

June 2004

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Recommended Citation

Zaghari-Mask, Danette; Tomshinsky, Sabina; and Fernandez, Tosha (2004) "The United Nations and Humanitarian Intervention: Building Legitimacy by Confronting our Past—An Open Letter to Kofi Annan," *Florida Journal of International Law*. Vol. 16: Iss. 2, Article 6.

Available at: <https://scholarship.law.ufl.edu/fjil/vol16/iss2/6>

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THE UNITED NATIONS AND HUMANITARIAN INTERVENTION:
BUILDING LEGITIMACY BY CONFRONTING OUR PAST — AN
OPEN LETTER*

We leave a century of unparalleled suffering and violence. . . . If the collective conscience of humanity — a conscience which abhors cruelty, renounces injustice and seeks peace for all peoples — cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice. . . . [I]ntervention must be based on legitimate and universal principles if it is to enjoy the sustained support of the world's peoples.

Secretary-General Kofi Annan¹

Dear Mr. Secretary-General Kofi Annan and Distinguished Members of the United Nations:

We celebrate the work and dedication of the United Nations and we are encouraged and hopeful for a peaceful future made possible by a commitment to promoting individual human rights.

We are law students at the University of Florida Levin College of Law as well as former students of Professor Sherrie Russell-Brown's International Organizations course.² We respectfully write this "open letter" to share with you some concerns and suggestions based upon the insights we have about the United Nations gained in that class, specifically in regard to the controversy surrounding the U.N. role in Humanitarian Intervention. We concluded that decisions with respect to Humanitarian Intervention have been tainted by U.N. member states' fears of military losses, now termed the "Somalia Syndrome," subdued racial motivations, and the political will of more powerful U.N. member states.

* This letter is from Danette Zaghari-Mask, Sabina Tomshinsky, and Tosha Fernandez, students in the University of Florida Levin College of Law International Organizations Course. Please note that this Open Letter was completed in November 2003.

1. U.N. GAOR, 54th Sess., 4th mtg., U.N. Doc. A/54/PV.4 (1999).

2. We would like to thank Professor Russell-Brown for awakening within us the realization that human rights are the most noble endeavor one could strive to support. Professor Russell-Brown's direction, guidance, and respect for her students have embedded in us a passion for the basic humanitarian rights of all peoples.

I. SOURCES OF AUTHORITY UNDER INTERNATIONAL LAW

As you know, the United Nations recognizes the value in human rights by first acknowledging human dignity. This is articulated in the Universal Declaration of Human Rights (UNDHR) and its two progeny, the International Covenant of Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social, and Cultural Rights (ICESCR). These documents are often termed the International Bill of Rights, and rightly so, because they give credence to the principle that individuals now are the subjects and not the objects of international law.³ These documents articulate an important principle that states now owe duties to their citizenry both within their borders and outside their borders.⁴

The United Nations was a bold and courageous transformation from the workings of the League of Nations.⁵ Within the League of Nations, sovereignty was defined as an impenetrable wall which gave states power to keep out aid from other states.⁶ Individuals could be tortured and denied equal rights within a state's borders without facing scrutiny from other nations.⁷ Now, the United Nations continues to search for solutions to conflicts the world over. In that noble purpose, as you know, the Security Council (S.C.) plays a central role.⁸

We recognize the awesome burden that the S.C. faces in exercising its powers under the ongoing scrutiny of the international community. We recognize that while the U.N. Charter spells out those powers, it does not provide a road map for how consistency should be attained. New times call for new responses to age-old conflicts. Each conflict presents unique challenges and yet the S.C. must seek a uniform way to respond in order

3. H. Lauterpacht, *International Law and Human Rights*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS, 147-48 (Henry J. Steiner & Philip Alston eds., 2d ed. 2000).

4. *Id.* at 651-52.

5. ROBERT F. DRINAN, *THE MOBILIZATION OF SHAME: A WORLD VIEW OF HUMAN RIGHTS* 5 (2001).

6. Lauterpacht, *supra* note 3, at 148 (Lauterpacht recognizes that outdated legal traditions such as the League of Nations did not recognize the rights of the governed within the sovereign but only the rights of the sovereign state itself).

7. *See generally id.* (The failure of the League of Nations can be partly attributed to the rise of nationalism after World War I and unwavering adherence to the international norm of absolute sovereignty. The United Nations was a success over the League of Nations because the Nuremberg Tribunal after World War II established individual responsibility and also made individuals the subjects of international law. This in turn led to the U.N. Charter, the International Bill of Rights, and other Conventions that put the focus on individuals as the subject of rights).

8. *See generally* <http://www.un.org> (explaining the relationship between U.N. organs).

to secure the legitimacy of the international coalition.⁹ In retrospect, evaluating the actions of the S.C. regarding Humanitarian Intervention provides insight for mapping out a course for a uniform legal methodology.¹⁰ In any celebrated legal tradition consistency is the foundation on which justice survives.

We turn our attention to the S.C. powers as spelled out in the U.N. Charter. We recognize that in the exercise of those powers, the international community must balance the interest of a state's sovereignty against an individual's right to the freedoms and protections which the United Nations has vowed to protect and develop.¹¹ We desire to respectfully articulate our view regarding that balance as citizens who are vested in the security and progress of the international community, but as students, we are humbled by the awesome work and responsibility of the institution we undertake to examine.

To begin our analysis, we examined similar conflicts in which there were inconsistent applications of Chapter VII powers (Chapter VII allows U.N. actions that would appear to breach a state's sovereignty) in deploying Humanitarian Intervention missions. We address how such inconsistencies in the exercise of Chapter VII powers can be remedied in light of scholarly works on the subject and from our own attempts to formulate a solution.

First, we turned to the U.N. Charter to inform ourselves regarding the express powers from which the S.C. proceeds when deploying a Humanitarian Intervention mission. The Charter spells out in Chapter I, Articles 2(4) and 2(7), that the international community must respect the territorial integrity of each state.¹² Nonintervention is a central theme in the Charter such that no state may proceed with force across another state's borders unless one of two exceptions apply: one, for reasons of self-defense,¹³ and two, whenever the S.C. exercises its Chapter VII powers.¹⁴ Furthermore, Chapter VII requires either a "threat to the peace, breach of the peace, or act of aggression."¹⁵ The Charter establishes a balance such that a state's right to protect itself against intrusive confrontation is weighed against a population's right to be free from human rights abuses.¹⁶

9. Tania Voon, *Closing the Gap Between Legitimacy and Legality of Humanitarian Intervention: Lessons From East Timor and Kosovo*, 7 UCLA J. INT'L L. & FOREIGN AFF. 31, 32 (2002).

10. Ruth Gordon, *United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond*, 15 MICH. J. INT'L L. 519, 575-81 (1994).

11. Lauterpacht, *supra* note 3, at 148; DRINAN, *supra* note 5, at 3.

12. U.N. CHARTER art. 2, para. 4, 7.

13. *Id.* art. 51.

14. *Id.* art. 39.

15. *Id.*

16. Bartram S. Brown, *Humanitarian Intervention and Kosovo: Humanitarian Intervention at a Crossroads*, 41 WM. & MARY L. REV. 1683, 1697 (2000) ("... [A]ny discussion of

II. THE "SOVEREIGNTY" ARGUMENT

One of the reasons the principle of Humanitarian Intervention has been controversial is because it contradicts sovereignty, the central pillar of international law, which is embodied in Articles 2(4) and 2(7) of the U.N. Charter.¹⁷ The former contains the "principle of non-intervention in the internal affairs of states" and the latter the "principle of non-use of force."¹⁸

Some scholars hold the sovereignty principle so highly that they would allow human rights violations to reach catastrophic levels before they would accept a Humanitarian Intervention as legitimate.¹⁹ Such a blind reverence of the sovereignty principle serves only to protect weaker states from the hegemony of more powerful states.²⁰ Proponents of this sovereignty principle maintain that intervention in the absence of enormous atrocity only further erodes the "sacred" sovereignty of the target state.²¹

Another approach to the application of state sovereignty allows for human dignity to reign supreme by distinguishing popular sovereignty from state sovereignty.²² If state sovereignty depends on popular sovereignty, then human rights violations transgress the sovereignty of the people, which then must be stopped.²³ From this standpoint, an intervention seeks only to restore the status quo and does not violate the sovereignty principle.²⁴

As students of international law, we considered that although at a glance these principles of sovereignty and nonintervention appear to be in conflict with Humanitarian Intervention, a more careful analysis would

humanitarian intervention must also try to reconcile two types of human rights: those of the victims one might hope to protect through intervention on the one hand, and the collective human right of self-determination, which is corollary of the principle of nonintervention, on the other."); see also Yvonne C. Lodico, *The Justification For Humanitarian Intervention: Will The Continent Matter?*, 35 INT'L LAW. 1027, 1032 (2001) (discussing whether the enforcement of human rights diminishes sovereign power).

