The Obligation to Use Force to Stop Acts of Genocide: An Overview of Legal Precedents, Customary Norms, and State Responsibility*

TABLE OF CONTENTS

I. INTRODUCTION .............................................................................................................. 462
II. FRAMING THE ISSUE: THE HORRORS OF GENOCIDE AND THE FAILURE OF THE GENOCIDE CONVENTION TO STOP IT................................................................. 463
III. THE EXISTING STRUCTURE: THE GENOCIDE CONVENTION AND HOW IT WORKS .......................................................................................................................... 465
IV. THE ROLE OF THE UNITED NATIONS IN INTERNATIONAL HUMANITARIAN INTERVENTION ........................................................................................................ 468
   A. Somalia .......................................................................................................................... 470
   B. Bosnia ........................................................................................................................... 471
   C. Rwanda ......................................................................................................................... 472
V. THE INITIATION OF HUMANITARIAN INTERVENTION THROUGH UNILATERAL OR REGIONAL ACTION: Kosovo ........................................................................................................ 473
VI. BRINGING THE PERPETRATORS TO JUSTICE: CAPTURING THOSE GUILTY OF COMMITTING GENOCIDE .................................................................................. 478
   A. Slobodan Milosevic ..................................................................................................... 478
   B. Adolph Eichmann ......................................................................................................... 479
VII. THE OBLIGATION TO ACT IN THE FACE OF GENOCIDAL ACTS ................................. 481
   A. Labeling a Situation as “Genocide” ........................................................................... 481
   B. What Obligations? ....................................................................................................... 482
   C. Other Justifications for the Convention ...................................................................... 483
VIII. ADDRESSING STATE CONCERNS REGARDING HUMANITARIAN INTERVENTION TO PREVENT OR PUNISH ACTS OF GENOCIDE .................................................. 484
IX. CONCLUSION ............................................................................................................. 488

* J.D. candidate 2006, University of San Diego School of Law. The author would like to thank his family for their unconditional support of his perpetual academic endeavors. The author would also like to thank Professor Laura Adams, Hilary Stauffer, Brigid Bennett, and the editorial staff of the San Diego International Law Journal for their guidance and assistance with this comment.
Action springs not from thought, but from a readiness for responsibility.

Dietrich Bonhoeffer

I. INTRODUCTION

Though the Genocide Convention was created to "liberate mankind from [the] odious scourge"2 of genocide, the dreams of its drafters have still not come to fruition. The commission of genocide, widely considered the most appalling of all crimes,3 did not end with the signing and ratification of the Convention in 1948. Genocide continues in the world today.4 While its sentiments were noble and its aims commendable, the Genocide Convention as it is interpreted and applied today is insufficient to stop the commission of genocide in the world. In order to rid the world of this crime, a new interpretation of the Convention is needed. If the commission of genocide is truly to be prevented and punished, the international community must come to accept the use of force to stop such acts.

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1. Dietrich Bonhoeffer (1906-1945) was one of the leaders of Germany's "Confessing Church" which opposed the Nazi influence on German Protestant churches and the Nazi racial doctrines. He was arrested and imprisoned in 1943 for his efforts to help a group of Jews escape to Switzerland. Bonhoeffer was hanged at the concentration camp in Flossenburg on April 9, 1945. See The International Dietrich Bonhoeffer Society, Who is Dietrich Bonhoeffer, available at http://www.dbonhoeffer.org/node/3 (last visited Jan. 27, 2006); see also Theologian of Life, TIME, May 9, 1960, at 53-54.
3. See Minister of State at the Federal Foreign Office, Speech by Kerstin Muller at the Stockholm International Forum on Preventing Genocide, Jan. 26, 2004 (referring to genocide as "the most extreme kind of human rights violation"); see also ALAIN DESTEXHE, RWANDA AND GENOCIDE IN THE TWENTIETH CENTURY 15 (N.Y.U Press 1995) (calling genocide "the most anti-human of all crimes" and "the most infamous of crimes"); see also Statement by President Horst Kohler of Germany, quoted in If You Will Be the Same After This, We Will Be Lost, INT'L HERALD TRIB., Jan. 28, 2005, available at http://www.iht.com/articles/2005/01/27/quotesed3_.php (last visited Jan. 29, 2006) (describing the Holocaust as "the worst crime in human history").
II. FRAMING THE ISSUE: THE HORRORS OF GENOCIDE AND THE FAILURE OF THE GENOCIDE CONVENTION TO STOP IT

While it has probably become the best-known example of genocide, the Nazi Holocaust was not the first time in the twentieth century that an attempt was made to destroy a national, ethnic, racial, or religious group. Between 1915 and 1922, approximately 1.5 million Armenians living in Turkey were systematically killed through a series of forced deportations and massacres. Between 1932 and 1933, in response to efforts by Ukrainians to seek independence from Soviet rule, Joseph Stalin forced a famine upon the Ukrainians that scholars believe led to somewhere between seven and ten million deaths. In December of 1937, the Japanese Imperial Army marched into China's capital city of Nanking and murdered approximately half of the 600,000 inhabitants in the Rape of Nanking. But it was not until the horrors of the Nazi Holocaust (1938 to 1945), in which approximately six million Jews, Gypsies, and other minority groups were systematically murdered, that the international community, and specifically the United Nations, made a concerted effort to identify and codify a response to the crime of genocide.

It is generally accepted that the term "genocide" was first coined by a Polish-Jewish lawyer named Raphael Lemkin in 1944. Lemkin used the term to describe the policies of systematic and mass murder used by the Nazis during the Holocaust. While the Nazi Holocaust was neither the first, nor regrettably the last, incident of genocide, it opened the eyes of the international community to the need for a more effective response to the crime of genocide.
of the international community to mankind’s horrific potential for systematic and holistic cruelty.

In 1945, top Nazis at the Nuremberg Trials were charged with “crimes against humanity” rather than genocide. However the indictment itself accused the Nazis of having “conducted deliberate and systematic genocide . . . in order to destroy particular races and classes of people and national, racial or religious groups . . . “ In the wake of the “never again” mentality that permeated much of post-World War II international affairs, the United Nations ratified the Convention on the Prevention and Punishment of the Crime of Genocide on December 9, 1948.

The Genocide Convention was an ambitious attempt by the international community to codify concerted steps in attaching international criminal liability to genocide and related crimes, and to establish a system whereby the perpetrators of any future acts of genocide could be punished. But while the Genocide Convention has been, at best, fairly effective in punishing the perpetrators of acts of genocide, it has not met its initial goal of preventing future acts of genocide from occurring. Despite the ratification of the Genocide Convention in 1948 and its entry into force in 1951, with 41 signatories and 133 parties, the commission of genocidal acts has continued.

Between 1975 and 1979, Cambodian Khmer Rouge leader Pol Pot orchestrated a systematic program of starvation, overwork, and executions, targeted largely at ethnic minorities within Cambodia, which left approximately two million people dead. In 1994, approximately 800,000 Rwandans of Tutsi descent were killed by Rwandan Hutu militias using machetes and hoes, at a rate as high as 10,000 per day. Between

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13. Id.
15. Genocide Convention, supra note 2.
16. See id.
18. Id.
19. Id.
1992 and 1995, approximately 200,000 Bosnian-Muslims were slaughtered by the Serbian forces of Slobodan Milosevic in mass killings and various other acts of "ethnic cleansing."  

