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## The Fall of Yugoslavia: The Third Balkan War by Misha Glenny

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## BOOK REVIEW

JOANNE KELSEY\*

THE FALL OF YUGOSLAVIA: THE THIRD BALKAN WAR. By MISHA GLENNY. New York: Penguin Books. 1992. Pp. 194.

*All of us have had, now and then, a terrible, horrifying dream, a nightmare, from which we wake up in the middle of the night or at dawn bathed in sweat from the terror we have experienced. We're overcome by joy to find that it was only a dream and not reality. Sadly, what is happening around us today, this horror, this chaos on our soil, in the heart of Europe, at the beginning of the twenty-first century, this destruction, this killing, this hatred—this, alas, is no dream but a living nightmare.<sup>1</sup>*

### I. INTRODUCTION

The nightmare began on June 25, 1991 when the Republic of Slovenia, followed shortly thereafter by the Republic of Croatia, declared independence from the Federation of the Republics of Yugoslavia.<sup>2</sup> In response, the Serbian-led Yugoslav People's Army (JNA) invaded Slovenia, sparking the fire that ignited the entire Balkan region.<sup>3</sup>

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<sup>1</sup> Boro Todorovic, statement to YUTEL, Nov. 2, 1991, *quoted in* MISHA GLENNY, *THE FALL OF YUGOSLAVIA: THE THIRD BALKAN WAR* at ix (1992).

<sup>2</sup> *A Whirlwind of Hatreds: How the Balkans Broke Up*, N.Y. TIMES, Feb. 14, 1993, at E5 [hereinafter *Whirlwind*]. Slovenia's secession arose from its dispute, primarily with Serbia, over the future political relationships among the country's republics and provinces. See Richard F. Iglar, Comment, *The Constitutional Crisis in Yugoslavia and the International Law of Self-Determination: Slovenia's and Croatia's Right to Secede*, 15 B.C. INT'L & COMP. L. REV. 213, 216 (1992). Croatia and Slovenia, supported by Bosnia-Herzegovina, Macedonia, and Kosovo, favored a loose confederal system, rather than the centralized federal system desired by Serbia, Montenegro, and Vojvodina. *Id.*

<sup>3</sup> This invasion included efforts to seize Slovenia's international border crossings. *Whirlwind*, *supra* note 2, at E5. Slovenia's militia successfully resisted the attack. *Id.* The Yugoslav army also attacked Croatia, which, having lost 30% of its territory, declared it would continue fighting to reclaim it. Sabrina P. Ramet, *War in The Balkans*, FOREIGN AFF., Fall 1992, at 79, 81.

The violence in Croatia and Slovenia and the European Community's recognition of these states pushed Bosnia into an abyss. With Croatia and Slovenia under Serbian attack, the Bosnian government had three choices: it could remain within the Yugoslav Federation and be ruled by Serbia, it could accept the territorial division of Bosnia between Serbia and Croatia, or it could apply to the United Nations for recognition as an independent state. GLENNY, *supra* note 1, at 143. Bosnian-Croats and Moslems, wary of Serbian domination, considered the first solution unacceptable; the Moslems, unhappy with the prospect of a division of their country, rejected

The ensuing battles,<sup>4</sup> the systematic rape of women,<sup>5</sup> and the Serbian campaign to “ethnically cleanse”<sup>6</sup> the Republic of Bosnia-Herzegovina have been documented and publicized in excruciating detail.

Because observers have lacked sources that accurately depict the historical events fueling this violence, few people understand the underlying causes of the bloodshed. The sources that do address this subject often lack credibility, leading to misrepresentations and rumors that only fan the flames of ethnic hatred.<sup>7</sup> From this perspective, the contribution of Misha Glenny’s *The Fall of Yugoslavia: The Third Balkan War*<sup>8</sup> is readily apparent. The book provides a vivid personal account of the events and personalities that led to Europe’s first war since 1948.<sup>9</sup> Through a detailed account of his personal interactions with the people of the Balkans and their leaders, Glenny provides a foundation for

the second alternative; and the Serbs, as they fought to create a “greater Serbia,” found the third proposal unacceptable. *See generally id.* Each option appeared to lead to armed conflict among the different groups.