17. David J. Scheffer, *Toward a Modern Doctrine of Humanitarian Intervention*, 23 U. TOL. L. REV. 253, 259 (1992).

18. *Id.* at 260, 264.

19. A. Mark Weisburd, *International Law and the Problem of Evil*, 37 VAND. J. TRANSNAT'L L. 225, 253-54 (2001).

20. *Id.* at 257.

21. *Id.*

22. Lauterpacht, *supra* note 3, at 148.

23. *Id.*

24. Michael L. Burton, *Legalizing the Sublegal: A Proposal for Codifying a Doctrine of Unilateral Humanitarian Intervention*, 85 GEO. L.J. 417, 434 (1996).

reveal that this is not the case.²⁵ We found that the principle of Humanitarian Intervention has actually been in existence for centuries.²⁶ Though there are some who dismiss the principle of Humanitarian Intervention as being a tool for undermining the independence of other states, it is still a lawful concept under customary international law.²⁷ The rapid growth of international human rights law since the end of World War II as well as the proliferation of various international organizations and treaties that focus on human rights have made this an undisputable fact.²⁸ By joining international organizations such as the United Nations and treaties such as the ICCPR and ICESCR, the member states agree to cede some of their territorial sovereignty; however, even if states are unwilling to become members of such international bodies, they still do not possess absolute sovereignty if human rights are at stake.²⁹

The former U.N. Secretary-General Javier Perez de Cuellar has reiterated this point when he said that “the case for not impinging on the sovereignty, territorial integrity and political independence of States is by itself indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection.”³⁰ Today, over a decade after Perez

25. Michael J. Reppas, *The Lawfulness of Humanitarian Intervention*, 9 ST. THOMAS L. REV. 463, 469 (1997).

26. Malvina Halberstam, *The Legality of Humanitarian Intervention*, 3 CARDOZO J. INT’L & COMP. L. 2-3 (1995) (“Grotius, writing in 1625, asked ‘whether a war for the subjects of another be just, for the purpose of defending them from injuries inflicted by their ruler,’ and answered that it is just if ‘a tyrant . . . practices atrocities towards his subjects which no just man can approve.’”).

27. *Id.* at 3.

28. Reppas, *supra* note 25, at 469-70; see Ruth E. Gordon, *Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti*, 31 TEX. INT’L L.J. 43, 46 (1996) (“Traditionally the international community viewed the manner in which a state treated its citizens as an internal matter that was within a state’s sovereign authority. Over the last fifty years, however, the emerging law of international human rights has modified this perception, and these matters have become a subject of international scrutiny and concern.”); see Ravi Mahalingam, *The Compatibility of the Principle of Nonintervention With the Right of Humanitarian Intervention*, 1 UCLA J. INT’L L. & FOREIGN AFF. 221, 263 (1996) (“As the twentieth century has progressed, the duty of each State to observe a basic respect for human rights, and to refrain from violating them in a manner which ‘shocks the conscience of mankind’ or poses a ‘threat to peace and security’ has become a litmus test for the continued respect of sovereignty and the principle of nonintervention”).

29. Reppas, *supra* note 25, at 469-70; see Mahalingam, *supra* note 28, at 253 (“[T]he U.N. now openly acknowledges that sovereignty is not absolute and that there must be some accommodation between States to address transnational problems.”)

30. Scheffer, *supra* note 17, at 262 (quoting what then-U.N. Secretary-General Javier Perez de Cuellar said at the University of Bordeaux in April 1991 and in his annual report on the work of the United Nations in September 1991. The importance of Perez de Cuellar’s words lies in how he stressed “the importance of striking a balance between the rights of States, as confirmed by the Charter, and the rights of the individual, as confirmed by the Universal Declaration on Human

de Cuellar spoke these words, they are still true.³¹ It is clear that “the protection of human rights has now become one of the keystones in the arch of peace.”³² The scales have definitely “tipped in favor of humanitarianism and against absolute sovereignty.”³³ The “international interest in universalizing a regime of human rights” has been the “most welcome shift in public attitudes. To try to resist it would be politically as unwise as it is morally indefensible.”³⁴ That is, states exist only to “preserve, protect and advance the natural rights of human beings.”³⁵ Thus, if a state chooses to disrespect human rights, it loses its legitimacy and foreign states then acquire a right to intervene on behalf of those whose rights are being violated.³⁶ It would indeed be unwise for a state to contravene human rights norms and thus unleash upon itself the wrath of the world in the form of Humanitarian Intervention — such an intervention would only symbolize to the world that the target state has lost its international legitimacy, and with it, whatever sovereignty it possessed.

In our discussion, the unanimous conclusion was that all conflicts regarding the infringement on human rights, as carved out in the

Rights and other human rights conventions”); see Gordon, *supra* note 28, at 46; see Reppas, *supra* note 25, at 468.

31. Scheffer, *supra* note 17, at 262; see Reppas, *supra* note 25, at 466, 468; see Mel Gurtov & Ellen Mekjavich, *Responding to Humanitarian Crises*, 25 NOTRE DAME J.L. ETHICS & PUB. POL’Y, 507, 512-13 (2001) (“Emerging slowly, but I believe surely, is an international norm against the violent repression of minorities that will and must take precedence over concerns of State sovereignty” (quoting Kofi Annan’s Commencement Address to the University of Michigan in April, 1999)).

32. Scheffer, *supra* note 17, at 262 (quoting former Secretary-General Perez de Cuellar); see Mahalingam, *supra* note 28, at 253 (“[P]rotecting human rights may not only be consistent with sovereignty, but also may be necessary for the survival of many multi-ethnic States. The human rights consequences of internal conflict threaten to undermine the very foundation of the international society of nation-states”).

33. Reppas, *supra* note 25, at 468 (“The principle of nonintervention that is emerging today is not as traditional in scope as it used to be. The balance has shifted from pro-sovereignty to pro-human rights”).

34. Scheffer, *supra* note 17, at 262-63 (quoting former Secretary-General Perez de Cuellar); see Mahalingam, *supra* note 28, at 245, 263 (“[H]uman rights issues have international effects and belong within the international sphere of debate. . . . International law now recognizes with little reservation that human rights is an international issue and may be a legitimate basis for intervention”).

35. Mahalingam, *supra* note 28, at 237.

36. *Id.* at 236-37.

UNDHR³⁷ and its two progeny, the ICCPR³⁸ and the ICESCR,³⁹ are international in scope. At a glance, it may seem that the gory details of a domestic conflict have not spilled over into a neighboring state, but upon deeper examination it is possible to understand the ripple effect of that domestic conflict.⁴⁰ One well-known problem is that of refugee spill-over.⁴¹ Then there is the gradual erosion of human rights norms, a result of the aggregate effect of many states acquiescing to transgressions. We looked for an illustration of the aggregate effect in our own domestic legal tradition, recognizing that international legal principles can be related to our own domestic legal tradition.