While the Genocide Convention was a well-intentioned step in the right direction, more must be done in order to rid the world of the scourge of genocide. As genocide is widely considered to be the most horrific of all crimes, the leaders of the international community owe it to their constituents to "put some teeth" in the Genocide Convention by (a) increasing the speed by which acts of genocide are identified and dealt with, and (b) placing more responsibility on states and international alliances to employ forceful intervention to stop acts of genocide. This comment will focus on the second prong of this recommendation: the obligation of the international community to use force to stop acts of genocide and whether precedents exist for such actions.  

III. THE EXISTING STRUCTURE: THE GENOCIDE CONVENTION AND HOW IT WORKS  

The Genocide Convention defines genocide as certain acts that are done with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. For the purposes of the Convention, these acts include: killing members of such a group; causing serious mental or bodily harm to the members of such a group; deliberately inflicting on such a group conditions of life calculated to bring about the group's physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group. Thus, a variety of acts are considered by the Convention to constitute genocide, with the primary distinguishing

23. William Drozdiak, Milosevic to Face Genocide Trial For Role in the War in Bosnia; Yugoslav Ex-Leader First Head of State to Be So Charged, WASHINGTON POST, Nov. 25, 2001, at A22.  

24. Genocide Convention, supra note 2, pmbl.  


26. Genocide Convention, supra note 2, art. 2.  

27. Id.  

28. Id.  

29. Id.  

30. Id.  

31. Id.
attribute being that such acts are committed against a national, ethnic, racial, or religious group with the intention of destroying that group in whole or in part. In addition to specific acts of genocide as defined above, the Genocide Convention also attaches criminal liability to a variety of associated acts including: conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; and complicity to commit genocide. This criminal liability can attach to either responsible leaders or private individuals for the commission of any of these aforementioned acts.

Each contracting party to the Genocide Convention undertakes to enact domestic legislation that gives effect to the provisions of the Convention. In so doing, each state provides domestic penalties for persons under that particular state’s jurisdiction who are found to be guilty of committing genocide or any of the other associated acts as stated in the Convention. Under the Convention, persons charged with the commission of genocide or one of the related acts may be tried in a competent national court of the state where the act was committed or by an international penal tribunal which has jurisdiction over the matter. The Genocide Convention states that the jurisdiction of this international penal tribunal is established when the contracting parties involved in the dispute have accepted such jurisdiction. It is presumably under this framework, and in accordance with the U.N. Security Council’s Chapter VII powers of the U.N. Charter, that the international community has established the ad hoc military tribunals for Rwanda and the former Yugoslavia to try those responsible for the genocidal acts committed in those nations.

It must also be assumed that the international penal tribunal envisioned by the drafters of the Genocide Convention has now been

32. Genocide Convention, supra note 2, art. 3.
33. Id.
34. Id.
35. Id.
36. Id. art. 4.
37. Id. art. 5.
38. Id. art. 6.
39. Id.
40. Id.
44. See Genocide Convention, supra note 2, art. 6.
established through the creation of the International Criminal Court (ICC). The ICC was established by the Rome Statute of the International Criminal Court on July 17, 1998, when 120 states signed the Statute. The Rome Statute entered into force on July 1, 2002, after 60 signatories had ratified it. The Rome Statute specifically states that the subject matter jurisdiction of the ICC extends to alleged cases of genocide, using the same definition of the crime that is found in the Genocide Convention. Thus, for future incidents of genocide, it seems safe to assume that the ICC will provide the forum for adjudication that was initially proposed in the Genocide Convention.

But in order to try a person for allegedly committing genocide or any of the related acts, the ICC must also have personal jurisdiction over that person. The ICC’s personal jurisdiction extends only to states that have accepted the jurisdiction of the court either generally, by becoming a party to the Rome Statute, or specifically, by accepting the court’s jurisdiction for a particular case or crime. The Court may then exercise its jurisdiction if such jurisdiction has been accepted by either the state where the alleged genocidal act occurred or the state of which the person accused of the crime is a national.

Cases before the ICC, including those involving allegations of genocide, may be initiated in one of three ways. The first way in which the Court may exert jurisdiction over a case occurs when a situation is referred to the ICC’s Prosecutor by a State Party to the Rome Statute. The second way in which the Court may exercise jurisdiction occurs when a case is referred to the Prosecutor by the U.N. Security Council, acting under Chapter VII of the Charter of the United Nations. The third and final manner in which a case may be brought before the ICC occurs when the Prosecutor initiates an investigation herself.

46. Id.
47. Id. art. 5.
48. See id. art. 6.
49. Id. art. 12(1).
50. Id. art. 12(3).
51. Id. art. 12(2)(a).
52. Id. art. 12(2)(b).
53. Id. art. 13(a).
54. Id. art. 13(b).
55. Id. art. 13(c).
While a judicial system may exist for trying those accused of committing genocide and related acts, the Genocide Convention contains several holes in the breadth of its treatment of, and its ability to stop, acts of genocide. Specifically, the Convention neither explicitly provides for means of intervening to stop acts of genocide that have already begun, nor does it expressly suggest an appropriate way of bringing the perpetrators of genocidal acts before a court. What the Genocide Convention does provide, however, is that any contracting party may call upon the competent organs of the United Nations to take such action under the U.N. Charter as may be necessary to prevent or suppress the commission of genocide or any of the other associated acts as enumerated in the Convention. Given that the Genocide Convention imparts this ability to state parties, some questions which must then be posited are: (1) If so called upon by a contracting party to the Genocide Convention, what courses of action are available to the United Nations?; (2) How effective are these actions in preventing and suppressing genocidal acts?; and (3) Are there alternative measures, either presently existing within the current system or on a theoretical basis, that would better serve the goals of stopping existing incidents of genocide and bringing the perpetrators to justice?

IV. THE ROLE OF THE UNITED NATIONS IN INTERNATIONAL HUMANITARIAN INTERVENTION

First and foremost among the purposes underlying the creation of the United Nations was the maintenance of international peace and security. Not only is this emphasis evident from the language of the Charter itself, but it also is reinforced when one looks at the circumstances that surrounded the creation of the United Nations. The U.N. Charter was signed in San Francisco on June 26, 1945. Written soon after World War II, its drafters sought to create an international body that was strong enough to adequately address the acts of aggression and threats to world peace that had been wrought during the war. It is not an overstatement, then, to say that the United Nations, a body dedicated to maintaining international peace and security, whose creation came at the culmination of World War II, was created in large part to address the acts of genocide and other widespread war crimes perpetrated in that war.

56. See Genocide Convention, supra note 2, art. 8.
57. U.N. CHARTER art. 1.
59. See id.
Within the structure of the United Nations, the Security Council is given primary responsibility for the maintenance of peace and security on a global level.\textsuperscript{60} Member-states of the United Nations (of which there were 191 at the time this comment was written)\textsuperscript{61} grant the Security Council the right to act on their behalf in carrying out its duties associated with such responsibility.\textsuperscript{62} Member-states also agree to accept and carry out the decisions of the Security Council.\textsuperscript{63} Thus, the Security Council is the most powerful arm of the United Nations and the one which is best able to address issues that threaten the global geopolitical equilibrium.

