."¹⁰⁷

Defining the crisis in Bosnia-Herzegovina as one of international dimensions by no means makes passing resolutions in favor of the forcible creation of peace simple. For instance, due to the desire to maintain status quo, supporting a government in power has traditionally been considered legal and supporting anti-government factions has been considered illegal.¹⁰⁸ However, since such policy would in essence render moot the competing principle of self-determination of peoples, scholars developed the standard of neutral non-intervention. Under this rule, neither faction is to be aided in an internal conflict;¹⁰⁹ this rule became written in the Charter as well,¹¹⁰ and this provision may now be seen as the primary cause of frustration of peace efforts in ex-Yugoslavia. It is this frustration, especially in light of the gross violations of human rights in ex-Yugoslavia, that some of these standards may need to be re-worked.¹¹¹ The current rules are abso-

105. See U.N. CHARTER art. 2, para. 4, which reads:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. *Id.*

For an excellent interpretation of Article 2(4), see Oscar Schachter, *International Law: The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1624 (1984).

106. Jost Delbrück, *A More Effective International Law or a New "World Law"?* — *Some Aspects of the Development of International Law in a Changing International System*, 68 IND. L.J. 705, 707-708 (1993) [hereinafter *Development of International Law*]; see generally, General Treaty for Renunciation of War as a Instrument of National Policy, Aug. 27, 1928, T.S. No. 796, 94 I.N.T.S. 57.

107. Moore, *supra* note 98, at 194. For a discussion of the role of the United Nations in civil wars, see Oscar Schachter, *The United Nations and Internal Conflict*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 403 (John Morton Moore, ed., 1974).

108. Moore, *supra* note 98, at 195.

109. *Id.*

110. See U.N. CHARTER art. 2, para. 7, which states:

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

111. See generally, Robert W. Gomulkiewicz, *International Law Governing Aid to Opposition Groups in Civil War: Resurrecting the Standards of Belligerency*, 63 WASH. L. REV. 43 (1988).

lutely inadequate to deal with conflicts of the type at hand here, especially because leaders in Yugoslavia, as did leaders in Iraq during the 1990 conflict,¹¹² for instance, believe they may safely disregard international law, thereby destroying the ultimate goal of the Charter.

These considerations aside, it appears that the Bosnia-Herzegovinan war is the type of international conflict which the drafters of the Charter intended to confront and prevent. First, Bosnia-Herzegovina is a nation recognized by the United Nations.¹¹³ As such, its borders must be protected from invading forces. Second, the new Yugoslavia, a nation itself, is aiding the Bosnian Serbs by providing personnel, arms, and other materials in operations which cross the Yugoslav-Bosnian border;¹¹⁴ this aid amounts to an invading force and must be prevented.

Even if one rejects these arguments and defines the Bosnian crisis as an internal one,¹¹⁵ this conflict still has severe international dimensions which justify United Nations action. This is because this war is fueled by racial hatred, and because civilians suffer tremendously in large numbers through human rights abuses committed on behalf of at least one faction. In addition, the types of aid provided by the Yugoslav Serbs will again become an issue.¹¹⁶

112. Paul W. Kahn, *Lessons for International Law from the Gulf War*, 45 STAN L. REV. 425, 428 (1993).

113. See *supra* note 59 and accompanying text. Recognition appears to be the most significant in determining the fine line between civil conflict and international war. See Theodor Meron, *War Crimes in Yugoslavia and the Development of International Law*, 88 A.J.I.L. 78, 81 (1994).

114. See *supra* note 67 and *infra* notes 131 through 133 and accompanying text.

115. Such position is, indeed, sustainable. Consider, for instance, the fact that small, extremist Bosnian Muslim factions, opposed to Izetbegovic's form of government, are fighting next to Bosnian Serb soldiers. See, e.g. Renate Flottau, "Dies hier ist kein Rambo-Film" ("This is not a Rambo movie"), DER SPIEGEL, July 4, 1994, at 118; Ruth Gordon, *United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond*, 15 MICH. J. INT'L L. 519 at note 294; Chuck Sudetic, *U.N.'s Forces Put on Alert As Serbs Advance in Bosnia*, N. Y. TIMES, November 21, 1994, at A6.