In April 1992, just prior to the United States’ and European Community’s recognition of Bosnia-Herzegovina’s independence, Serbian nationalists and the Yugoslav Army launched their attempt to claim the Bosnian territory for Greater Serbia. *Whirlwind, supra* note 2, at E5. In the winter of 1994, despite dozens of cease-fire orders and efforts by the United Nations to end the conflict, the fighting still continued.

<sup>4</sup> Mark Weller, *Current Developments: The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 AM. J. INT’L L. 569, 570, 571–73 (1992).

<sup>5</sup> Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 AM. J. INT’L L. 424, 424–25 (1993) (describing rape in Bosnia as deliberate, massive, and egregious). An unpublished European Community report described rape as a Serbian war strategy. Arthur H. Matthews, *Yugoslavia’s Waiting Game*, WORLD, Jan. 16, 1993, at 12. According to the report, sexual assaults against an estimated 20,000 women and children should not “be seen as incidental to the main purpose of the aggression, but as serving a strategic purpose in itself.” *Id.*; *see also Petition Decries Practice of Rape in Bosnia and Herzegovina*, GAZETTE, Mar. 11, 1993, at A3. The experience of one 17-year-old, as described to journalists, is representative: “After raping [Marijana] and her mother, Serb irregulars carried [her] off to a camp in the forest, where she and a group of other women were raped repeatedly over several weeks. They finally freed her when she became pregnant . . .” Bruce W. Nelan, *Rumor & Reality*, TIME, Aug. 24, 1992, at 46.

<sup>6</sup> The term “ethnic cleansing” has been defined as “the forcible eviction of particular populations variously defined by their ethnicity and culture, including religion and language, from areas that are claimed by other groups.” M.J. Rowlands et al., *The Fallacy of Ethnic Territorial Claims*, INDEPENDENT, May 18, 1993, at 17; *see also Ex-Yugoslavia*, ECONOMIST, Oct. 10, 1992, at 64.

<sup>7</sup> Ramet, *supra* note 3, at 80; *see also* GLENNY, *supra* note 1, at 180.

<sup>8</sup> GLENNY, *supra* note 1. In 1912 and 1913, two separate wars raged through the Balkan region—hence Misha Glenny’s title choice. For more information on the origins and outcomes of these wars, *see* CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, REPORT OF THE INTERNATIONAL COMMISSION TO INQUIRE INTO THE CAUSES AND CONDUCT OF THE BALKAN WARS (1914).

<sup>9</sup> Misha Glenny, the Central Europe correspondent of the BBC’s World Service, was stationed in Yugoslavia from June through December 1991. He is also the author of *THE REBIRTH OF HISTORY: EASTERN EUROPE IN THE AGE OF DEMOCRACY* (1990).

an understanding of the origins of the seemingly intractable hostilities, as well as the reasons for their longevity.

Glenny's portrayal of the region is realistic and unbiased. He subjects all sides of the conflict to a rigid, but fair, inquisition. He avoids placing definitive blame for the Balkans tragedy on any one group, but indicates clearly the frailties and misperceptions of them all. *The Fall of Yugoslavia* begins in Knin, a militarily strategic town in Croatia, where Glenny's focus on the region's symbolic landmarks provides a useful gateway to informed discussions of the ethnic history of the region's population.<sup>10</sup> Glenny next travels to Belgrade, where his account focuses on Serbian leader Slobodan Milosevic's politics, military connections, and ultimate rise to power.<sup>11</sup> In later chapters of *The Fall of Yugoslavia*, Glenny comments on the factors motivating Slovenia's and Croatia's drives for independence<sup>12</sup> and the quagmire of Bosnia-Herzegovina.<sup>13</sup> In his epilogue, Glenny retreats from his more provincial focus and provides a global framework outlining the competing interests in the Balkans.<sup>14</sup> At this point, the difficulties and possible futility of using international force to contain the violence in the former Yugoslavia become clear.