While the U.N. Charter grants the Security Council broad discretion in acting on behalf of member-states to maintain peace and security on an international level, the exact actions available to the Security Council in acting on such authority are not necessarily clear. The Security Council has the authority to determine whether a threat to the peace,\textsuperscript{64} breach of the peace,\textsuperscript{65} or act of aggression exists,\textsuperscript{66} as well as the authority to determine what the United Nations' response should be to such a situation.\textsuperscript{67} A U.N. response can take several forms, some that do not involve the use of armed force,\textsuperscript{68} and others that implement force to maintain or restore international peace and security.\textsuperscript{69}

Under its Chapter VII powers, the Security Council has the ability to authorize and implement force in the maintenance or restoration of international peace and security by using member-states' air, sea, or land forces.\textsuperscript{70} In accordance with this authorization, the Charter requires member-states to make available to the Security Council any domestic armed forces or other assistance that may be necessary in fulfilling its Chapter VII powers.\textsuperscript{71} Furthermore, the U.N. Charter grants the Security Council the right to require the participation of either some or all

\begin{footnotes}
\item[60.] U.N. Charter art. 24.
\item[62.] U.N. Charter art. 24.
\item[63.] Id. art. 25.
\item[64.] Id. art. 39.
\item[65.] Id.
\item[66.] Id.
\item[67.] See id.
\item[68.] U.N. Charter art. 41.
\item[69.] Id. art. 42.
\item[70.] Id.
\item[71.] Id. art. 43(1).
\end{footnotes}
member-states in such actions and calls on all member-states to work collaboratively in employing the measures chosen by the Security Council.

The U.N. Charter also recognizes the inherent right of states, whether individually or collectively, to act in self-defense. While such action would be undertaken independently of the United Nations, the affirmation of such a right in the U.N. Charter warrants mention along with the courses of action available to the United Nations. Thus, the Charter provides two possibilities for using force to stop genocidal acts or other breaches of international peace and security: (1) concerted collaborative actions initiated and authorized by the Security Council under its Chapter VII powers, and (2) actions taken in self-defense, either unilaterally by a state or collaboratively by some sort of international alliance.

On a pragmatic level, precedents exist within the current U.N. system for the use of forceful intervention to provide humanitarian assistance and to stop armed conflict. In each of the examples outlined in the following sections, the United Nations deployed peacekeeping troops in an effort to either create or maintain a peaceful situation. But the weak mandates, limited resources, and lack of international support in each situation led to the significant shortcomings of the U.N. peacekeeping missions to Somalia, Bosnia, and Rwanda.

A. Somalia

After the March 1992 cease-fire between rival warlords appeared to end a bloody civil war in Somalia, the Security Council established the United Nations Operation in Somalia (UNOSOM). But the U.N. peacekeepers faced hostility from the very civilians whom they were seeking to protect. In December 1992, the United States initiated Operation Restore Hope, under which they agreed to assume the

72. Id. art. 48.
73. Id. art. 49.
74. Id. art. 51.
75. Id. art. 42.
76. Id. art. 51.
78. Leonard Doyle, Armies of Peace Patrol a World Ravaged by War, THE INDEPENDENT (LONDON), Sept. 6, 1992, at 12.
79. See Stevenson, supra note 77.
unified command of the operation in accordance with Security Council Resolution 794.\textsuperscript{81}

However, Somali warlords had little respect for the U.N. peacekeepers or for the U.S. soldiers that were bolstering the U.N force. United Nations peacekeepers were killed\textsuperscript{82} and the bodies of dead U.S. soldiers were dragged through the streets of Mogadishu.\textsuperscript{83} Not long after two U.S. Black Hawk helicopters were shot down during a brutal 15-hour battle in Mogadishu,\textsuperscript{84} the U.S. government decided to withdraw its troops.\textsuperscript{85} In 1995, the United Nations also withdrew the remaining peacekeepers from Somalia\textsuperscript{86} in what is now considered a failed attempt at peacekeeping.

\textbf{B. Bosnia}

In Resolution 743 of February 21, 1992,\textsuperscript{87} the Security Council established the United Nations Protection Force (UNPROFOR) to create peace and security necessary for the negotiation of a peace settlement in the former Yugoslavia.\textsuperscript{88} Security Council Resolution 776 of September 14, 1992\textsuperscript{89} specifically extended and enlarged UNPROFOR’s presence in Bosnia-Herzegovina. But the U.N. peacekeepers had a weak mandate,\textsuperscript{90} as well as deficiencies in their level of training, equipment, and chain of

\footnotesize{
\textsuperscript{82} Judy Keen, Somalia’s Lessons Alter U.S. and U.N. Policies, USA TODAY, Feb, 27, 1995, at 5A.
\textsuperscript{84} The battle of October 3-4, 1993, which pitted U.N. peacekeepers and U.S. troops against the guerillas of militia leader Mohamed Farah Aideed, was the most intense fighting of the Somali campaign. See Keith B. Richburg, Somalia Battle Killed 12 Americans, Wounded 78, WASHINGTON POST, Oct. 5, 1993, at A1.
\textsuperscript{85} Less than three weeks after the Mogadishua battle that killed 12 American soldiers, President Clinton began ordering the withdrawal of U.S. troops from Somalia. See Keith B. Richburg, Somalis Express Familiar Fears Over U.S. Troop Withdrawal, WASHINGTON POST, Oct. 24, 1993, at A27.
\textsuperscript{86} Keen, supra note 82.
\textsuperscript{88} See id.
\textsuperscript{90} Ian Black & Michael White, Safety Zones Urged for Besieged Towns, THE GUARDIAN (LONDON), Apr. 21, 1993, at 10.
}
command and control. These shortcomings inhibited the ability of UNPROFOR to protect the civilian population. As a result, in July 1995, the U.N. peacekeepers could only stand by helplessly as Bosnian Serb soldiers separated Muslim families and methodically murdered at least 6,000 people in the supposed “U.N. safe area” of Srebrenica.

C. Rwanda

In October 1993, the Security Council passed Resolution 872, which established the United Nations Assistance Mission for Rwanda (UNAMIR). In August 1993, UNAMIR helped to broker the Arusha Accords, which formally ended a three-year civil war between the Tutsi Rwandan Patriotic Front (RPF) and the Hutu government. While observers noted that Rwandan President Juvenal Habyarimana was not especially committed to the ceasefire, there was a relative lull in the violence following the Accords. But when President Habyarimana died in a plane crash on April 6, 1994, the hardliners in his Hutu government took the opportunity to unleash a campaign of mass killings against the country’s Tutsis. After countries began to unilaterally withdraw their contingents from the U.N. peacekeeping forces, the Security Council passed Resolution 912 on April 21, 1994, reducing UNAMIR’s presence in Rwanda from 2,548 to 270 peacekeepers.

However, as conditions worsened, the Security Council changed its mind and passed Resolution 918 on May 17, 1994, which called for an increase of UNAMIR troops, up to a total of 5,500. Unfortunately, it took nearly six months for member-states to provide the troops. In late 1995, the Rwandan government stated that the UNAMIR was not...