116. One author used similar standards in his analysis as to when a civil conflict becomes an international concern. Schachter, *The United Nations and Internal Conflicts*, *supra* note 107, at 410-415. See also Louis B. Sohn, *Civil Wars for States and the United Nations*, in LAW AND CIVIL WAR IN THE MODERN WORLD 583 (John Norton Moore, ed., 1974). Sohn's proposed guidelines for non-intervention in civil wars are as follows:

The following acts in support of a foreign government or an insurgent group shall be considered as military intervention for the purpose of these guidelines:

a. Arms sales or grants;

b. Making available military training at home or abroad;

c. Making available military advisers . . . ;

g. Participation in military operations by combat units, whether composed of "volunteers" or regular military personnel. *Id.*

See *supra* note 67 and accompanying text in support of Serbian forces providing such assistance.

For the purposes of the following discussion, it is assumed that the war in Bosnia is, indeed, one of the types of international conflicts addressed by the Charter.

IV. INTERVENTION IN THE YUGOSLAV WAR UNDER THE UNITED NATIONS CHARTER

If peace is indeed the ultimate value to be achieved under the Charter,¹¹⁷ under what circumstances, then, is intervention allowed to attain peace? As discussed, the Charter prohibits any use of force,¹¹⁸ with the possible exceptions of armed force as an enforcement measure as authorized by the Security Council, collective and unilateral intervention for purposes under self-defense, introduction of United Nations peacekeeping forces in the territory in question, and intervention to counteract violations of human rights.¹¹⁹ These exceptions are considered in turn.

A. Armed force as an enforcement measure taken by the United Nations Security Council under Article 42

The Charter allows use of force to be employed by the Security Council essentially if prior sanctions have shown ineffective and if international peace is endangered.¹²⁰

First, prior sanctions must have been demonstrated to be ineffective. In the case of Yugoslavia, it appears that the sanctions which have been issued to date, namely trade and weapons embargoes, have, indeed, failed. This is due on the one hand to the inability of Serbia's neighbors to enforce the embargo because of the complete lack of enforcement logistics.¹²¹ On the other hand, the embargoes have seen little enforcement due to the lack of the Orthodox world's desire to enforce the embargo because of Greece's fear of Macedonian expansionism¹²² and due to the dependency of Yugoslavia's neighbors on their

117. Louis Henkin, *Use of Force: Law and U.S. Policy*, in *RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE* 37, 38-39 (Louis Henkin et. al., eds., 1989).

118. See *infra* note 105 and accompanying text.

119. See generally Oscar Schachter, *Authorized Use of Force by the United Nations and Regional Organizations*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* 65 (Lori Fisler Damrosch & David J. Scheffer, eds., 1991).

120. U.N. CHARTER art. 42, which states:

"Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations." *Id.*

121. See *GAO Report to Senator Kennedy, supra* note 76.

122. Weller, *supra* note 44, at 588.

Serbian export market.¹²³ These factors have not improved to date; they in fact help deepen the crisis.¹²⁴

Second, the situation in Bosnia-Herzegovina must present a threat to international peace. It appears that Article 42 does not view violations of human rights committed within a country to be within its scope.¹²⁵ However, in a resolution passed at the beginning of the war, the Security Council did consider the events in ex-Yugoslavia as a threat to international peace and security when it first implemented the embargo.¹²⁶

The limitation of the exception to the threat of international peace is essential because if human rights violations of any kind were grounds for intervention under Article 42, the principle of state sovereignty would be significantly restricted¹²⁷. It appears that the absence of such limitation would make the entire exception unworkable because, for instance, some countries' laws' roots in religion directly violate some standards of human rights.¹²⁸ Critics of that limitation raise examples such as the intervention against Iraq, in which threats to international peace and security "are more likely to be acknowledged when the target country is geo-politically significant. Displaced persons from these countries or oil-rich states may gain attention, while those from poorer nations languish because their loss is not perceived as a threat to international peace."¹²⁹ Given this analysis,

123. See GAO Report to Senator Kennedy, *supra* note 76.

124. While the Bosnian Serb faction is supplied with arms from its Yugoslav neighbor, Bosnian Muslims have no access to such arms as they are land locked. In recent months, the United Nations Assembly expressed a desire to lift the arms embargo. Barbara Crossette, *U.N. Assembly Approves Call for End to Bosnian Arms Embargo*, N. Y. TIMES, November 4, 1994, at A6. Lifting the arms embargo would do nothing to ease the pain of the Bosnia-Herzegovinan population, but it might at least in some way level the rules of war, which so far has been a deck of cards militarily stacked in favor of the Serbs.