The most obvious example in United States jurisprudence is *Wickard v. Filburn*.⁴² In *Wickard*, a farmer planted more than his allotted quota of wheat, in violation of the Agricultural Adjustment Act (AAA) of 1938.⁴³ The purpose of the AAA was to stabilize the national economy.⁴⁴ The farmer refused to pay the penalty charged, claiming that his activity only indirectly affected the national economy.⁴⁵ The Supreme Court of the United States held that the farmer's activities on his own territory had a direct effect on the national economy.⁴⁶ The Court reasoned that the farmer's activities, when combined with similar violations in other jurisdictions would result in an outcome contrary to the grand design.⁴⁷

The aggregate effect doctrine, as applied in the international law context, teaches us that we must look at substantial human rights violations within a sovereign's borders in the context of similar violations which are occurring elsewhere. Humanitarian Intervention must be applied consistently so as not to allow one brutal dictator to undermine the international human rights regime. A superficial analysis might lead to a *laissez-faire* international solution, yet we feel that a deeper analysis

37. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

38. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

39. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 [hereinafter ICESCR].

40. Keith L. Sellen, *The United Nations Security Council Veto in the New World Order*, 138 MIL. L. REV. 187, 206, 208 (1992) (maintaining that all conflicts are international).

41. Gordon, *supra* note 10, at 578.

42. *Wickard v. Filburn*, 317 U.S. 111 (1942).

43. *Id.* at 114-15.

44. *Id.* at 115.

45. *Id.* at 118-20.

46. *Id.* at 132-33.

47. *Id.* at 129.

would reveal that the aggregate effect works in conflict with the international design created to foster international peace and security.⁴⁸

Finally, on the point of sovereignty, we discussed the consequence of globalization that has made states progressively more dependent on each other for the preservation of their respective economies, environment and a stable outward-looking political climate.⁴⁹ Therefore, even in the absence of the aggregate effect, the relationship between states in the modern era is such that a humanitarian crisis in any region of the world can infect any state's *modus operandi*.⁵⁰

III. HUMANITARIAN INTERVENTION: CASE STUDIES

We examined three decades of internal strife and noted conflicts that were similar yet where Humanitarian Intervention missions were not deployed consistently. We examined the role of the S.C., or lack thereof, in each conflict and discussed possible reasons for unpredictability in its actions. A number of reasons surfaced, namely the "Somalia Syndrome," racial disparity and political will. We discovered that Humanitarian Intervention missions do not seem to be evenly deployed between oppressed white populations on the European continent and oppressed brown populations on other continents.⁵¹ We are deeply concerned that inconsistencies in the responses to similar conflicts have either led the international community to lose faith in the integrity and stamina of the United Nations or have instead encouraged a politicized atmosphere where inconsistencies are being nourished.

A. Iraq

The Cold War political climate rendered the United Nations largely inchoate.⁵² A spirit of cooperation that followed at the end of the Cold War was well illustrated in the textbook case of the international coalition's condemnation of Iraq's treatment of its Kurd population, further

48. Richard B. Lillich, *The Role of the U.N. Security Council in Protecting Human Rights in Crisis Situations: U.N. Humanitarian Intervention in the Post Cold War World*, 3 TUL. J. INT'L & COMP. L. 1,2 (1995) (enumerating two purposes of the United Nations; one, to maintain "international peace and security" and two, to promote and encourage "human rights").

49. See Sellen, *supra* note 40, at 208.

50. *Id.* at 190 ("The members of that community should take this opportunity to consider critically whether the world has entered an era in which each nation comfortably can sacrifice considerable self-interest to promote collective interest").

51. R.C. Longworth, *When Does a Real Superpower Intervene? When It Can, And When It Should*, CHI. TRIB., June 6, 1999, at 1C; see also *infra* Parts III.A-III.J.

52. Lodico, *supra* note 16, at 1027.

aggravated by its 1991 invasion of Kuwait.⁵³ Iraq's suppression of the Iraqi Kurds' rebellion against Saddam Hussein's regime in the aftermath of the Persian Gulf War posed a great refugee crisis for both Turkey and Iran.⁵⁴ In order to suppress the rebellion, Hussein's forces also committed gross human rights violations against the Kurd population in Northern Iraq.⁵⁵ However, it was mostly the fear that the massive flows of refugees into neighboring states could further destabilize the already volatile region that prompted the United Nations to act despite the language of Article 2(7).⁵⁶

Although at the time, the matter was perceived to be within Iraq's domestic jurisdiction, the United Nations justified its intervention by depicting the pending refugee crisis as a matter with international implications and thus an international matter warranting intervention.⁵⁷ While Resolution 688 did not explicitly evoke Chapter VII, the Resolution was still groundbreaking because it allowed the United Nations to intervene in a solely internal conflict without the consent of the target state.⁵⁸ Although no express mention was made of Chapter VII powers, Resolution 688 condemned Iraq's invasion and demanded that Iraq establish relations and cooperate with human rights relief networks.⁵⁹ In hindsight, Resolution 688 paved the way for the development of "Humanitarian Intervention" as a mechanism for halting gross human rights violations in internal conflicts in the future.⁶⁰

B. Somalia

Since a 1969 military coup brought Siad Barre to power, he has ruled Somalia with rampant corruption while at the same time playing the two Cold War superpowers against each other to benefit his own regime.⁶¹

53. Fernando R. Teson, *Collective Humanitarian Intervention*, 17 MICH. J. INT'L L. 323, 344-46 (1996) (discussing Resolutions 687 and 688 wherein condemnation was made concerning Iraqi aggression and oppression, and humanitarian relief was proscribed, yet the mission was never labeled a Humanitarian Intervention mission under S.C. Chapter VII powers); see generally SAMANTHA POWER, "A PROBLEM FROM HELL": AMERICA AND THE AGE OF GENOCIDE 317 (2002).

54. Gordon, *supra* note 10, at 546-48.

55. *Id.* at 547.

56. *Id.* at 548-49.

57. *Id.*

58. *Id.* at 549. (In the past, "consent has been the basis for jurisdiction in the absence of chapter VII enforcement measures").

59. Teson, *supra* note 53, at 344; see also Lillich, *supra* note 47, at 6-8.

60. Although not consistently, the United Nations has intervened under the rubric of "Humanitarian Intervention" in order to halt human rights abuses in internal conflicts in Haiti and Somalia while regional defense organizations have similarly acted in Kosovo, Liberia and Sierra Leone.

61. See Ved P. Nanda et al., *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia – Revisiting the Validity of Humanitarian Intervention under International Law – Part II*, 26 DENV. J. INT'L L. & POL'Y 827, 831 (1998).

When the Cold War ended, Barre's political position greatly deteriorated as his people grew increasingly discontent with his rule amid ever-present pandemic starvation.⁶² By 1991, the country was immersed in a full-fledged civil war as inter-clan rivalries flared up, with four main rebel groups emerging as the dominant actors; each made destructive grabs for governmental power, ultimately resulting in complete government collapse.⁶³ These rebel groups, each representing different Somali clans, bitterly fought for control over Somalia while ignoring how the immense devastation of their civil war worked only to exacerbate the destruction of Somalia, which was already suffering from natural disasters, and hence further destabilized the already volatile African continent at large.⁶⁴ Pictures of starving and dying Somali children, broadcast by reporters brave enough to enter Somalia, shamed the international community into responding to the crisis.⁶⁵

On December 3, 1994, one year after the first attempt to secure the delivery of humanitarian aid to Somalia, the S.C. for the first time directly referred to its Chapter VII powers when it issued Resolution 794, authorizing the use of force for humanitarian reasons in what was a completely internal civil war.⁶⁶ Because of the limited resources of the United Nations, the S.C. authorized the United States to lead an intervention, labeled the Unified Task Force (UNITAF), which operated in conjunction with a previously commissioned mission, United Nations Operation in Somalia I (UNISOM I).⁶⁷ UNITAF's mission was to create

62. *See id.*

63. *See id.*

64. PATRICK BROGAN, *WORLD CONFLICTS, A COMPREHENSIVE GUIDE TO WORLD STRIFE SINCE 1949* 101-102 (1998); *United Nations Operation In Somalia I, UNISOM I* [hereinafter *Somalia I*], available at http://www.un.org/Depts/dpko/dpko/co_mission/unosomi.htm (last visited Jan. 21, 2004). Some of the background text on the web site is credited on the site as adapted from the "Blue Helmets" — A Review of the United Nations Peacekeeping. This is a U.N. sales publication offered in December 1996.