92. Peter Finn, NATO Fails to Capture Key Suspect in Bosnia; Karadzic Eludes Arrest on Genocide Charges, WASHINGTON POST, Mar. 1, 2002, at A14.
94. Id.
96. Id.
97. Id.
98. Id.
101. Id.
103. See id.
responsive to the needs of Rwanda and asked the U.N. peacekeeping
troops to leave.\textsuperscript{105} The Security Council complied with this request, and
in April 1996 UNAMIR troops left Rwanda.\textsuperscript{106}

In each of these aforementioned situations, the United Nations
presumably had good intentions in acting under its Chapter VII powers
to establish international peacekeeping missions.\textsuperscript{107} The failures of these
missions should be seen not as an indication of the impracticality or
unfeasibility of such peacekeeping missions in general, but rather as an
indication of the shortcomings of international peacekeeping forces
within the current United Nations system.

It can rationally be argued that each of these missions was doomed
from the start due to the lack of a strong mandate, appropriate resources,
and necessary international support. But as mentioned earlier, collaborative
international actions initiated and authorized by the U.N. Security
Council under its Chapter VII powers are not the only possible means of
action contemplated by the Charter. In affirming the inherent right of
individual and collective acts of self-defense,\textsuperscript{108} the U.N. Charter also
implicitly recognizes the potential for humanitarian intervention and the
use of force in international peacekeeping missions that fall outside the
mandate and control of the Security Council. There is also an existing
precedent for international military actions aimed at creating or
preserving a state of international peace and security which have not
been authorized by the Security Council, and thus fall outside the
purview of the United Nations.

V. THE INITIATION OF HUMANITARIAN INTERVENTION THROUGH
UNILATERAL OR REGIONAL ACTION: KOSOVO

During 1998, armed conflicts between the occupying Serbian Federal
Republic of Yugoslavia (FRY) military and the police forces of Slobodan
Milosevic and the ethnic Albanian rebel force, the Kosovo Liberation
Army (KLA), led to the death of over 1,500 Kosovar Albanians\textsuperscript{109} and

\begin{thebibliography}{99}
\bibitem{107} U.N. \textit{CHARTER} art. 42.
\bibitem{108} U.N. \textit{CHARTER} art. 51.
\end{thebibliography}
the displacement of 400,000 others.110 In response, the United Nations Security Council issued Resolutions 1160 (March 31, 1998)111 and 1199 (September 23, 1998).112 Resolution 1160 condemned the use of force by both sides involved in the conflict and called on the parties to reach a peaceful reconciliation of their differences.113 Resolution 1199 demanded that both sides cease hostilities and maintain a ceasefire, and that the FRY allow Kosovar refugees to return to their homes and give aid agencies full access to Kosovo.114 But Milosevic and the FRY army failed to comply with these provisions.115

Soon after, members of the North Atlantic Treaty Alliance (NATO) warned the Serbs that the alliance would conduct airstrikes against Milosevic’s forces in Kosovo if they did not comply with the Security Council resolutions.116 With the threat of a NATO attack on the Serb forces appearing imminent, Milosevic agreed to a cease-fire on October 13, 1998.117 Among other things, the cease-fire agreement called for NATO planes to fly over the area and monitor both sides’ compliance with the agreement.118 On October 24, 1998, the Security Council passed Resolution 1203,119 which was aimed at protecting unarmed envoys on the ground as they monitored compliance with the cease-fire.120

The cease-fire agreement disintegrated and the violence re-escalated when a mass grave site for ethnic Albanians was discovered in Racak, Yugoslavia, on January 15, 1999.121 The discovery of the massacre that had occurred at Racak gave the international community proof that Milosevic had acted in violation of the cease-fire agreement.122 As the fighting intensified, NATO leaders warned Milosevic that an air strike was imminent if he did not accept a permanent resolution of the

110. Id.
113. S.C. Res. 1160, supra note 111.
114. S.C. Res. 1199, supra note 112.
120. See id.
122. See id.
conflict.\textsuperscript{123} When Milosevic ignored these warnings, NATO authorized airstrikes against Serbia on March 24, 1999.\textsuperscript{124}

The reaction of the international community, and specifically the United Nations, to the NATO airstrikes was mixed. U.N. Secretary General Kofi Annan gave the airstrikes his implicit endorsement by blaming the resort to force on Milosevic's continuing resistance to a political settlement.\textsuperscript{125} At the same time, Mr. Annan criticized NATO for having initiated the airstrikes without the authorization of the Security Council.\textsuperscript{126}

Was the NATO action in Kosovo really an unauthorized intervention? Article 51 of the U.N. Charter affirms a member-state's inherent right of individual or collective self-defense.\textsuperscript{127} However, this affirmation is constrained in a number of ways. Article 51 goes on to recognize the existence of such a right of self-defense (a) for member-states against whom an armed attack occurs,\textsuperscript{128} and (b) only until the Security Council has taken measures necessary to maintain international peace and security.\textsuperscript{129} Thus, construing this authorization to apply to states (or groups of states) against whom an armed attack has not explicitly occurred, at a point in time in which the Security Council has already issued relevant resolutions, seems to be tenuous at best. However, that does not necessarily imply that unilateral humanitarian intervention is completely without merit.

Elaborating on the International Law Commission (ILC)\textsuperscript{130} State Responsibility principles for humanitarian intervention under state of necessity,\textsuperscript{131} Professor George Walker suggests that:

\begin{itemize}
  \item \textsuperscript{123} Jane Perlez, \textit{U.S. Negotiator at the Kosovo Talks Visits Milosevic}, N.Y. TIMES, Feb. 17, 1999, at A3.
  \item \textsuperscript{125} See Judith Miller, \textit{The Secretary General Offers Implicit Endorsement of Raids}, N.Y. TIMES, Mar. 25, 1999, at A13.
  \item \textsuperscript{126} \textit{Id.}
  \item \textsuperscript{127} U.N. CHARTER art. 51.
  \item \textsuperscript{128} \textit{Id.}
  \item \textsuperscript{129} \textit{Id.}
  \item \textsuperscript{130} The International Law Commission is an agency of the U.N. General Assembly composed of leading international lawyers from member-states. \textit{See} 1 SIR ARTHUR WATTS, \textit{THE INTERNATIONAL LAW COMMISSION 1949-1998} 16 (Oxford Univ. Press 1999).
\end{itemize}
In collective humanitarian intervention under state of necessity, all states involved in the intervention, the affected state and the collective interveners, retain their inherent rights of individual and collective self-defense in conformity with the Charter and international law, e.g., the principles of necessity and proportionality. With respect to the intervention, this would mean that interveners retain rights of individual and collective self-defense from unit through national and collective levels, including rights of anticipatory self-defense against the affected state and all other comers, to the extent that states recognize anticipatory self-defense as legitimate during the Charter era.\(^{132}\)

In order for a state of necessity to exist, a self-defensive act must be the only way for a state to safeguard an essential interest against a grave and imminent peril, and that act must not seriously impair an essential interest of the state towards which the obligation exists, or of the international community as a whole.\(^{133}\) Furthermore, the state asserting the existence of a state of necessity must not have contributed to the situation of necessity.\(^{134}\) Thus, NATO’s actions are justified under ILC State Responsibility principles if: (a) the protection of the ethnic Albanians in Kosovo was an essential interest; (b) the actions of Milosevic and the FRY army placed these ethnic Albanians in a state of grave and imminent peril; (c) NATO either intervened in an Albanian state or, if in a FRY area, the aggressive actions of the FRY had nullified any existing obligation owed to them by NATO; (d) the intervention did not impair an essential interest of the international community as a whole; and (e) NATO had not contributed to the existence of the state of necessity.