## II. NEW PERCEPTIONS OF THE CONFLICT

Glenny's glimpse into Yugoslavia's past and his details of its present provide insight into the factors fueling the current hostilities. By focusing on the "real people" of the conflict, Glenny provides an individualized analysis of the disastrous consequences of forcing the union of people with diverse ethnic, political, and religious views. Such a viewpoint may shake some observers' beliefs that the atrocities are simply the unjustified, selfish, and one-sided activities of a purely fanatical group—the Serbs.

At the beginning of 1991, Yugoslavia was a federation of six republics: Serbia, Croatia, Slovenia, Bosnia-Herzegovina, Montenegro, and Macedonia; and two autonomous provinces: Vojvodina and Kosovo.<sup>15</sup> Eight major ethnic populations lived in regions that corresponded approximately to the political divisions of the federation,<sup>16</sup> and the

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<sup>10</sup> GLENNY, *supra* note 1, at 1–30.

<sup>11</sup> *Id.* at 31–61.

<sup>12</sup> *Id.* at 62–97.

<sup>13</sup> *Id.* at 138–76.

<sup>14</sup> *Id.* at 177–84.

<sup>15</sup> Iglar, *supra* note 2, at 215 n.21.

<sup>16</sup> *Id.*

names of the republics generally corresponded to their *majority* populations.<sup>17</sup> Whereas each region claimed a particular ethnic concentration, no single ethnic group possessed an absolute majority in Yugoslavia.<sup>18</sup>

Glenny points out that one weakness in the belief that the Serbian campaign was unprovoked and irrational is that not all Serbs lived in the geographic region designated "Serbia."<sup>19</sup> For example, 600,000 Serbs lived in Croatia.<sup>20</sup> The majority were urbanized, shared a symbiotic relationship with their Croatian neighbors, and were often referred to as "*Hrbi*, a conflation of *Hrvati* (Croats) and *Srbi* (Serbs)."<sup>21</sup> According to Glenny, the neighbor-against-neighbor conflict that tore through Croatia in 1991 could not have arisen out of such an integrated relationship—there must have been other influences.<sup>22</sup>

In particular, Glenny suggests that the heart of the conflict in Croatia lies in the contrast between urbanized Serbs and their rural relatives.<sup>23</sup> In contrast to the highly educated, elite, urban Serbs, it is

[the] rural Serbs who control the broad swathes of countryside . . . . The economic horizons of the rural Serbs are limited, but the early post-feudal concepts of land and home are central to their thinking and sense of security. Passive for decades, when they believed their homes were under threat, their harmless ignorance transformed into something extremely dangerous.<sup>24</sup>

Key political figures misjudged the extent of the differences between these two groups. Glenny contends that the mistake of attributing similar qualities to both the urban Serbs and their rural counter-

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<sup>17</sup>The province of Kosovo, however, contains an Albanian majority. *Id.*

<sup>18</sup>BRUCE MCFARLANE, *YUGOSLAVIA: POLITICS, ECONOMICS AND SOCIETY* 2 (1988). Few inhabitants of the former Yugoslavia actually consider themselves "Yugoslavians." The 1981 census counted 22.4 million people consisting of 9.3 million Serbs, 4.6 million Croats, 4.1 million Bosnians, 1.9 million Macedonians, 1.8 million Slovenes, 1.7 million Albanians, 590,000 Montenegrans, and 470,000 Hungarians. *Id.* at 2.

<sup>19</sup>See GLENNY, *supra* note 1, at 2.