125. Jost Delbrück, *A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations*, 67 INDIANA L.J. 887, 888 (1992) [hereinafter *Fresh Look*].

126. See S.C. Rec. 713, U.N. SCOR, 46th Sess., 3009 mtg., U.N. Doc. S/RES/713 (1991).

Some writers contend that no threat of international peace exists since the fighting remains limited to the borders of former Yugoslavia. See, e.g., Mary Ellen O'Connell, *Continuing Limits on U.N. Intervention in Civil War*, 67 IND. L. J. 903, 910 (1992). Such articles continue to ignore the fact that Bosnia-Herzegovina has been recognized as a nation, whereas the new, "rump" Yugoslavia, consisting of Serbia and Montenegro, remains to be admitted to the United Nations. See *supra* note 65 and accompanying text.

127. *Fresh Look*, *supra* note 125, at 890.

128. For example, some Arabic countries inflict crippling corporal punishment for certain crimes committed by their subjects.

129. Nancy D. Arnison, *International Law and Non-Intervention: When Do Humanitarian Concerns Supersede Sovereignty?* 17 FLETCHER F. WORLD AFF. 199, available on WESTLAW, Jlr database (1993).

it clearly appears that the Security Council may give orders to any of its surrogates to militarily intervene in the Yugoslavian war to create peace, not to merely enforce humanitarian aid.

B. Collective and individual self-defense under Article 51

Article 51, in its ambiguous language, allows both individual and collective self-defense in cases of armed attack;¹³⁰ much of the debate around Article 51 lingers around the definition of aggression.¹³¹ However, since Bosnia-Herzegovina has been recognized as a state in April of 1992, it appears that the direct and indirect aid delivered by the Yugoslav Serbs to the Bosnian Serbs despite the Security Council's embargo presents an act of aggression under customary international law as defined by the Definition of Aggression¹³² and interpreted by the International Court of Justice.¹³³

Once it can be acknowledged that an act of aggression has taken place by the Yugoslav Serbs against the Bosnia-Herzegovinan government through its support of the Bosnian Serbs, the road to collective self defense appears to have been paved. The hesitation of the United Nations to militarily intervene, then, may be the result not of inability to do so, but based on the continuing hope for a peaceful resolution of the conflict. However, in this case, threats of use of force by the United States¹³⁴ and by the United Nations appear to continue to be a politi-

130. U.N. CHARTER, art. 51, which reads:

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

131. See generally Eugene V. Rostow, *Armed Force, Peaceful Settlement, and the United Nations Charter: Are there Alternatives to "A New International Anarchy"?* 77 AM. SOC'Y INT'L L. PROC. 31 (1983).

132. See Definition of Aggression (1974), G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc A/9631 (1974); Article 3 states:

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2, qualify as an act of aggression:

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to [an attack as defined in omitted paragraphs], or its substantial involvement therein. *Id.*

133. *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J. 14, 146 (Judgment on the Merits of June 27). In this case, the United States militarily supported rebel forces in that country against the *de jure* government.

134. Juliet O'Neil and Julian Beltrame, *Europe, U.S. Back Use of Air Strikes to End Siege*, THE OTTAWA CITIZEN, Feb. 8, 1994, at A6.

cal means to achieve a settlement without United Nations military intervention, a plan of action which has shown largely unsuccessful so far.¹³⁵

One arguable limitation to self-defense is the customary international law concept of proportionality, which requires that the actions of the defending state may not exceed those of the attacker.¹³⁶ Most reports indicate that while the Serb attackers continue to revert to genocide as a medium of war, the Bosnian Muslims generally, but by no means always, remain within the realms of international laws of warfare. Although proportionality is otherwise a difficult concept to apply in belligerent situations,¹³⁷ the balance dictated by the proportionality principle appears to have been in favor of the Muslim side, a result favoring collective intervention on behalf of the United Nations.