Assuming, for the moment, that the unilateral actions of NATO in Kosovo fell outside of the U.N. Charter’s affirmation of the right of individual or collective self-defense,\(^{135}\) the central inquiry must then be: Do these NATO actions represent the emergence of an acceptable customary international norm, or are they simply an aberration?

International law can be created in one of three ways: (a) as customary international law,\(^{136}\) (b) by international agreement,\(^{137}\) or (c) through derivation of the common legal practices of the world’s major legal systems.\(^{138}\) Customary international law is the result of general and consistent state practice which is followed out of a sense of legal obligation.\(^{139}\) Leading international scholar Antonio Cassese\(^{140}\) has

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134. Id.
135. U.N. CHARTER art. 51.
137. Id. § 102.1(b).
138. Id. § 102.1(c).
139. Id. § 102.2.
contended that the NATO action in Kosovo may have been the genesis of a customary international norm condoning unilateral humanitarian intervention to end large-scale atrocities.\textsuperscript{141} Some scholars have gone even further in asserting that such a customary international norm already exists.\textsuperscript{142} Though scholarly opinion seems largely to disagree with such an assertion,\textsuperscript{143} the fact that the matter is in question at all seems to add a degree of legal legitimacy to acts of unilateral humanitarian intervention.

One must concede, however, that humanitarian intervention to stop acts of genocide is only part of the equation. Parties to the Genocide Convention agree to both prevent and punish acts of genocide.\textsuperscript{144} In the hopes of preventing future genocides and of holding responsible those persons who led or fostered such genocides, there must be a means for capturing the war criminals and others who have perpetrated these acts.

\textsuperscript{140} Antonio Cassese (Italy) fulfilled an appointment as a justice on the International Criminal Tribunal for the Former Yugoslavia from 1993-2000, serving as the Tribunal’s President in 1993 and 1995. He was elected to the International Commission of Jurists in 1990. Cassese was awarded the Commission’s Man for Peace Award in 1995 and its Robert G. Storey Award for Leadership in 1997. Professor Cassese has taught International Law at the University of Florence since 1981, and has served as a visiting professor at numerous universities including the Universities of Cambridge and Oxford. Information from The Website of the International Commission of Jurists, Antonio Cassese, available at http://www.icj.org/article.php3?id_article=17&id_rubrique=13 (last visited Jan. 27, 2006).

\textsuperscript{141} Antonio Cassese, \textit{Ex Iniura lus Oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?}, 10 EUR. J. INT’L L. 23 (1999) (‘‘This particular instance of breach of international law may gradually lead to the crystallization of a general rule of international law authorizing armed countermeasures for the exclusive purpose of putting an end to large-scale atrocities amounting to crimes against humanity and constituting a threat to the peace.’’).

\textsuperscript{142} Steve G. Simon, \textit{The Contemporary Legality of Unilateral Humanitarian Intervention}, 24 CAL. W. INT’L L.J. 117, 144 (1993) (“[N]ations do possess the right to intervene unilaterally for humanitarian purposes in both rescue and non-rescue cases so long as the intervention is done properly.”); Jeremy Levitt, \textit{Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone}, 12 TEMP. INT’L & COMP. L.J. 333, 375 (1998) (“[T]here has been a shift in the law de lege ferenda, permitting unilateral humanitarian intervention by groups of states and regional actors in internal conflicts.”).

\textsuperscript{143} See Mary Ellen O’Connell, \textit{The UN, NATO, and International Law After Kosovo}, 22 HUM. RTS. Q. 57, 82 (2000) (“Whatever the arguments, international legal rules are not easily changed. One act not in conformity with the rules does not eliminate a legal regime, unless one finds overwhelming support for the change.”).

\textsuperscript{144} Genocide Convention, \textit{supra} note 2, art. 1.
VI. BRINGING THE PERPETRATORS TO JUSTICE: CAPTURING THOSE GUILTY OF COMMITTING GENOCIDE

Because the Genocide Convention calls on its member-states not only to prevent acts of genocide, but also to punish those responsible, it logically follows that the perpetrators of such genocidal acts should be brought to justice. As with the case of humanitarian intervention, the capturing of war criminals and others who commit acts of genocide or other crimes against humanity can be carried out in two forms: (a) within the U.N. system and with U.N. endorsement, or (b) outside the U.N. system as a unilateral or multilateral act. While the weight of opinion seems to favor actions within the U.N. system, precedents exist for both situations, and in certain circumstances urgency and necessity have warranted the use of the latter option.

A. Slobodan Milosevic

After 11 weeks of bombing, NATO finally suspended its military campaign against Milosevic’s FRY forces on June 10, 1999.\textsuperscript{145} NATO Secretary-General Javier Solana gave the order after verifying that FRY troops began their withdrawal from Kosovo.\textsuperscript{146} Soon the nationalistic tide that had brought Milosevic to power began to turn on him. On September 24, 2000, Milosevic lost the presidential election to Vojislav Kostunica.\textsuperscript{147} On April 1, 2001, Milosevic was arrested on charges of abuse of power and theft of state funds after a standoff with FRY police.\textsuperscript{148} Despite the international call to hand Milosevic over to The Hague to be tried on charges of crimes against humanity, Kostunica’s government appeared ready to stand by its declaration that it would try Milosevic in Belgrade instead.\textsuperscript{149} On June 28, 2001, under mounting international pressure, the Yugoslavian government extradited Milosevic to the International Court of Justice (ICTY).\textsuperscript{150} Upon Milosevic’s

\begin{itemize}
    \item \textsuperscript{145} NATO Ends Bombing, BBC NEWS ONLINE, June 10, 1999, available at http://news.bbc.co.uk/1/hi/world/europe/365849.stm (last visited Jan. 27, 2006).
    \item \textsuperscript{146} Id.
    \item \textsuperscript{148} R. Jeffrey Smith, Milosevic Arrested at Belgrade Villa; Ex-Leader’s Surrender Follows Standoff, WASHINGTON POST, Apr. 1, 2001, at A1.
    \item \textsuperscript{150} David J. Lynch, Milosevic Turned Over to U.N. Tribunal; Former Dictator Sent to Face Charges in the Hague, USA TODAY, June 29, 2001, at 8A.
\end{itemize}
extradition, more than $1 billion of relief began to flow into Yugoslavia to help rebuild the country’s battered economy.\footnote{151}

On November 22, 2001, the ICTY indicted Milosevic on charges of genocide and complicity in genocide for his role in the murder of thousands of Bosnian Muslims and Croats.\footnote{152} However, on March 11, 2006, before Milosevic’s trial could reach its conclusion, the former Yugoslav leader was found dead in his Hague prison cell.\footnote{153} Nonetheless, the extradition of Slobodan Milosevic to the ICTY is an example of the way in which the architects of the U.N. system intended for war criminals to be tried. But not all accused perpetrators of war crimes or crimes against humanity have been brought to justice in such a way.