<sup>20</sup>Paul Lendvai, *Yugoslavia Without Yugoslavs: The Roots of the Crisis*, 67 INT'L AFF. 251, 253 n.5 (1991).

<sup>21</sup>GLENNY, *supra* note 1, at 3.

<sup>22</sup>One commentator points out that it is a circulating myth, and therefore no justification, that this conflict between the Croatian and Serbian people is "centuries old." Ramet, *supra* note 3, at 80. She claims that actual violence between the groups did not begin until after World War I, which indicates that the people of Yugoslavia lived together peacefully for centuries. *Id.*

<sup>23</sup>GLENNY, *supra* note 1, at 3.

<sup>24</sup>*Id.*

parts was most problematic when made by President Franjo Tudman,<sup>25</sup> winner of Croatia's 1990 democratic elections. Tudman viewed the seemingly submissive and integrated nature of the urban Serbs as representative of all Croatian Serbs.<sup>26</sup> Likewise, Tudman's representatives in Croatia's rural areas arrogantly assumed that the passivity and adaptability of the Serbs living in urban communities reflected the values of the entire Serbian community in Croatia. Consequently, they handled matters in an indelicate manner.<sup>27</sup> This led the rural Serbs to believe that the Croats had begun to create the infrastructure of a fascist state.<sup>28</sup>

Many events support this Serbian belief. Tudman's political methods, though somewhat democratic, exhibited authoritarian tendencies. His obsession with creating a "state which would be identified with the Croatian people"<sup>29</sup> stood in vivid contrast to the style of former Yugoslavian leader Josip Bizo Tito, who had successfully suppressed Serbian-Croatian enmity during his rule.<sup>30</sup> Each change implemented by Tudman further alienated the Serbs living in Croatia and strengthened their fears of Croatian domination.<sup>31</sup> Tudman, for example, authorized the hanging of the red and white shield of Croatian heraldry in public locations, demoted many Serbs from high government positions, and demanded that literary Croat be the official language of people in administrative positions.<sup>32</sup>

Tudman's goal of increasing Croatian nationalism and Tito's contrasting style of minimizing differences demonstrate two different approaches to solving the particular conundrum of the Balkan peninsula—the choice of either a centralized, federal system of government or a loose confederal system would have alienated at least one group. Whereas developing a Yugoslav state would have implied the dominance of Serbs over Croats, creating an independent Croatia would have implied the dominance of Croats over Serbs.<sup>33</sup> Each approach was destined to fail.

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 12.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 13. Tito ruled Yugoslavia with a unique brand of liberalized communism, which allowed for rival points of view to be voiced in the media. Ramet, *supra* note 3, at 82. Under his rule, the country remained at peace from 1943 to 1980. *See id.*

<sup>31</sup> GLENNY, *supra* note 1, at 12.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 13.

When Croatia declared its independence in 1991, violence ensued as a result of the opposition of the 600,000 Serbians stranded in Croatia.<sup>34</sup> The neighbor-against-neighbor violence displayed by the Croats and Serbs represents only one of the problems created by centuries of intertwined ethnic, religious, and political forces in the Balkans.<sup>35</sup> Rather than serving to unify the different groups, these common threads in the patchwork of Balkan tensions only intensify the complexity involved in designing an effective solution to the violence in the region.

As cease-fires continue to be broken, a solution involving military force grows more likely. Assuming a decision to pursue such a solution, the international community would require legal avenues through which to implement it. Currently, no precedent exists for intervention with force for purely humanitarian purposes. By analyzing the laws governing intervention authorized by the United Nations Security Council, however, a viable justification for intervention can be developed.

### III. LEGALITY OF INTERVENTION WITH FORCE

*The Fall of Yugoslavia* provides a contextual background against which a legal justification for humanitarian intervention can be discussed. Initially, the most important consideration is whether the fighting in Bosnia-Herzegovina should be characterized as a civil war or an international conflict.<sup>36</sup> The significance of this distinction originates in debates on the legality and obligation of outside intervention.<sup>37</sup> Victims of the conflict, as well as outside observers, had lobbied

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<sup>34</sup>In contrast, Slovenia seceded relatively painlessly. *Id.* at 177. Slovenia's peaceful transition resulted from both the healthier Slovene economy and the region's strong sense of tradition and ethnic homogeneity. *Id.* at 97.