C. United Nations peacekeeping forces authorized by the Security Council or General Assembly and employed in agreement with the states concerned

The role and size of United Nations peacekeeping forces in Bosnia-Herzegovina has increased extensively in recent years in the area of refugee management, humanitarian aid, and election monitoring.¹³⁸ Bosnia's President, after Bosnia was recognized as a state, requested such peacekeeping forces, and, after initial hesitation, they were properly employed.¹³⁹

The question is whether the United Nations troops have been, or ever will be successful. Countless violations of cease-fires followed by equally fruitless attempts to prevent the fighting between the factions demonstrate that the peacekeeping forces have failed in their objective to "help create the conditions of peace and security required for negotiation of an overall political settlement among the contending parties."¹⁴⁰ This is not due to their lack of competency, but rather to the strict limitations the Security Council has placed on their activities. To date, they have not been successful in the peacemaking process, but have been marginally successful in assuring that aid is delivered to the needy refugees. Many more troops are likely to be needed if their goal is to enforce peace agreements militarily, a reality which is partially due to the fact that the infrastructure of the territory in Bosnia-

135. See *supra* note 96 and accompanying text.

136. See Schachter, *supra* note 105, at 1637.

137. See Kahn, *supra* note 112, at 435.

138. Bartram S. Brown, *International Law: The Protection of Human Rights in Disintegrating States: A New Challenge*, 68 CHI.-KENT. L. REV. 203, 218 (1992).

139. See *supra* note 74 and accompanying text.

140. Brown, *supra* note 138, at 219.

Hercegovina can only with difficulty support ground troops and artillery.¹⁴¹

One writer lists the following factors to help determine whether peacekeeping efforts will be successful; these are a strong international consensus, a workable mandate, and a force with an effective integrated command.¹⁴² Although the current mandate is less than workable, the international consensus is not yet as present as one may wish. Integration of command does not appear to pose a problem as such integration has not posed significant problems in prior instances, such as during the war against Iraq, in which a resolution to the conflict was relatively quickly achieved. The instant problem faced by the United Nations forces is their lack of authority to take more aggressive military measures; this causes the troops either to keep potential refugees in their home villages where their lives are in danger or to move them to safer areas, which would essentially aid the ethnic cleansing process.¹⁴³ Authorized use of more aggressive force by the Security Council would not only eliminate the latter concern, but would also allow for more aggressive protection of the villagers.

*D. Collateral intervention as a measure responding to violations of human rights*¹⁴⁴

The violations are well-known, and their results are documented.¹⁴⁵ There have been "numerous reports of 'ethnic cleansing', including civilian killings, mutilation, torture, starvation, operation of detention centers, executions, mass graves, systematic rape, and mass terrorization of Croats and Muslims."¹⁴⁶ These acts are illegal under

141. See COUNTRY STUDY, *supra* note 11, at 236.

142. Nikolai B. Krylov, *International Peacekeeping and Enforcement After the Cold War*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 97 (Lori Fisler Damrosch & David J. Scheffer, eds., 1991).

143. Pierre Bertrand, *An Operational Approach to International Refugee Protection*, 26 CORNELL INT'L L. J. 495, 500 (1993).

144. Louis Henkin et. al., 2 RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE 50 (1991). For a full discussion of human rights and their relation to international law, see Myres S. McDougal et al., HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY (1980).

145. See *supra* note 5 and accompanying text.

146. Webb, *supra* note 2, at 380.

the Genocide Convention of 1948,¹⁴⁷ and constitute violations of the most basic human rights.

In certain circumstances, violation of Article 2(4) is justified if human rights are at stake.¹⁴⁸ Instances of intervention to prevent violations of human rights are plentiful;¹⁴⁹ the difficulty lies in striking a balance between Article 2(7) of the Charter and the need to protect individuals from the atrocities committed by its own government or a third party.¹⁵⁰ In Bosnia-Herzegovina, numerous violations of human rights have taken place on both sides,¹⁵¹ and the International Court of Justice has issued the appropriate opinion.¹⁵² It would appear that even Articles 1(3) and 55(c)¹⁵³ taken alone would outweigh

147. See Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, 78 U.N.T.S. 277.

Article II states:

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

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

For an excellent analysis of the Genocide Treaty, see Matthew Lippman, *The 1948 Convention on the Prevention and Punishment of the Crime of Genocide: Forty-Five Years Later*, 8 TEMP. INT'L & COMP. L. J. 1 (1994).