\section*{B. Adolph Eichmann}

During the Holocaust, Adolph Eichmann was in charge of planning and implementing the “Final Solution,” the Nazi’s methodical and programmatic system of killing that led to the murder of over 13 million people.\footnote{154} Though arrested at the end of World War II, Eichmann had not yet become well-known and he was able to escape from an American internment camp in 1946 and flee to Argentina.\footnote{155} In 1960, agents of MOSSAD, Israel’s intelligence agency, kidnapped Eichmann from Buenos Aires.\footnote{156} The agents then forcibly brought him back to Israel to stand trial in an Israeli court.\footnote{157}

\begin{itemize}
\item \footnote{151} Milosevic Extradition Unlocks Aid Coffers, BBC News Online, June 29, 2001, available at http://news.bbc.co.uk/1/hi/world/europe/1413144.stm (last visited Jan. 27, 2006).
\item \footnote{153} Marlise Simons, Milosevic Died of Heart Attack, Autopsy Shows, N.Y. TIMES, Mar. 12, 2006, at A1.
\item \footnote{156} See Decline of the Superspies, TIME, Mar. 23, 1987, at 32; see also Malkin & Stein, supra note 155, at 186-90; see also RAANAN REIN, ARGENTINA, ISRAEL, AND THE JEWS 162 (Martha Grenzeback trans., Univer. Press of Maryland 2003).
\item \footnote{157} See Rein, supra note 156, at 163; see also Alan Mintz, Foreward to HAIM
Argentina contested such an invasion of their sovereignty and brought Israel before the U.N. Security Council. Dealing with such a highly sensitive issue, the Security Council did not order Israel to return Eichmann, but instead requested that Israel make appropriate reparation to Argentina. The District Court of Jerusalem proceeded with the trial and indicted Eichmann on fifteen separate counts, including crimes against humanity and crimes against the Jewish people. After a highly publicized trial lasting eight months, the Israeli court convicted Eichmann on all counts and sentenced him to death. Adolph Eichmann was hanged in 1962.

The Eichmann case serves as an example of the capturing of a war criminal outside of the U.N. framework. The fact that the Security Council did not order Israel to return Eichmann to Argentina seems to indicate that such acts are permitted, if not authorized, under certain circumstances. The important question then becomes: Did Eichmann establish a customary norm for capturing international war criminals or should the case simply be limited to its facts and given no precedential effect? Political theorist/philosopher Hannah Arendt has argued that the kidnapping of Adolph Eichmann, while justified under the circumstances, should be limited to just such circumstances, and set no international legal precedent. Other scholars have largely echoed this sentiment. However, while it is not my contention that the Eichmann case sets a general precedent for capturing all war criminals outside GOURI, FACING THE GLASS BOOTH: THE JERUSALEM TRIAL OF ADOLF EICHMANN, at IX-XI (Michael Swirsky trans., Wayne State Univ. Press 2004).


159. Id.


161. Id.

162. Id.


165. See, e.g., Lee A. Casey & David B. Rivkin, Jr., The Limits of Legitimacy: The Rome Statute's Unlawful Application to Non-state Parties, 44 Va. J. Int'l L. 63, 78 (2003) (“[T]he Eichmann case represents a single precedent, arising in the most unusual circumstances, and involving the most horrific atrocities in history.”); see also Matthew Lippman, Genocide: The Trial of Adolf Eichmann and the Quest for Global Justice, 8 BUFF. HUM. RTS. L. REV. 45, 62 (Quoting Golda Meir as stating that the abduction of Eichmann did not constitute a precedent because "modern history knows of no such monster as Adolf Eichmann"); see also Stephan Wilske & Teresa Schiller, Jurisdiction Over Persons Abducted in Violation of International Law in the Aftermath of United States v. Alvarez-Machain, 5 U. CHI. L. SCH. ROUNDTABLE 205, 225 (1998) (“Furthermore, the case is not a good example of customary international law on jurisdiction because of the extraordinary crimes of Adolf Eichmann.”).
of the U.N. system, it seems reasonable to conclude that the perpetrators of acts of genocide share the greatest degree of culpability with Adolph Eichmann, and hence they could be brought to justice in a similar fashion.

Having examined the legal framework of the U.N. system and some precedents for both humanitarian intervention and bringing war criminals to justice, the critical issue then becomes the role of the Genocide Convention itself. Does the Convention bind its state-parties to act in cases of genocide? If so, what sort of action is appropriate? If not, what is the role of the Convention?

VII. THE OBLIGATION TO ACT IN THE FACE OF GENOCIDAL ACTS

The language of the Convention has been examined earlier in this comment to assess whether the Genocide Convention obligates its state-parties to act to prevent or punish acts of genocide. As previously mentioned, the architects of the Genocide Convention seem to have envisioned a two-part system for its structure and application. On a national level, contracting parties would agree to enact domestic legislation that gives effect to the provisions of the Convention, provide domestic penalties for persons in breach of the Convention, and try perpetrators in a competent tribunal of the state in which the act is committed. On a supra-national level, the Convention also envisioned the use of an international penal tribunal. But other than requesting action from the United Nations itself, the Genocide Convention is silent regarding the actual steps that countries are permitted or obligated to take to avert or suppress the commission of genocide abroad.

A. Labeling a Situation as "Genocide"

What are the implications of calling an act "genocide"? If the Genocide Convention does not create an obligation for member-states to react, then describing a particular atrocity as "genocide" would not necessarily entail any sort of requisite action. But why, then, is the word used so conservatively? After the British television network ITN aired footage

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166. Genocide Convention, supra note 2, arts. 5-6.
167. Id. art. 6.
168. Id. art. 8.
of the Bosnian-Serb controlled Omarska camp in 1992, U.S. officials in the Bush administration were instructed to avoid labeling the atrocities as “genocide.” Despite evidence to the contrary, officials of the succeeding Clinton administration continued to assert from 1993-1995 that there was no obligation to act in Bosnia because the atrocities were being committed by both sides. In 1994, the Clinton administration also ordered government officials not to use the term “genocide” to describe the crisis in Rwanda, due to the implications of such a label. Referring to the Rwandan atrocities in 1998, President Clinton even referenced the profound effect that labeling the crisis as genocide would have wrought. Thus, it seems evident that U.S. policy in both the Bosnian and Rwandan crises emphasized the importance of labeling (or not labeling) a situation as “genocide” and the resultant obligations and expectations that ensue from the label.

B. What Obligations?

Precisely what obligations does the use of the term “genocide” create? International Court of Justice Judge Brunno Simma has contended that the commission of acts of genocide may create an obligation for member-states to the Convention to stop such actions. However,

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171. See MICHAEL P. SCHARF, BALKAN JUSTICE 31 (Carolina Academic Press, 1997) (“U.S. officials were instructed to avoid using the ‘genocide’ label with respect to Bosnia so as not to trigger obligations under the Genocide Convention, which obliges parties to prevent and punish acts of genocide.”).

172. Id. (“Testifying before Congress in May 1993, Secretary of State Christopher refused to acknowledge that Serbs were committing genocide in Bosnia, asserting instead that ‘all sides’ were responsible for the atrocities there-thus removing the imperative for action. Notwithstanding clear evidence to the contrary, this would remain the party line until two years later, in March 1995, when Clinton Administration officials would leak the finding of a classified CIA study that 90 percent of ethnic cleansing had been carried out by Serbs pursuant to a policy designed to destroy and disperse the non-Serb population.”).