<sup>35</sup>See Iglar, *supra* note 2, at 216.

<sup>36</sup>Weller, *supra* note 4, at 572. A serious threat exists that the conflict in Bosnia will spread to Kosovo and Macedonia, thus drawing Albania, Greece, Bulgaria, and Turkey into the war. Ramet, *supra* note 3, at 80. In fact, in January 1993, Ibrahim Rugova, the leader of the Albanians in Kosovo traveled to the United States to request the United Nations' intervention in order to prevent the "cleansing" drive from spreading. The next probable target of the Serbians is the province of Kosovo, where ethnic Albanians constitute a majority. Matthews, *supra* note 5, at 12.

<sup>37</sup>The debate is wide ranging. For views arguing against the legality of humanitarian intervention, see Farrokh Jhabvala, *Unilateral Humanitarian Intervention and International Law*, 21 *IND. J. INT'L L.* 208 (1981); Oscar Schachter, *The Right of States to Use Armed Force*, 82 *MICH. L. REV.* 1620 (1986). For arguments in favor of the legality of humanitarian intervention, see Michael J. Bazylar, *Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia*, 23 *STAN. J. INT'L L.* 547 (1987); Michael J. Levitin, *The Law of Force and the Force of Law: Grenada, the Falklands, and Humanitarian Intervention*, 27 *HARV. INT'L L.J.* 621 (1986).

intensively for an effective intervention by the United Nations. Serbian leaders, however, never acknowledged the secession of Croatia, Slovenia, and Bosnia-Herzegovina. In their opinion, the conflict was a civil war.<sup>38</sup> As such, the United Nations had neither a right to intervene with force nor any precedent for such intervention.

Alternatively, because the United Nations had admitted the Republics of Slovenia, Bosnia-Herzegovina, and Croatia as new members,<sup>39</sup> the United Nations may have cleared a path for legal, forceful intervention. Under currently accepted international legal principles, when a member nation of the United Nations requests outside intervention, other member nations may comply.<sup>40</sup>

At least two potential legal justifications exist for the United Nations to intervene with force in the Balkans.<sup>41</sup> First, the United Nations Security Council may authorize intervention with force.<sup>42</sup> Second, when certain conditions exist, other member states may intervene under their own authority.<sup>43</sup>

#### A. *Intervention Authorized By The United Nations Security Council*

Created at the end of the Second World War, the United Nations proposed to "save succeeding generations from the scourge of war" and to "reaffirm faith in fundamental human rights, [and] in the dignity and worth of the human person . . . ."<sup>44</sup> Arguably, Cold War politics stunted the development and implementation of the United Nations' role. Today, however, with the end of the Cold War, the role of the Security Council as an instrument of collective security may be

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<sup>38</sup> HELSINKI WATCH, *WAR CRIMES IN BOSNIA-HERZEGOVINA* 47 (1992) [hereinafter *WAR CRIMES*].

<sup>39</sup> G.A. Res. 236, U.N. GAOR, 46th Sess., Agenda Item 20, at 1, U.N. Doc. A/Res/46/236 (1992); G.A. Res. 237, U.N. GAOR, 46th Sess., Agenda Item 20, at 1, U.N. Doc. A/RES/46/237 (1992); G.A. Res. 238, U.N. GAOR, 46th Sess., Agenda Item 20, at 1, U.N. Doc. A/RES/46/238 (1992).

<sup>40</sup> See Louis Henkin, *Use of Force: Law and U.S. Policy* [hereinafter *Use of Force*], in *RIGHT v. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE* 37, 45 (Council on Foreign Relations ed., 1989).