148. See Jean-Pierre L. Fonteyne, *Forcible Self-help by States to Protect Human Rights: Recent Views from United Nations, Humanitarian Intervention and the United Nations* 201 app. (Richard B. Lillich, ed., 1973). This premise is heavily contradicted by others because, among other reasons, there is no "black letter rule" permitting it. See Roger S. Clark, *Humanitarian Intervention: Help to your Friends and State Practice*, 13 GA. J. INT'L & COMP. L. 211 (1983). These positions have been essentially eliminated by recent decisions of the Security Council in its request of NATO to enforce humanitarian aid mandates.

149. For pre-Bosnia analyses of the validity of humanitarian intervention, see Schachter, *International Law: The Right of States to Use Armed Force*, *supra* note 105, at 1629 (discussing the validity of India's intervention in East Pakistan to protect Bengalis during Pakistan's 1971 civil war); see also Ian Brownlie, *Humanitarian Intervention*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 217-228 (John Norton Moore, ed., 1974).

150. See Ved P. 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).

151. See Human Rights Watch, *supra* note 121.

152. See Case Concerning Application of the Convention of the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), *reprinted in* 87 A.J.I.L. 505 (1993).

153. U.N. CHARTER art. 1, para. 3, which states:

To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; . . . *Id.* (*Emphasis supplied.*)

the issue of sovereignty with respect to Yugoslavia, as any actions contrary to Article 1(3) by any state would undermine the very purpose of the United Nations and would violate article 2(4) itself.¹⁵⁴

One writer offers five criteria under which humanitarian military intervention should be permitted.¹⁵⁵ These criteria include the severity of human rights violations, the nature of the intervention, the purpose of the intervention, the extent and collectivity of the action, and the balance of alternatives and outcomes.¹⁵⁶ To briefly apply these criteria, not many crimes are more severe than those of genocide. Intervention would last as long as necessary, at the minimum, to stop the violence, at the maximum, to forcibly return Yugoslav forces to their own borders after a lasting peace accord has been agreed upon and has been implemented by the factions. The purpose of such intervention would clearly be in furtherance of a humanitarian concern; under the United Nations umbrella, such action would be of collective instead of unilateral nature. Although the question of balancing alternatives and outcomes is a difficult one to resolve until the conflict is essentially over and one has the advantage of hindsight, it appears apparent that, at this late date, any positive intervention will begin to help save lives and will ease the exodus refugee burden on Bosnia-Herzegovina and the influx refugee burden on neighboring countries.¹⁵⁷ At the minimum, the past three years of impotence on behalf of the United Nations would finally come to a close, and, at the maximum, such intervention would serve as an important precedent to future conflicts and as a deterrent to future violators of human rights. The human rights violations in Bosnia-Herzegovina to date alone must more than justify intervention by any state or by the United Nations with the objective to restore a normal life in Bosnia-Herzegovina.

V. CONCLUSIONS AND OBSERVATIONS

This article focused on the United Nations' possibilities for military intervention in Bosnia-Herzegovina in order to achieve peace. Based upon the above discussion of the four different standards under which the United Nations may intervene in the Yugoslav war, it ap-

Art. 55, para. c states:

[The United Nations shall promote] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. *Id.*

154. Jordan J. Praust, *Conflicting Norms of Intervention: More Variables For the Equation*, 13 GA. J. INT'L & COMP. L. 305, 306 (1983). See Fernando R. Tresón, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 130-137 (1988) for a full discussion of this conflict.

155. Nanda, *supra* note 150, at 330.

156. *Id.*

157. Steinberg, *supra* note 12, at 50. The latter has been a hot issue for debate in Croatia, Slovenia, and many Western European nations.

pears that the United Nations, if it so desires, has the legal authority to do so. Why, then, does the United Nations not follow its own example set during the Iraq conflict and achieve peace in this manner? Why, instead, does the United Nations continue to negotiate with the Serb factions, who have shown on many occasions that their interest is not in peace but in expansionism utilizing tools of genocide and ethnic cleansing?