173. See HUMAN RIGHTS WATCH, WORLD REPORT 1995 46 (1994) (“A few weeks after the massacres had begun, when it had long been evident that genocide was taking place, a senior member of the Clinton administration ordered officials not to speak of ‘genocide’ because the term could increase the moral pressure on the President and force him to act.”); see also Justice Richard Goldstone, The Trial of Sadaam Hussein: What Kind of Court Should Prosecute Sadaam Hussein and Others for Human Rights Abuses?, 27 FORDHAM INT’L L.J. 1490, 1500 (2004) (Stating that the State Department “did not want to use the word ‘genocide’ because it would attract certain international obligations.”).


175. See Brunno Simma, NATO, the UN and the Use of Force: Legal Aspects, 10 EUR. J. INT’L L. 1, 2 (1999).
former U.S. Secretary of State Colin Powell has asserted that the United States satisfies its obligations under the Convention by providing money for humanitarian assistance, engaging diplomatically, and working through the U.N. Security Council towards a resolution.\textsuperscript{176} The U.S. Senate Foreign Relations Committee released a 1989 report on the Genocide Convention in which it found the only obligation created by the Convention to be the enactment of domestic legislation to make genocide a municipal crime.\textsuperscript{177} Leading international scholar Professor Winston Nagan,\textsuperscript{178} on the other hand, has identified the obligation to both prevent and punish acts of genocide as an obligation \textit{erga omnes},\textsuperscript{179} that is, one that is owed to the international community as a whole.\textsuperscript{180} Finally, Professor Joseph Betz\textsuperscript{181} seems to go even further by implying that state-parties to the Genocide Convention had an obligation, which they failed to meet, to stop the atrocities in Kosovo and Rwanda.\textsuperscript{182} While the precise obligation imposed by the Genocide Convention remains unclear, it seems evident from these statements that declaring an incident to be “genocide” does trigger some sort of duty, and that there is some support for including the suppression of genocide as such a duty.

\textbf{C. Other Justifications for the Convention}

While popular opinion adopts the view that the framers of the Genocide Convention must have intended to create some sort of

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\textsuperscript{176} See Jamal Jafari, \textit{“Never Again,” Again: Darfur, the Genocide Convention, and the Duty to Prevent Genocide}, 12 No. 1 HUM. RTS. BRIEF 8 (2004).


\textsuperscript{178} Winston P. Nagan serves as Professor of Law, Samuel T. Dell Research Scholar, and Affiliate Professor of Anthropology at the University of Florida. Professor Nagan has been the Founding Director of the University of Florida’s Institute for Human Rights and Peace Development as well as the Board Chairman of Amnesty International USA. Information from The Website of the University of Florida, Spotlight, Nagan, available at http://www.ufl.edu/spotlight/nagan.html (last visited Jan. 27, 2006).


\textsuperscript{180} See Barcelona Traction (Belg. v. Spain), 1970 I.C.J. 3, 31-32 (Feb. 5).

\textsuperscript{181} Joseph Betz is a Professor of Philosophy at Villanova University. He specializes in the areas of social philosophy and “just-war” theory. The faculty listing for the Villanova University Department of Philosophy is available at http://www. philosophy.villanova.edu/faculty.html (last visited Jan. 27, 2006).

\end{flushright}
obligation to act in the face of genocide, other potential purposes for drafting the Convention should be considered. It is conceivable that the purpose of the Genocide Convention was simply to call attention to the atrocities of the Holocaust. In the midst of the "never again" mentality that permeated Jewish, European, and even international policy at the end of World War II, it seems quite reasonable that the architects of the Genocide Convention were seeking to put down on paper, to make permanent, some sort of reminder for the world of the horrors of the Holocaust.

It is also quite possible that the framers of the Convention were aiming to create some sort of "moral authority." By making it clear that every state-party to the Convention condemned the practice of genocide, the framers may have hoped that the Convention would send an unambiguous signal to the rest of the world that the commission of such an act was against the collective values of the group and would not be condoned. Similarly, the drafters of the Genocide Convention may have been seeking to make any potential future perpetrators of genocidal acts think that they would be held accountable for their actions. Finally, it seems plausible that given the skeptical approach with which many nations view the binding nature of international legal obligations, the architects of the Convention may have been attempting only to create an impetus for the enactment of domestic legislation that would echo the Convention’s sentiments.

It is likely that these foregoing explanations played a part in inspiring the creation of the Genocide Convention. However, the validity of any of these explanations does not necessarily discredit the possibility that the authors of the Convention were in fact striving to create a system that would obligate the state-parties to take action when faced with the "odious scourge" of genocide. In light of the reluctant use of the term "genocide" when describing horrific atrocities—for fear of initiating some sort of international obligation—and given that the weight of scholarly opinion suggests that the Genocide Convention creates at the very least a legislative and adjudicative obligation, it seems that one would be justified in assuming that such an obligation to act does exist.

VIII. ADDRESSING STATE CONCERNS REGARDING HUMANITARIAN INTERVENTION TO PREVENT OR PUNISH ACTS OF GENOCIDE

Even when humanitarian intervention is initiated in response to acts of genocide, it is likely that individual nation-states will have some concerns regarding the use of such action. These concerns may come from both (a) the state acting in response to its obligation under the
Convention to prevent and to punish genocide, and (b) the state on whose territory such an intervention would occur, if these are not one and the same. Such reservations can be expected to relate to issues of individual state interest, state sovereignty, and misgivings about the potential for an ulterior motive behind the intervention.

While each of the parties that has signed and ratified the Genocide Convention has unambiguously professed the act of genocide to be unacceptable and, in accordance with the Convention, enacted domestic legislation to give its provisions effect, those same states have stood by while genocidal acts have occurred. It is certainly possible that the problem is one of ignorance: either the state-parties to the Convention do not know that the incidents are occurring (or do not know the extent of the atrocities) or they do not understand their obligations under the Convention. The latter possibility seems especially plausible in light of the foregoing discussion of the way in which states view their duties under the Convention and the influence of international law in general. Yet it also seems probable that state-parties’ inaction in the face of genocide is a reflection of the individual interests of these states. This notion that states will comply with a treaty or convention only when doing so serves their individual interests is reflected in the writings of the neorealist school of international relations.183

Neorealist thought seems especially applicable in reference to international humanitarian intervention. Cynics will point to the rapid intervention in conflicts involving oil-rich countries like Kuwait,184 but the slow response time in coming to the aid of less wealthy nations like Rwanda.185 In fact the United States, the world’s largest contributor to