<sup>41</sup> Because the United Nations had not recognized these republics as independent member nations when Serbian-led forces first invaded their respective territories, an argument could be made that this is not an international conflict. Such an argument is questionable, however, because the republics have requested aid since their recognition by and admission into the United Nations General Assembly.

<sup>42</sup> See Barry M. Benjamin, *Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities*, 16 *INT'L L.J.* 120, 130 (1992).

<sup>43</sup> See Louis Henkin, *Law and War After the Cold War*, 15 *MD. J. INT'L L. & TRADE* 147, 151-55 (1991) [hereinafter *Law and War*].

<sup>44</sup> U.N. CHARTER pmbl.



considered more seriously.<sup>45</sup> Some argue that the Security Council remains the institution best designed to carry out the protection of human rights.<sup>46</sup>

In Article 2(1) of the United Nations Charter, member states confer the responsibility of maintaining international peace and security upon the Security Council, and agree that the Council acts on their behalf when it carries out its duties. Under Article 25, member states have also agreed to accept and carry out the decisions of the Security Council in accordance with the United Nations Charter.

The Security Council's legal right to intervene in the Bosnia-Herzegovina conflict is consistent with its responsibilities under the United Nations Charter. Specifically, Article 39 provides that once the Council has determined that there has been a breach, or threat of breach, to international peace, it can either recommend or decide what measures should be taken.<sup>47</sup> Under Article 42, if measures not involving the use

<sup>45</sup> The Security Council is composed of five permanent members (China, France, Russia, the United States, and the United Kingdom) and 10 nonpermanent members. U.N. CHARTER art. 23. Procedural decisions are now made upon a vote of nine members, but in cases of substantive matters, a negative vote by one or more of the permanent members constitutes a veto. U.N. CHARTER art. 27; Sydney D. Bailey, *The Security Council, in THE UNITED NATIONS AND HUMAN RIGHTS* 304, 305 (Philip Alston ed., 1992). Because intervention with force requires the unanimous vote of all members of the United Nations Security Council, and during the Cold War it was unlikely that the United Nations superpowers—the United States and the U.S.S.R.—would agree on substantive matters, the concept of humanitarian intervention never evolved. The only exception to this was the Security Council's action during the Korean War, which occurred only because the "Soviets were absent from the Council, having voluntarily left their seat vacant in protest over the Council's refusal to seat the Chinese communists instead of the Chinese nationalists." JOSEPH M. SWEENEY ET AL., *THE INTERNATIONAL LEGAL SYSTEM* 1305 (3d ed. 1988).

<sup>46</sup> See generally *Law and War*, *supra* note 43, at 158–66. But see Alan K. Henrikson, *How Can the Vision of a 'New World Order' Be Realized?*, *FLETCHER FORUM WORLD AFF.*, Winter 1992, at 66–67 (suggesting that alternatives to United Nations Security Council action be tested).

The Persian Gulf War represented a turning point for the United Nations Security Council. The collective action taken under the aegis of the United Nations in that conflict has been hailed as "a vindication of international law and of the principle of collective security." Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 *AM. J. INT'L L.* 452, 452 (1991). Although most nations recognize that a new world order "based on the rule of law" may be a distant prospect there is a sense of renewed hope that the Security Council will be taken seriously as an instrument of collective responsibility. *Id.*

<sup>47</sup> Article 39 provides that "[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." U.N. CHARTER art. 39. Article 41 provides:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

U.N. CHARTER art. 41.

of armed force are inadequate to resolve the conflict, the Council has the right to resort to the use of air, land, and sea forces.<sup>48</sup>

As Glenny indicates, the Balkan conflict has the potential to reach international proportions because “[t]he re-emergence not simply of old Balkan conflicts but of local and more international alliances and strategies implies considerable danger for the stability of southern Europe, central and eastern Europe and the Mediterranean.”<sup>49</sup> The United Nations Security Council, therefore, has sufficient reason to intervene in the regional conflict. As impatient member states await significant Security Council intervention, however, the legality of unilateral state intervention based on humanitarian measures must also be explored.