The answer can only be found, unfortunately, in politics itself.¹⁵⁸ The United States, often the first to loudly condemn such incidents, does not have, so it appears, any economic or national interests in Bosnia, and is, therefore, reluctant to proceed with military intervention,¹⁵⁹ or to use its powerful role to persuade the United Nations to militarily solve the crisis.¹⁶⁰ Some even say that the United States Department of State deliberately downplays Bosnian genocide accounts in order to avoid public opinion outbursts for United States action.¹⁶¹

European nations, on the other hand, view Bosnia-Hercegovina as a hot iron not to be touched,¹⁶² remembering the sore experience of World War I after the events in Sarajevo. In addition, Europeans do not particularly like the idea of another neighboring Muslim state,¹⁶³ as a result, the European Union excuses its inaction by claiming that its hands are tied without clear United Nations authority to act.¹⁶⁴

In addition to regional excuses for inaction, it appears that the United Nations and the Security Council do not wish to engage in conduct which is unpopular with Western governments.¹⁶⁵ As one

158. See, e.g., United States General Accounting Office, *Report to the Honorable Robert S. Dole, U.S. Senate, Humanitarian Intervention: Effectiveness of Operations in Bosnia 4* (April 1994) (summarizing the evaluation of the United Nations High Commissioner for Refugees about this GAO report) [hereinafter GAO Report to Senator Dole].

159. See *infra* note 129 and accompanying text.

160. Prior examples of the United States' using this influence are plentiful; one needs to point merely to the Iraq and Somalia conflicts. See, e.g., Samuel M. Makinda, *SEEKING PEACE FROM CHAOS: HUMANITARIAN INTERVENTION IN SOMALIA* 59-82 (1993).

161. *Aide says U.S. Ignores Genocide*, N. Y. TIMES, February 4, 1994, at 4 (citing Richard Johnson, former head of U.S. Department of State's Yugoslavia desk).

162. See Sciolino, *supra* note 87.

163. See *Balkan Moral Order*, *supra* note 4. "Britain and France, concerned about the emergence of a Muslim state in Europe, are now eager to forget the brutality of the Serbs." *Id.*

164. See Brian Hall, *Blue Helmets, Empty Guns*, N. Y. TIMES, January 2, 1994, at 20. This proposition appears to hold, at least on its face, true, since the 1958 Treaty of Rome does not address the deployment of military forces into non-member nations.

165. The tragedy caused by this inaction is amplified by the fact that, according to some, the Security Council is finally working as intended by the drafters of the Charter. Prior to the end of the Cold War, any one of the five permanent members of the Council would frequently use its veto power to avoid Council action. Recently,

commentator has phrased the problem: "None of this should come as a great surprise because we are speaking about concerns based on human rights, not the rights of governments, and the United Nations is an organization of governments, not human beings."¹⁶⁶ In fairness it must be acknowledged that the United Nations helped relieve the suffering in Bosnia-Herzegovina to some extent. Through the help of the United Nations, less numbers starved, the Sarajevo airport was kept operational throughout much of this crisis, and airlifts and convoys reduced the overall suffering through their providing of medical and other assistance.¹⁶⁷

However, the United Nations did not stop human rights abuses and the killing of civilians.¹⁶⁸ While Bosnian leaders long ago invited a strong United Nations presence,¹⁶⁹ the United Nations still appears to follow the wishes of Western nations.¹⁷⁰ This policy has the effect of rendering the United Nations an instrument of the United States Department of State. Ironically, this is the precise effect which the United Nations has tried hard to avoid in the past,¹⁷¹ as such an effect would undermine the quintessential existence of any transnational body.

However, imagine that Serbia successfully realizes its goal of a "Greater Serbia." Such a vision, if achieved, may be sustainable¹⁷²

the Security Council members have overcome this stalemate and cooperate with each other. See, e.g., The Stanley Foundation, *CHANGING CONCEPTS OF SOVEREIGNTY: CAN THE UNITED NATIONS KEEP PACE* 25-26 (1992).

166. Douglass Cassel, Jr., *Tenth Annual International Law Symposium 1993 — Select Panel Discussions: Bosnia, War Crimes, and Humanitarian Intervention*, 15 WHITTIER L. REV. 445 (1994).

167. *GAO Report to Senator Dole, supra* note 158, at 25.

168. *See id.*

169. Jeanne J. Kirkpatrick and Morton I. Abramowitz, *Lift the Embargo*, N. Y. TIMES, April 20, 1994, at A19. Obviously, notwithstanding international law issues, one of the factors which contributes to successful peacekeeping operations is the desire by the affected population to have a U.N. presence. See, e.g. Barbara Crossette, *U.N. Falters in Post-Cold-War Peacekeeping, but Sees Role as Essential*, N. Y. TIMES, December 5, 1994, at A6 [hereinafter *U.N. Falters*].