65. BROGAN, *supra* note 64, at 101.

66. *See Teson, supra* note 53, at 349; Frank Crigler, JFQ Forum, *The Peace-Enforcement Dilemma*, Autumn 1993 (while the United Nations (and the United States) contemplated humanitarian response to the crisis, 300,000 civilians, including children, perished and 4.2 million faced starvation and disease-related death), at http://www.dtic.mil/doctrine/jel/jfq_pubs/jfq1002.pdf (last visited June 7, 2004); Nanda et al., *supra* note 61, at 833; *see also United Nations Operation in Somalia II* [hereinafter *Somalia II*], available at http://www.un.org/Depts/dpko/dpko/co_mission/unosom2.htm (last visited Jan. 21, 2004).

67. *Somalia I, supra* note 64; Crigler, *supra* note 66 (UNISOM I was commissioned by the United Nations to operate a mission of "50 military observers, 3,500 security personnel, up to 719 logistic support personnel" and 200 international civilian staff to monitor a cease-fire in Mogadishu, provide the U.N. protection, and to escort humanitarian aid to Mogadishu and the surrounding areas. Later, UNISOM I mission was expanded to escort humanitarian aid convoys to all of Somalia. Even with UNISOM I in full operation and operating under the expanded mission, by December of 1992, the United Nations found it necessary to establish UNITAF.).

a secure environment for humanitarian aid to come in.⁶⁸ Once aid was entering the country, the United States became reluctant to remain militarily involved in Somalia, as rebel groups were once again picking up arms.⁶⁹ When the United States stated that it would call UNITAF troops home, the United Nations authorized a second military intervention of U.N. troops, labeled the United Nations Operation in Somalia II (UNISOM II).⁷⁰ UNISOM II was supposed to be a phased-in transition from UNITAF and was given the mandate of enforcing cease-fire agreements, maintaining a secure environment for aid to continue, aiding in disarmament and assisting with nation-building undertaken by the United Nations.⁷¹

After an attack that killed 25 Pakistani soldiers who were part of the UNISOM II force, the S.C. passed Resolution 837, authorizing UNISOM II to take more drastic measures including arrest, detention and prosecution of all responsible parties including the clan leader, General Aideed.⁷² During the investigation and prosecution of the attack, many local citizens were killed by UNISOM II troops.⁷³ On October 3, 1993, during the investigation of the Pakistani deaths, two U.S. military helicopters were shot down.⁷⁴ Television news broadcast film footage of angry Somalis dancing on the downed helicopters and abusing the bodies of slain American soldiers.⁷⁵ Eighteen U.S. soldiers died and seventy-five were wounded from the events of October 3, 1993.⁷⁶ Consequently, the United States withdrew its forces fearing further American casualties and other nations soon followed suit.⁷⁷ During the entire Somalia mission, U.S. deaths totaled 30 with 175 wounded.⁷⁸ In 1995, UNISOM II troops finally conceded the failure of the mission and completely withdrew from Somalia.⁷⁹ Initially, the U.N. mission was a failure because of a slow response and lack of resources, thereby causing dependence on the United States.⁸⁰ Once UNISOM II had taken over UNITAF, the troops lacked clear goals, a clear command structure and adequate resources.⁸¹

68. *Somalia I*, *supra* note 64 (UNISOM I was already operational in Somalia when the United Nations voted using Chapter VII powers to create UNITAF after UNISOM I troops could not secure the nation.).

69. *Id.*

70. *Somalia II*, *supra* note 66.

71. *Somalia I*, *supra* note 64; *see generally* POWER, *supra* note 53.

72. *Somalia I*, *supra* note 64; *Somalia II*, *supra* note 66.

73. *Somalia II*, *supra* note 66.

74. *Id.*

75. BROGAN, *supra* note 64, at 102; *Somalia II*, *supra* note 66.

76. *Somalia II*, *supra* note 66.

77. *Id.*

78. BROGAN, *supra* note 64, at 102.

79. *Somalia II*, *supra* note 66.

80. Crigler, *supra* note 66.

81. *Id.* at 67.

The Humanitarian Intervention mission in Somalia was landmark because it was the first time that the United Nations authorized a Chapter VII intervention prompted by pure humanitarian concerns although the conflict appeared to be completely internal.⁸² However, the slow response, the lack of clear direction and command structure, the lack of U.N. resources and the heavy dependence on the United States all led to the failure of the mission.⁸³ Regrettably, the chief failure of the Somalia mission was that the death of U.S. forces gave birth to the “Somalia Syndrome” which would prove to be a major roadblock for all future Humanitarian Intervention missions.⁸⁴

C. Liberia

We contrasted the S.C. reaction to the Somalia crisis in 1993 to its stance on the more than decade-long civil war that has plagued Liberia — subjecting Liberian citizens to ongoing, draconian rule under one oppressive regime after another.⁸⁵ Unable to broker a peace on its own, the Organization of African Unity encouraged and then requested involvement from the international community, specifically seeking help from the United Nations.⁸⁶ In the meantime, world aid organizations struggled to support half a million refugees and thousands of displaced, starving and sick Liberian citizens suffering the effects of a devastating war.⁸⁷ In 1992, the United Nations finally passed a resolution authorizing an arms embargo and endorsing the efforts of a military coalition of African states, the Economic Community of West African States Cease-Fire Monitoring Group (ECOMOG).⁸⁸ In 1993, after continued human rights violations, the United Nations Observer Mission in Liberia (UNOMIL) was established; it was poorly organized, largely duplicative of ECOMOG and ineffective as either a peacekeeping or peacemaking mission because the command structure had little authority to achieve subordination of the fighting military factions.⁸⁹ Although the conflict was restricted to a single state’s borders, as in Somalia, the reaction from the S.C. was not as swift.⁹⁰ This was largely attributed to the “Somalia Syndrome,” which has since caused

82. *Id.* at 64.

83. *See generally id.*; Lodico, *supra* note 16, at 1028.

84. Lodico, *supra* note 16, at 1028-29.

85. Nanda et al., *supra* note 61, at 851; *see also* ROY GUTMAN & DAVID RIEFF, CRIMES OF WAR: WHAT THE PUBLIC SHOULD KNOW 230-35 (1999).

86. Nanda et al., *supra* note 61, at 851.

87. *Id.* at 859.

88. *Id.* at 860.

89. *Id.* at 861-62; *see also* GUTMAN & RIEFF, *supra* note 85, at 230-35; *see also* Judith Miller, *U.N. Monitors Accuse Sierra Leone Peacekeepers of Killings*, N.Y. TIMES Feb. 12, 1999, at A12.

90. Nanda et al., *supra* note 61, at 851-62 (Nanda details efforts of the United Nations which seem to indicate a desire not to provide effective Chapter VII assistance, but rather to delegate to ECOWAS, ECOMOG forces and the Organization of African Unity.).

a sharp decrease in U.S. support for Humanitarian Intervention missions in Africa.⁹¹

Liberian citizens had hoped for a reprieve from the bloodshed when they elected Charles Taylor, the leader of a dominant rebel group, to the presidency in 1997.⁹² Unfortunately, they were hopelessly wrong as Taylor continued in the footsteps of his predecessors — taking advantage of his authority and committing heinous atrocities against dissidents.⁹³ In June 2003, when President Taylor was in Ghana for peace talks, a rebel attempt to stage a military coup was thwarted.⁹⁴ Then in July 2003, images of corpses of Liberian civilians killed during the violence of the attempted coup and then piled up in a massive heap in front of the U.S. Embassy in Monrovia were broadcast around the world; and still, the United Nations and African regional forces were reluctant to become involved.⁹⁵ Subsequently, under intense international pressure to stop the bloodshed, Taylor was finally forced into exile in Nigeria and the international community hoped that the fighting rebels would now put down their arms.⁹⁶

Hopefully the successes gained by the removal of Taylor will not become contaminated by the lack of a commitment on behalf of the international community to help establish a lasting peace in Liberia. Already, there are reports of renewed outbursts of violence in Liberia since Taylor's exile.⁹⁷ The first peacekeepers to arrive have come from the

91. Fergal Keane, *Yet Again, We Choose to Ignore Butchery in Africa; 'I Remember Visiting A Hospital In Sierra Leone and Being Sick at the Sight of the Wounds,'* THE INDEPENDENT (London), May 6, 2000, at 3 (this is also termed the "Mogadishu line").