### B. *Intervention By Member States*

International law governing the right of United Nations member states independently to use force against other nations is based in Article 2(4) of the United Nations Charter.<sup>50</sup> This article provides that “[a]ll 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.” It is generally agreed that a violation of this article occurs whenever a state enters the territory of another state by force, for any purpose, and for any length of time.<sup>51</sup>

One explicit exception to the constraints of the article is the use of force against another state in self-defense.<sup>52</sup> During the Cold War,

<sup>48</sup> Article 42 provides:

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.

U.N. CHARTER art. 42.

The Council’s decisions are binding, however, only if a formal determination is made under Article 39 or if words from that Article, but not synonyms, are incorporated into a decision of the Council. Bailey, *supra* note 45, at 305. United Nations members have in theory agreed to accept and carry out the Council’s decisions. U.N. CHARTER art. 25. When the Council decides on provisional, nonmilitary, or military measures, United Nations members are expected to “join in affording mutual assistance in carrying out the measures . . .” U.N. CHARTER art. 49.

<sup>49</sup> GLENNY, *supra* note 1, at 183.

<sup>50</sup> *Law and War*, *supra* note 43, at 149. In principle, sending forces into the territory of another state does not violate the laws of the Charter when those forces have been legitimately invited. *Id.* at 148–49. The question of which legitimate government may legally invite outside forces into Bosnia-Herzegovina is beyond the scope of this review.

<sup>51</sup> *Id.* at 149–50.

<sup>52</sup> Article 51 provides in part: “Nothing in the present Charter shall impair the inherent right of the individual or collective self-defense if an armed attack occurs against a Member of the

certain other "benign" exceptions were also suggested, although none were formally accepted. These include the use of force to support self-determination,<sup>53</sup> intervention for socialism,<sup>54</sup> intervention for democracy,<sup>55</sup> and intervention for humanitarian purposes.<sup>56</sup>

The argument in favor of allowing humanitarian intervention is based on the simple premise that the Charter's framers could not possibly have intended to forbid a state from penetrating another state with armed forces in order to save human lives.<sup>57</sup> Although this is a noble interpretation, as of 1993 the only viable exception to Article 2(4) in the area of humanitarian intervention has been the *Entebbe* principle.<sup>58</sup> This limited exception allows a state to use limited force if necessary to rescue hostages.<sup>59</sup> Attempts to extend this principle beyond the use of minimal force—for example, to justify the use of force to destroy repressive governments—have been rejected.<sup>60</sup>

One argument against humanitarian intervention in the Balkans is an interpretation of the Charter that posits that once the Security Council has taken action regarding a conflict, individual member nations lose the right to intervene absent specific instructions from the Council.<sup>61</sup> As mentioned above, it could be argued that the Council's actions in the Balkan conflict—calling for cease-fires, structuring embargoes, and recognizing the crisis as a threat to international peace—

United Nations, until the Security Council has taken measures necessary to maintain international peace and security." U.N. CHARTER art. 51.

<sup>53</sup> See *Use of Force*, *supra* note 40, at 47. Although the definition of self-determination remains unclear, many experts agree that it includes, at a minimum, "the right of peoples in Asia and Africa to be free from Colonial domination, Western style." *Id.* The debate centers on whether external powers may intervene with force in the context of expelling colonial domination. *Id.* Experts note that in the modern world, pressure for such an exception has diminished, and, therefore, "the potential significance of such an exception . . . is sharply reduced." *Id.* at 43.

<sup>54</sup> *Id.* The basic tenet of this so-called Brezhnev doctrine is the right of any socialist state to intervene in another state where socialism is threatened. *Id.*

<sup>55</sup> *Id.* at 44. The basic tenet of this so-called Reagan doctrine is the right of an outside state to use force to preserve or impose democracy in another state. *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> See *Law and War*, *supra* note 43, at 157.