183. See Oona A. Hathaway, Do Human Rights Treaties Make a Difference?, 111 YALE L.J. 1935, 1945-46 (2002) (Explaining that according to neorealist theory, “if compliance with international law occurs, it is not because the law is effective, but merely because compliance is coincident with the path dictated by self-interest in a world governed by anarchy and relative state power.”).
185. See Why Not Rwanda?, THE NEW REPUBLIC, May 16, 1994, at 7. On January 11, 1994, the military commander of the U.N. peacekeeping force in Rwanda, General Romeo Dallaire, sent a fax to U.N. headquarters in New York, warning that genocide was being planned by the Hutu majority against the Tutsi minority. Despite the Dallaire fax and other credible evidence, the U.N. did not even set up a Commission of Experts to investigate the situation until almost 6 months later. See Karin Davies, Annan: UN Lacked Members’ Support to Prevent Rwandan Genocide, ASSOCIATED PRESS ONLINE, May 4, 1998.
international humanitarian and peacekeeping efforts,\textsuperscript{186} articulated the narrowing scope of its involvement in such peacekeeping operations in President Clinton's Presidential Decision Directive 25 (PDD-25).\textsuperscript{187} PDD-25, which was widely considered to be a response to the ill-fated peacekeeping missions to Somalia and Haiti,\textsuperscript{188} included provisions suggesting that the United States: (a) would scale back its donations for international peacekeeping, and (b) would apply stricter criteria before agreeing to involve its troops in any peacekeeping operation or to place its troops under U.N. command.\textsuperscript{189} While expounding on the reductions to be made in the United States' support of international peacekeeping operations in the name of American interests, PDD-25 also explicitly states America's desire to remain involved in such peacekeeping operations that are in the interest of the United States.\textsuperscript{190} Thus, PDD-25 can be seen as a reflection of the strong influence that a state's individual interests have on a state's decision to act in the face of international humanitarian crisis situations.

While concerns over individual state interest are likely to be raised (in internal processes if not in external international affairs) by state-parties that are called on to intervene in the face of genocide, the state sovereignty issue is one that is likely to be raised by the state in which intervention is occurring. States are likely to protest the intrusion into their borders and the interference in their domestic issues. The dispute over state sovereignty is an ubiquitous topic in international relations.\textsuperscript{191} Effectuating the goals of the United Nations while respecting the

\textsuperscript{186} From 1996-2001, the U.S. donated an estimated $3.45 billion to support U.N. peacekeeping. Over this same time, the U.S. also supplied $24.2 billion worth of indirect contributions (mainly in the form of military operations and services) to support U.N. peacekeeping. While the U.S. has traditionally paid over 30% of the total cost of U.N. peacekeeping, in 1994 the U.S. Congress passed legislation limiting the share that the U.S. would pay to 25 percent. See United States General Accounting Office, Report to Congressional Requesters, U.N. Peacekeeping: Estimated U.S. Contributions, Fiscal Years 1996-2001, GAO-02-294, Feb. 2002, at 2-4.


\textsuperscript{189} See PDD-25, supra note 187.

\textsuperscript{190} Id.

sovereignty of individual states has long been a contentious issue within the United Nations. This balance between national sovereignty and the maintenance of international peace and security is reflected in Article 2 of the U.N. Charter. 192

While concerns related to individual state interest and state sovereignty are not unimportant, when compared to the catastrophic loss of human life that results from acts of genocide, the importance attached to such concerns must inevitably diminish. In the face of such an atrocity, individual state concerns relating to state interest and sovereignty must be put aside. Professor Fernando Teson 193 has argued for the primacy of human rights over state sovereignty rights, and even expanded on this concept to suggest that force used in defense of fundamental human rights is in fact consistent with the purposes of the United Nations. 194 Even Secretary General Kofi Annan has referenced the existence of a moral duty to act to suppress such atrocities. 195 Thus, while the international community should respect individual state interests such as state sovereignty under normal conditions, these rights must become secondary to fundamental human rights when acts of genocide are occurring.

192. See U.N. Charter art. 2 ("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... but this principle shall not prejudice the application of enforcement measures under Chapter VII.").

193. Fernando Teson serves as Tobias Simon Eminent Scholar and Professor of Law at Florida State University. Professor Teson has written and lectured extensively in the areas of international law and international human rights, and international humanitarian law. The Website of the Florida State University College of Law, Fernando Teson, available at http://www.law.fsu.edu/faculty/profiles/fteson.html (last visited Jan. 27, 2006).

194. Fernando Teson, Humanitarian Intervention: An Inquiry Into Law and Morality 173-74 (2d ed. 1997) ("The human rights imperative underlies the concepts of state and government and the precepts that are designed to protect them, most prominently article 2(4) [of the U.N. Charter]. The rights of states recognized by international law are meaningful only on the assumption that those states minimally observe individual rights. The United Nations purpose of promoting and protecting human rights found in article 1(3), and by reference in article 2(4) as a qualifying clause to the prohibition of war, has a necessary primacy over the respect for state sovereignty. Force used in defense of fundamental human rights is therefore not a use of force inconsistent with the purposes of the United Nations.").

195. See Kofi Annan, "We the Peoples": The Role of the United Nations in the 21st Century, Millennium Report of the Secretary-General of the United Nations 48 (2000), available at http://www.un.org/millennium/sg/report/ (last visited Jan. 27, 2006) (suggesting that where crimes against humanity are being committed "and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community.").
IX. CONCLUSION

While the creation of the Genocide Convention marked an important moment in the acknowledgement and recognition of international human rights, it has been unsuccessful in effecting its ultimate purpose: punishing and preventing the commission of the crime of genocide. If the purposes of the Genocide Convention are to be given meaning, if the crime of genocide is truly to be eradicated from the world, the international community must adopt an interpretation of the Convention that accepts the use of force to stop such acts. The precedents for using such force are already in place. The numerous peacekeeping missions of the United Nations and the unilateral actions of groups like NATO in Kosovo have shown that the world is willing to respond to these atrocities.

What is lacking from the equation is the formal authorization. In the face of genocide, the world needs clarity. Ridding the world of genocide will require three variables that have been lacking from previous efforts: swift and deliberate action, a clear mandate, and the cooperation of the international community. The action must be swift as the nature of genocide causes the death toll to rise rapidly. The mandate must be clear, so that the troops know their mission exactly, know how much force can be used, and have a clear and verifiable goal. The international community must also be supportive of this action. While nation-states will inevitably have different goals relating to facets of international relations such as economics and social interaction, fundamental human rights must be a shared and universal part of the human experience.

The most effective way to foster a clear mandate, swift action, and international support is to build on the existing structure. Rather than creating a new system to deal with cases of genocide, the most prudent course of action is to clarify the obligations of state-parties to the Genocide Convention. As discussed in previous portions of the comment, there is a strong international consensus that state-parties to the Convention are not without obligation. But this obligation must be clarified. In order to actually put meaning behind the words of the Convention, in order to actually prevent and punish acts of genocide, the Convention must be interpreted to impart a duty upon its state-parties to act, and to use force if necessary, to stop acts of genocide.

The step from the existing structure to the one which I am proposing is not so far as it may seem. The precedents of humanitarian intervention are already in existence. The obligations of the Convention are already perceived to be real. The moral weight given to the subject matter by the framers of the Convention and the state-parties is undeniable. The only thing left to do is to combine these elements into a working system.
If the international community can adopt such a system, if some meaning can be given to the inevitable obligations that exist under the Genocide Convention, if the "never again" mentality can finally become more than just a hollow promise, then perhaps those dreams dreamt so long ago in 1948 can become a reality and the world can finally be free of the "scourge" of genocide.

JOSHUA M. KAGAN