92. Nanda et al., *supra* note 61, at 852.

93. *Annan: Liberia Needs Peace Force*, CNN.COM/WORLD, Saturday, June 28, 2003 [hereinafter *Annan*], available at <http://www.cnn.com/2003/WORLD/africa/06/28/liberia.monitors/index.html> (last visited May 24, 2004); Nanda et al., *supra* note 61, at 851; Jeremy Levitt, *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, 342-44 (1998); Stephen Ellis, *War in West Africa*, 25 FLETCHER F. WORLD AFF. 33, 35 (2001).

94. *Liberia Coup Bid Fails — Sources*, CNN.COM/WORLD, June 5, 2003, at <http://www.cnn.com/2003/WORLD/africa/06/05/liberia.coup/index.html> (last visited May 24, 2004); *Annan*, *supra* note 93.

95. Peter Takimbudde, *Where the Arms Come From: Liberia*, INT'L HERALD TRIB., Sept. 17, 2003, at 8.

96. *New Bid to Stop Liberia Bloodshed*, CNN.COM/WORLD, June 10, 2003, at <http://www.cnn.com/2003/WORLD/africa/06/10/liberia.fighting/index.html> (last visited May 24, 2004).

97. Global Policy Forum, Sept. 17, 2003, Global Policy Forum — U.N. Security Council, *Nations United in Discontent*, at <http://www.globalpolicy.org/security/reform/cluster1/2003/0917discontent.html> (last visited May 24, 2004); U.N. News on Africa, *Liberia: UN Humanitarian Envoy Calls for End to Sporadic Fighting in Northeast*, Sept. 10, 2003, at http://www.un.org/esa/africa/UNNews_Africa/sporadic.htm (last visited May 24, 2004); Takimbudde, *supra* note 95 (writing that fighting continues between the pre-exile fighting factions. The writer is the executive

Nigerian-led Economic Community of West African States (ECOWAS), even though nongovernmental organizations (NGOs) have challenged the human rights record of these peacekeepers.⁹⁸ In any case, whatever peacekeepers there are currently in Liberia, their number is far from adequate to enforce a cease-fire agreement between the two rebel groups and the newly formed transitional government.⁹⁹ Therefore, NGOs have been pleading for additional peacekeeping forces to encourage the rebel groups to maintain the fragile peace that is currently in place in Liberia.¹⁰⁰

Although the international community should applaud the work of peace negotiators and diplomats that have brought Liberia this far, the United Nations should still try hard not to ignore the current plight of Liberians, especially at this crucial moment in Liberian history, when there finally seems to be real progress being made toward stabilizing the country that has been plagued by bloodshed and turmoil for nearly fifteen years. Should the rebel groups be unable to maintain a cease-fire on their own, the United Nations must not miss its opportunity to then immediately take initiative to help the Liberian people — the victims of a prolonged, horrendous brutality, and in the process, attempt to restore some of its lost legitimacy by making such a strong commitment to a lasting peace.

D. Rwanda

Unfortunately, Liberia was not the first time the S.C. considered sending a Humanitarian Intervention mission only after much reservation and massive loss of life. In Rwanda, the United Nations was mainly concerned with promoting a cease-fire agreement between the Hutu Rwandan government and Tutsi guerrillas.¹⁰¹ In furthering this goal, the United Nations established the United Nations Assistance Mission (UNAMIR), whose mission was to provide short-term peacekeeping

director of Human Rights Watch and calls upon the international community, especially the Bush administration, to send peacekeeping troops.)

98. Colum Lynch, *Rights Activists Worried by African Peacekeepers*, WASH. POST, Aug. 5, 2003, at A10.

99. Takimbudde, *supra* note 95.

100. Fareed Zakaria, *Take the Lead in Liberia*, NEWSWEEK, Aug. 18, 2003, at 35.

101. Nanda et al., *supra* note 61, at 848; *see generally* POWER, *supra* note 53.

operations.¹⁰² UNAMIR failed to bring lasting peace to Rwanda.¹⁰³ Instead of trying other avenues to stabilize Rwanda and the region around it, U.N. members faltered.¹⁰⁴ When, in 1994, the death of President Habyarimana unleashed one of the worst massacres in the Twentieth Century, the United Nations took no immediate action; it instead reduced UNAMIR forces and embarked on a long debate at the U.N. Headquarters in New York about what action it was willing to take.¹⁰⁵ In the meantime, perhaps as many as eight hundred thousand Tutsis were being slaughtered.¹⁰⁶ The S.C. authorized the French government to lead a Chapter VII mission known as “Operation Turquoise” only after the genocide took at least half a million lives.¹⁰⁷

E. Haiti

In the same year that Hutus were slaughtering Tutsis, the United States led a Chapter VII Humanitarian Intervention mission to restore Haiti’s democratically elected President, Jean-Bertrand Aristide.¹⁰⁸ The Chapter VII mission proved to be successful in overthrowing the military junta.¹⁰⁹ However, the international community questioned the motives for the S.C.’s intervention into Haiti’s internal conflict that posed no military threat to its neighbors.¹¹⁰ Was the S.C.’s intervention prompted by a pure motive to restore Aristide’s legitimate constitutional government of Haiti, or was it prompted by a desire to prevent the impending refugee crisis that would confront its U.S. neighbor?¹¹¹

102. Nanda et al., *supra* note 61, at 849.

The UNAMIR plan consisted of four phases. First, the U.N. would establish a broad-based transitional government in Kigali. Second, the armed forces would be demobilized and integrated. Third, the U.N. would expand and monitor the Demilitarized Zones . . . throughout Rwanda and along the Rwanda-Uganda border. Fourth, the mission would terminate with nationwide elections in Rwanda.

Id.

103. *Id.*

104. *Id.*

105. *Id.* at 849-50.

106. *Id.* at 846; *see also* Lodico, *supra* note 16, at 1028-30; POWER, *supra* note 53, at 327.

107. Nanda et al., *supra* note 61, at 850-51; *see also* Lodico, *supra* note 16, at 1043-45; *see also* HENRY J. STEINER & PHILLIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 652 (2000).

108. Lodico, *supra* note 16, at 1043-45; Lillich, *supra* note 48, at 9-11.

109. *Id.* at 1045.

110. *Id.* at 1044-45.

111. *Id.* at 1044-45; *see also* Gordon, *supra* note 10, at 558.

The S.C. justified its Chapter VII intervention because the junta subjected the Haitian people to human rights abuses.¹¹² By recognizing the coup leaders as illegitimate rulers of the state of Haiti who had committed gross human rights violations, the S.C. was able to label the internal conflict in Haiti as a situation that was “a threat to peace and security,” and thus trigger its Chapter VII powers.¹¹³ By asserting humanitarian concerns for its intervention in Haiti, the S.C. was able to proclaim to the world its pure motives for its intervention.¹¹⁴ But could the S.C.’s humanitarian motive be simply a cover up for a selfish motive — to assist one of its powerful permanent members, the United States, in curbing the refugee crisis created by massive flights of Haitian citizens to the U.S. coast?¹¹⁵ The success of the S.C.’s intervention has been somewhat tarnished by accusations that support for Humanitarian Intervention came only as a result of an impending crisis presenting itself at the Florida border, a territory within the jurisdiction of a permanent member of the S.C., the United States.¹¹⁶

112. Mahalingam, *supra* note 28, at 255; see also Kevin Ryan, *Rights, Intervention, and Self-Determination*, 20 DENV. J. INT’L L. & POL’Y 55, 66-67 (1991); Nanda et al., *supra* note 61, at 842 (stating that “after Aristide’s overthrow by a military junta, widespread human rights abuses ensued. Over 3,000 Haitians were murdered, and others were raped, arbitrarily arrested, and tortured.”).