<sup>58</sup> *Id.* at 151.

<sup>59</sup> *Id.*

<sup>60</sup> See *id.* The United States invoked, inter alia, the right to use force to save lives as justification for invading and replacing the governments of Grenada in 1983 and Panama in 1989. *Id.* Vietnam made a similar claim to justify replacing the prior regime in Cambodia. The international legal community rejected all these attempts to justify international aggression. *Id.*

<sup>61</sup> Taken literally, this language prevents a nation from defending itself beyond its borders, even in situations where the aggressor nation ignores the Council's mandates. Schachter, *supra* note 46, at 458; P. Lewis, *U.S. Preparing Draft on Claims Against Baghdad*, N.Y. TIMES, Nov. 1, 1990, at A12. In contrast, another interpretation of Article 51 recognizes that the Security Council's authority includes requiring an armed action to cease. Schachter, *supra* note 46, at 458. This would occur at the Council's discretion, however, and not as a mandatory consequence of every Council action. *Id.*

constituted intervention sufficient to preclude individual member nations from acting on their own.<sup>62</sup> Nonetheless, the ambiguity over interpretations of the United Nations Charter, as well as the possibility for ethnic conflict elsewhere in the world, establish strong justifications for creating a new exception to Article 2(4) authorizing humanitarian intervention.<sup>63</sup>

#### IV. CONCLUSION

Had they so chosen, the United Nations could have found a legal justification for intervening with force in the Balkan conflict. Instead, for over two years, the United Nations authorized only limited, benign intervention. Although the justification for allowing human rights violations to continue remains elusive, *The Fall of Yugoslavia* provides a starting point for understanding the factors underlying the United Nations' decisions.

Unfortunately, the Balkan conflict is not an isolated incident. With half the world's population being denied fundamental human rights,<sup>64</sup> conflicts similar to those occurring in the Balkans—based on historical animosity and ethnic, religious, and political differences—inevitably will erupt in the form of genocide and massive human rights violations. International leaders must respond with more effective tools of deterrence. As Glenny concludes, “[t]hroughout the Cold War, only poorly funded human rights organizations addressed this problem [of nationalist disputes concerning a minority population] with any seriousness. If the problems of the Balkans and the former Soviet Union are to be solved, politicians and diplomats must consider [these disputes] with equal gravity.”<sup>65</sup> By highlighting the complex factors involved in designing an effective solution to a war based in historical ethnic conflict, Misha Glenny's account reemphasizes the need for the international community to become more proactive in both discouraging ethnic conflicts before they start and ending them quickly once they have begun.

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<sup>62</sup> See e.g., U.N. SCOR, 46th Sess., 3009th mtg. at 3, U.N. Doc. S/RES/713 (1991), reprinted in 31 I.L.M. 1431 (arms embargo); U.N. SCOR, 46th Sess., 3018th mtg. at 2, U.N. Doc S/Res/721 (1991), reprinted in 31 I.L.M. 1433 (peacekeeping operations); U.N. SCOR, 46th Sess., 3023d mtg. at 3, U.N. Doc. S/RES/724 (1991), reprinted in 31 I.L.M. 1435 (humanitarian aid and other United Nations actions). For a detailed description of Security Council actions in the conflict, see WAR CRIMES, *supra* note 38, at 145–71.

<sup>63</sup> A humanitarian intervention exception could use international human rights law as its normative base. On the importance of international human rights at both the national and global levels, see generally Richard B. Bilder, *Rethinking International Human Rights: Some Basic Questions*, 1969 WIS. L. REV. 171.

<sup>64</sup> UN: *Rights Denied Half World's People*, BOSTON GLOBE, Apr. 19, 1993, at A53.

<sup>65</sup> GLENNY, *supra* note 1, at 184.