170. The reason for this lies in the fact that the United Nations and the Security Council are political bodies, considering media coverage, public opinion, and budgetary issues first; the rule of law appears to be a secondary consideration. See, e.g., The Stanley Foundation, *THE U.N. ROLE IN INTERVENTION: WHERE DO WE GO FROM HERE?* 20-21 (1993).

171. Barbara Crossette, *U.N. Leader to Call for Changes in Peacekeeping*, N. Y. TIMES, January 3, 1995, at A3 (in an interview with Mr. Boutros Boutros-Ghali, Secretary General to the United Nations) [hereinafter *U.N. Leader to Call for Changes*].

172. Sabrina Petra Ramet, *BALKAN BABEL: POLITICS, CULTURE, AND RELIGION IN YUGOSLAVIA* 180 (1992) (quoting Milos Vasic, editor of *VREME*, a Belgrade opposition paper). A "Greater Serbia" is not achievable through peaceful means due to the cultural, religious, and political diversity. Of course, if the Serbs succeed in their ethnic cleansing campaign, minority opposition of the Serb intellectual community will be small.

but would also lead to a less secure Europe. The new Yugoslavia, led by Serbia and Montenegro, is presently in charge of the armaments of what was once the fifth largest army in the world. To allow the existence of a "Greater Serbia" as the successor to the new Yugoslavia could eventually lead to insecurity not only in Central Europe, but in Western Europe as well. Until the United States policy makers understand this danger, the United States will not originate a sincere push for peace.

Tragically, without a firm push by both the European Union and the United States, military intervention under the supervision of the United Nations in order to achieve peace is not likely to take place. Past accounts of this cruel war¹⁷³ as of yet have not moved global powers to intervene.

Two recommendations follow from these conclusions. First, the United Nations must learn to cope with its new role in the post-Cold War era. If United Nations members must pass amendments to the Charter in order to strengthen the enforcement capabilities of the Security Council,¹⁷⁴ so be it. If the establishment of a quick response security force is required to quickly quell regional disputes,¹⁷⁵ so be it. Hardly any measure, if achieved through democratic process by legal means, is too authoritarian or coercive if the objective is the keeping of world peace and the prevention of gross human rights violations. This is because one of the United Nations' main goals is the maintenance of international security, a goal which the United Nations has not been able to achieve in the Bosnian crisis and a goal which the United Nations will never achieve, unless it is willing to implement drastic measures to calm the conflict under discussion and to prevent future wars.¹⁷⁶ In the long term, the costs of achieving and maintaining peace will be outweighed by their benefits, as only then will the United Nations have the time to devote itself to other important human issues, such as the environment, underdevelopment, and overpopulation.¹⁷⁷

Second, the West must follow its own tough words, condemnations, and threats with actions.¹⁷⁸ Such actions would save lives and accomplish peace. The West promised the Bosnians peace at the beginning of the war; delivery of this promise is long overdue.

173. See, e.g., Zlatko Dizdarevic, SARAJEVO: A WAR JOURNAL (1993); Slavenska Drakulic, THE BALKAN EXPRESS: FRAGMENTS FROM THE OTHER SIDE OF WAR (1993).

174. Ferencz *supra* note 91.

175. *U.N. Falter*, *supra* note 169.

176. See Ferencz, *supra* note 91.

177. *U.N. Leader to Call for Changes*, *supra* note 171.

178. Robert Marquand and Faye Bowers, *Slovenian Premier Urges West: Stay Tough on Serbs*, CHRISTIAN SCI. MONITOR, Apr. 8, 1994, 6 (quoting Janez Drnovsek, Prime Minister of the Republic of Slovenia).

[Editors' Note: The state of affairs for the purposes of this article is February 1995. During the late summer of 1995, NATO selectively bombed Bosnian Serb targets in Bosnia-Herzegovina after the Bosnian Serbs continued to violate established "safe areas" and after yet another shelling in the center of Sarajevo taking many innocent lives. In addition, the 1995 Dayton Agreement permitted U.N. peacekeeping forces to carry out various objectives within the territory of Bosnia-Herzegovina. These recent events do not alter the analysis as presented in this article. The United Nations, here with the help of NATO, and international leadership will only consider military intervention, whether legal or illegal under international law, if the political climate supports such action. It is respectfully submitted that only the consistent application and enforcement of international law, not swings of political winds or smooth-speaking Western "expert" negotiators, will ensure a peaceful world order.]