113. Mahalingam, *supra* note 28, at 256-57, 259-60. In refusing to recognize the coup leaders as legitimate rulers of Haiti, the S.C. was able to circumvent U.N. Charter Art. 2(7), which prohibits any intervention “in matters which are essentially within the domestic jurisdiction” of the state except when Chapter VII powers must be applied. U.N. CHARTER art. 2, para. 7. It seems that S.C.’s Resolution 940, authorizing the use of “all necessary means” by a multinational coalition to restore the Aristide government in Haiti, represents the view of the international community

that a democratically-elected government was more legitimate and preferable to a military junta. . . . [T]he threshold for a breach of peace and security, and hence, Chapter VII treatment, has been liberalized. The presence of an humanitarian catastrophe itself can trigger Chapter VII treatment even where the actual threat to other States is not particularly strong.

Mahalingam, *supra* note 28, at 258-60; see also Nanda et al., *supra* note 61, at 845.

114. Ryan, *supra* note 112, at 66-67 (The S.C.’s motive to intervene in an internal conflict must be “pure,” i.e., the S.C. should only intervene under its Chapter VII powers in order to stop the most egregious violations of the fundamental rights of the people. “An intervention which, in reality, is designed to achieve the selfish purposes of the intervening party — e.g., to rid itself of an annoying, belligerent, or merely uncooperative neighbor, or to establish any vision of world order . . . is unjustified.”).

115. *Id.* at 67; Lodico, *supra* note 16, at 1044-45; see also Nanda et al., *supra* note 61, at 842.

116. Lodico, *supra* note 16, at 1044-45.

Many Haitians sought to flee, creating a politically volatile situation in the United States. The result was a flood of refugees heading toward the southern Florida borders, creating a calamity of refugee policies from summarily returning the refugees to containing them at Guantanamo Bay, Cuba. This ensured that the

F. Sierra Leone

Perhaps legitimacy is lost in view of the fact that the S.C. did not order a Humanitarian Intervention mission into Sierra Leone. Like Haiti, the conflict began when a democratically elected president was ousted from power.¹¹⁷ In May 1997, the Armed Forces Revolutionary Council and the Revolutionary United Front (R.U.F.) forced President Ahmad Tejan Kabbah into exile after only a year in office.¹¹⁸ The rebel leader, Foday Sankoh, was waging an ongoing campaign of butchery against civilians, code-named “No Living Thing.”¹¹⁹ Men, women and children were shot, disemboweled or mutilated by having limbs hacked off.¹²⁰ Women and children were also subjected to constant sexual abuse such as gang rape and sexual slavery.¹²¹ Since the rebel forces financed their terror campaign

United States would have a direct interest in finding a solution to the crisis in Haiti.

Id.; cf. Teson, *supra* note 53, at 359-60.

If one asks why the atrocities affected U.S. interests, a plausible answer is that the national interest as defined in a broader sense, and not just in terms of pure national egoism was affected precisely because the atrocities were morally intolerable. One could reply that the U.S. national interest was affected by the flow of Haitian refugees into U.S. territory. This is certainly true but only means that the United States had a self-regarding motive in addition to its humanitarian motives.

Id.; see also Ryan, *supra* note 112, at 67.

117. See Barbara Crossette, *In West Africa, a Grisly Extension of Rebel Terror*, N.Y. TIMES, Jul. 30, 1998, at A1; Karsten Nowrot & Emily W. Schabacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, 14 AM U. INT’L L. REV. 321, 325 (1998).

118. Crossette, *supra* note 117; see also Nowrot & Schabacker, *supra* note 117, at 325 (stating that Kabbah was elected in the “first free elections . . . in over thirty years”).

119. Crossette, *supra* note 117.

[The rebels] would mutilate the people . . . writ[ing] things like “No election” or “Don’t vote” on peoples’ backs — they would burn it in. The idea of chopping someone’s hands off . . . came from rebels saying to people: We’re going to cut your hands off so you can’t vote. . . . [The rebels] want to put themselves back on the political chessboard . . . [and] to do these horrible things to civilians . . . it makes the civilian population subservient.

Id.

120. *Id.*

121. *Id.*; see also Miller, *supra* note 89 (“[R]ape of females, including children, was a ‘standard practice’ of the rebels. . . . [V]irgins . . . mostly aged 12 to 15 ‘were ordered to report each night for sexual abuse by the commander and his men.’”); see also Victoria Brittain, *Sierra Leone*

by selling diamonds in exchange for weapons, they were able to continue their terrorization of the civilian population, so long as they controlled the diamond mines in the Eastern region of Sierra Leone.¹²² Thus, the Sierra Leoneans' only hope was the Nigerian-led West African regional force known as ECOMOG. However, some have questioned the true motive behind ECOMOG's presence in Sierra Leone.¹²³ Reports indicate that Nigerian troops also committed atrocities against Sierra Leoneans similar to those committed by the rebels, thereby tarnishing their official mission.¹²⁴

It appears that after the U.S.-led forces failed to bring peace in Somalia, the Western states now favor the creation of any type of African army as long as it is an *all*-African army, regardless of whether it can actually restore peace, so long as no Western soldier's blood is spilled in this or

Haunted by 'Silent War Crimes,' GUARDIAN (London), Jan. 16, 2003, at 21 ("Sexual violence has remained a silent war crime in Sierra Leone"); *see also* Tim Butcher, *UN Sierra Leone Troops Accused of 'Systematic' Rape*, DAILY TELEGRAPH (London), at 18 ("Women were used by all sides as chattels, kidnapped from their homes . . . and forced to act as sex slaves . . . as well as domestic maids.").

122. Crossette, *supra* note 117.

123. David Hecht, *West Wades into African War*, CHRISTIAN SCIENCE MONITOR, Jan. 21, 1999, at World 6 ("Nigeria's interest in Sierra Leone is widely believed to be diamonds. . . . Nigeria's stated objective is to show itself to be a superpower in the region, deserving of a permanent seat on the UN Security Council. . . . [Thus,] ECOMOG has not remained neutral in conflicts."

124. Miller, *supra* note 89.

A United Nations human rights mission has charged that regional peace-keepers in Sierra Leone have summarily executed dozens of civilians. . . . the mission describes systematic rights violations by both insurgents and peacekeepers. . . . The report accuses . . . ECOMOG [] of executing groups including children . . . The report says that ECOMOG forces bombed civilian targets, shot at "human shields" formed by the rebels and mistreated the staffs of the Red Cross and similar groups. . . . the mission observed "numerous incidents of ill treatment" of people whom ECOMOG soldiers detained at checkpoints. Punishments included "whipping, beating, varying types of public humiliation, and being bound extremely tightly."

Id.

any other African conflict.¹²⁵ Thus, is the S.C.'s inaction in Sierra Leone simply an illustration of the racial biases of the S.C. members? There are some in the international community who hold such a view.¹²⁶ If so, is the S.C. once again a paralyzed body as it was during the Cold War?¹²⁷ Then what good is the United Nations if it is unable to intervene in the very atrocities which it was created to stop?¹²⁸

For Sierra Leoneans, the U.N.'s inaction is a sign of betrayal.¹²⁹ Instead of intervening militarily to disarm the rebel troops and bring them to justice, the United Nations preferred to negotiate what soon became a flawed peace plan.¹³⁰ This supposed peace plan brought the "butchers into the government" despite the fact that the R.U.F. was a murderous army that chopped off hands and legs, beheaded the people and burned them alive.¹³¹ Furthermore, there is evidence that the conflict's supposed savior,

125. Hecht, *supra* note 123 ("ECOMOG fits with US policy in Africa," as well as with the foreign policies of other like-minded Western states; "Western states want an African army to defend their interests"); *see also* Miller, *supra* note 89. The fact that ECOMOG was able to restore President Kabbah's civilian government, a little more than a year after a 1997 military coup had overthrown it, appeared to be enough for the organization to win support of the Western states. This was despite the fact that rebels still remained active outside the capital and controlled the state's only asset — its diamond mines — and despite confirmed reports that ECOMOG forces had themselves committed human rights atrocities. This suggests that Sierra Leoneans are just not important enough for the Western states to use their resources to defend them. *See* Crossette, *supra* note 117.

126. Longworth, *supra* note 51, at 1C (questioning if the United Nations has a duty to correct "any human-rights violations, or only the worst ones? Who decides? The United Nations? If the UN refuses to act, what then? If Kosovo, why not Rwanda or Sierra Leone? Are we committed only to saving Europeans, or white folks?" Although Longworth refers to the United States specifically here when stating "we," the same can be applied to all the U.N. members, especially to the members of the S.C. Likewise, when Longworth states that "[i]f the United States is the world's only superpower . . . [is it then] the world's police force, or only the leader of other like-minded nations?," this language can also be applied to the United Nations as a whole due to the language in the Preamble and Chapter I of the Charter. By looking back when the U.N. S.C. chose to intervene and when it did not, it appears that "America and its allies" have no desire to intervene in totally "alien terrain, where Western intelligence is poor," and where the chance of success, according to them, is slight, at best, like in Rwanda, Sierra Leone, Liberia, Sudan and Gujarat. Such selective intervention only confirms the view of some states that some "great powers act only in their own self-interest, and that no coalition of nations can successfully collaborate for purposes as weak as ideals and values" and that other great powers would not act at all and would simply leave "the world problems . . . to local folks to sort out").

127. *Id.* ("[T]he UN Security Council, which is the only UN body that can authorize interventions" seems to be "held hostage by the veto power of the five permanent members [when it] refuses to act." But is it? Maybe the S.C. is simply using the excuse of the veto power held by the five permanent members to cover up its unanimous intention not to intervene where its members have nothing to gain, or where success is unlikely or can only be achieved at too high a cost for them in terms of lives and equipment.)

128. *Id.*; *see also* U.N. CHARTER *ambli.*, ch. 1.

129. Keane, *supra* note 91.

130. *Id.*

131. *Id.*

ECOMOG, also perpetuated similar human rights abuses against the Sierra Leoneans.¹³² For Sierra Leoneans, the U.N.'s preference for negotiations instead of military intervention simply meant that their lives are not worth saving.¹³³ After all, a military intervention would have only required a few

132. *Id.* ("President Kabbah had no choice but to accept killers in his cabinet as part of the UN brokered peace agreement." This action really answers the question of whether the S.C. is "willing to go to war in Sierra Leone?" in the negative. This is partly due to the losses that American and Pakistani U.N. troops suffered in Somalia. The peacekeepers in Somalia became just another target for the feuding clans, and the "Mogadishu line" that this incident caused has since inhibited the S.C. from intervening in subsequent similar conflicts like in Rwanda, Bosnia, Liberia, Sierra Leone, Kosovo, Sudan and Gujarat, all of which are, according to S.C., internal conflicts to be locally or regionally resolved.); see also Steven Mufson, *Sierra Leone's Peace Succumbs to Its Flaws*, WASH. POST, May 8, 2000, at A01. In Sierra Leone, the peace accord was flawed because President Kabbah was forced by peace negotiators to sign a peace accord with the leader of RUF, Foday Sankoh, that

gave Sankoh amnesty within Sierra Leone for war crimes committed . . . [a]nd it gave the RUF eight cabinet posts, including control of the diamond mines, the main source of foreign exchange earnings. "Instead of dealing with a guy who obviously committed war crimes, they cut him a deal and put him in charge of diamonds in the hope that he'd steal enough to keep himself happy," said [former U.S. ambassador Dennis] Jett. . . . "With a guy like that, I don't think you can expect his good faith and integrity to live up to his part of a bargain. . . ." Sankoh dared to break the flawed peace pact because of the flawed U.N. peacekeeping force, which he does not fear. U.N. peacekeepers . . . are not meant to keep the peace. They mostly monitor peace. They carry guns they are never meant to fire. When warring factions violate peace accords and begin to fight, then U.N. peacekeepers turn into spectators . . . Although the United Nations gave its Sierra Leone peacekeepers the mandate to shoot back and use force, giving them the will . . . is another matter.

Id. This issue of mustering political will to defend the people in faraway lands, such as Sierra Leone, against human rights abuses, was raised by then-Republican presidential candidate George W. Bush, who "cast doubt whether he would ever send U.S. troops to Africa." *Id.* He stated that "[w]e should not send our troops to stop ethnic cleansing and genocide in nations outside our strategic interest." *Id.* Vice President Gore also urged "selective engagement in regional conflicts" stating that "America can not be the world's policeman." *Id.*; see also *Brutal Leader Who Said: 'I'm God'* (stating that Foday Sankoh died on July 29th, 2003), CNN.COM/WORLD, July 30, 2003, at <http://www.cnn.com/2003/WORLD/africa/07/30/sierra.sankoh.profile/index.html> (last visited May 24, 2004).

133. For that matter, the life of any African. Keane, *supra* note 91 (stating that, in Sierra Leone, one option is for the world to "get out fast and look the other way while the rebels take power and slaughter all around them."); see also DAVID RIEFF, *SLAUGHTERHOUSE: BOSNIA AND THE FAILURE OF THE WEST* 140-44 (1995) ("[T]he West does not actually want to be a policeman." Although Rieff refers to Bosnian Muslims, who were white and European, the same is especially true for the Africans who are mostly black and non-European. Bosnian Muslims used to say, "I can't understand why you don't do anything for us . . . [w]e are not Africans, we are civilized Europeans just like you! . . . Bosnians of all stripes seemed unable to accept [the] thought that nobody cared." Bosnian Muslims could not comprehend that "there was no intervention in Bosnia . . . because the Western powers did not care enough about Bosnia's fate to sacrifice the lives of

thousand troops, inevitably comprised, in part, of Western soldiers, backed up by high tech weaponry to halt the rebels.¹³⁴ In the absence of a military effort, how then can there be any talk of post-tragedy justice if it appears that the United Nations is unwilling to take even some risk in order to save large populations?¹³⁵

We are unable to arrive at a logical conclusion as to why a Humanitarian Intervention mission was not ordered in Sierra Leone when we discovered that the S.C. did act with deliberate speed to restore Haiti's president, but merely endorsed military sanctions to restore Sierra Leone's democratically elected president. We thus pondered the question: *if Sierra Leone had been in fleeing distance of a state with veto power on the S.C., would the mayhem have dragged on for so long?*

G. Bosnia

Yet another cause of controversy surrounds the gross violations of fundamental human rights committed against the Bosnian Muslims and Kosovars, which occurred after the breakup of Yugoslavia. The civil wars that erupted, in part due to the historic volatility of the Balkan region, revealed a casebook illustration of an immediate threat to international peace and of an actual breach of peace.¹³⁶ The S.C. would have been justified in ordering a Humanitarian Intervention mission because of the

even a few of its soldiers." This language that Rieff uses to refer to Bosnian Muslims is equally applicable to Sierra Leoneans because if the United Nations did not care enough to intervene to defend the white Europeans, Bosnian Muslims, it was highly unlikely that it would intervene to defend Sierra Leoneans, people that are farther away and that looked and acted differently than the people of the western states, especially those of the S.C. members.); Mufson, *supra* note 132.

Sierra Leone was a place of no strategic significance, and instead of sending a massive NATO military force to rout the rebels, the international community sent negotiators and then a hodgepodge of U.N. peacekeepers to collect the rebels' weapons and implement the deal. . . . The Sierra Leone fiasco . . . calls into question the will of world powers to stop atrocities in distant lands and highlights a basic flaw in U.N. peacekeeping missions . . . [that] peacekeepers can't succeed if there's no peace to keep.

Id. That is why the U.N. peacekeeping operations failed in Somalia, Rwanda and Bosnia.

134. Gwynne Dyer, *Sierra Leone: The End of UN Peacekeeping?*, JAKARTA POST, May 16, 2000 ("The Western powers in particular . . . remain reluctant to commit their ground forces to combat because of the intense popular aversion to casualties.")

135. Peter H. Maguire, *UN is Weak-Willed in Fighting Genocide*, Viewpoints, NEWSDAY, July 19, 2001 at A37 ("Trials can never make up for shameful inaction in the face of preventable genocide."). In the case of Sierra Leone, as of March 2003, there has been no criminal tribunal established yet to bring the criminals to justice. Is this because the United Nations itself is just as guilty as the RUF, the perpetrators of human rights abuses, since the United Nations failed to prevent the preventable for political reasons and thus sanctioned the abuses that the rebels committed?; *see also* Dyer, *supra* note 134.

136. U.N. CHARTER art. 39; *see also* Gordon, *supra* note 10, at 570-72.

impending certainty that the conflict would spill over into neighboring states, coupled with massive human rights abuses.¹³⁷ However, due to lingering Cold War alliances of the permanent members of the S.C., most notably of Russia, the S.C. was prevented from acting under its Chapter VII powers.¹³⁸ Thus, in both the Bosnian and Kosovar conflicts, the North Atlantic Treaty Organization (NATO) had to replace the S.C.¹³⁹ Although NATO did not label its mission a “Humanitarian Intervention,” it proclaimed a humanitarian purpose.¹⁴⁰

H. Kosovo

Whereas in the case of Bosnia, NATO acted under the S.C. mandate,¹⁴¹ in Kosovo, in 1999, NATO acted within its own mandate.¹⁴² These two

137. Gordon, *supra* note 10, at 570-72. The human rights abuses against Bosnian Muslims

included rape camps, concentration camps, and massive bombardments of civilian targets. . . . Bosnia-Herzegovina . . . presents a classic case of an internal conflict that is a grave “threat” to international peace and would suggest the kind of situation where the Council could act to the very limits of its powers, including forcible and nonforcible enforcement.

Id.

138. See Inocencio Arias, *Humanitarian Intervention: Could the Security Council Kill the United Nations?*, 23 *FORDHAM INT’L L.J.* 1005, 1011-12 (2000).

[A] split in the Security Council — and the resulting gridlock created by the veto power of the Permanent Members — places any international intervention, no matter how apocalyptic the outrage being committed, in legal quicksand. Let us not forget that the prohibition against intervention is not absolute; the Security Council may authorize it in certain situations . . . [t]he Security Council has exercised this option during upheavals in certain geographical regions, or when refugees threaten to flow into neighboring countries. . . . When the Security Council fails to act, due either to the threat or the actual exercise of the veto power, the United Nations appears to be wavering or passive. Consequently, the reputation of the United Nations is damaged. . . . A future of recurring vetoes by the “Great Ones” . . . which would represent a return to Cold War-like patterns, might not be tolerated by long-term international public opinion. The erosion of the foremost duty of the United Nations . . . could be the coup de grace for the United Nations.

Id.

139. *Id.* at 1012 (“Despite the obvious seriousness of the matter in Kosovo, the split between Permanent Members in the Security Council kept the United Nations from acting, which in turn, led to NATO’s intervention without the blessing of the Security Council.”). See generally Nanda et al., *supra* note 61, at 840-41.

140. See Brown, *supra* note 16, at 1704-06.

141. Nanda et al., *supra* note 61, at 840-41 (“The [Security] Council . . . authorized air power, . . . in response to which NATO conducted air strikes”).

142. Arias, *supra* note 138, at 1006 (“NATO [] intervention . . . was engineered outside the realm of the United Nations, and thus in violation of the rules of the U.N. Charter”); Brown, *supra*

cases show how the lingering Cold War alliances should yield to the noble goal of eradication of human rights abuses around the globe. The U.N. Charter's purpose and the S.C.'s role as a protector of human rights and dignity are inconsistent with political alliances to the contrary.¹⁴³

As you know, controversy centers around the argument that NATO's response was illegal, however justified, in light of the balance created between Articles 2(4) and 2(7) and Chapter VII of the U.N. Charter.¹⁴⁴ Controversy also centers on the realization that a strong and steady response is forthcoming when the victims are European, yet there is no similar response on the African and Asian continents, where the death toll is constantly on the rise, but the victims are not European.¹⁴⁵ This leads many to question whether racism wields the arms of protection, leaving brown citizens of the world community in serious peril when caught in the middle of an armed conflict.¹⁴⁶

I. Sudan

In Bosnia and Kosovo, Humanitarian Intervention was quick in coming, at least from regional forces, while in Sudan over two million people have died and five million have been internally displaced or become refugees.¹⁴⁷ Yet the United Nations still ignores the cries of abducted women and children forced into slavery, often sexual slavery; the

note 16, at 1724 (“[S]tates wielding the veto privilege [made] it impossible for the Security Council to act”); Lodico, *supra* note 16, at 1046 (“The United States and European countries would not have received authorization from the Security Council despite a series of resolutions condemning the situation, so it was necessary to develop an alternative collective mechanism under the NATO.”).

143. Mahalingam, *supra* note 28, at 251-52 (“During the Cold War, the superpower conflict restrained the U.N. from taking meaningful action.”). Mahalingam then states that since the fall of the Soviet Union, “[t]he U.N.’s paralysis has . . . ended.” *Id.* at 252. However, the cases of Bosnia and Kosovo illustrate how that may not be so. Since internal conflicts currently seem to be the biggest threat to the international community, it seems that now, it is more crucial than ever before to have the S.C.’s P5 members shed their selfish self-aggrandizement agendas and unite in the fight to prevent human sufferings.

144. Arias, *supra* note 138, at 1006-07 (“[T]hey were noticeably uncomfortable — from a legal standpoint — with the North Atlantic Treaty Organization (“NATO”) intervention”); *see also* Brown, *supra* note 16, at 1688.

145. Longworth, *supra* note 51.

146. *See generally* Lodico, *supra* note 16.

147. U.S. Department of State, *The Outlook for Peace in the Sudan, Report to the President of the United States from John C. Danforth, Special Envoy for Peace*, Apr. 26, 2002 [hereinafter Danforth Report], at <http://www.state.gov/p/af/rls/rpt/10150.htm> (last visited May 24, 2004); *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives, Situation of Human Rights in the Sudan*, Report by Gaspar Biro, Special Rapporteur of the Commission of Human Rights, U.N. GAOR, 48th Sess., Agenda Item 114(c), U.N. Doc A/48/601 (1993) [hereinafter 1993 Special Rapporteur Report], available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/e0af1160ef9e5781c1256a0f003e6920?Opendocument> (last visited May 26, 2004).

cries of young boys forced to pick up arms and fight; the cries of activists imprisoned without charges, tortured, silenced and executed; the cries of children forcefully taken from parents; and the cries of a civilian population slowly starving to death.¹⁴⁸

Sudan was plunged into a civil war in 1983, when President Nimeiri unsuccessfully attempted to impose his government's version of *shari'a*, Islamic law, on all of Sudan, including 8.6 million non-Muslims mostly in southern Sudan.¹⁴⁹ At this time, the international community was immersed in the Cold War and U.N. actions were held hostage by Cold War politics.¹⁵⁰ The paralysis of the S.C. prevented the international community from responding quickly to Nimeiri's policies and addressing the growing unrest among the Sudanese before the situation was allowed to fester for twenty years and bring such enormous suffering to the Sudanese.

The southern Sudanese were represented in the civil war by the Sudan People's Liberation Movement (SPLM), which was fighting for self-determination and against a regime seeking to impose autocratic religious rule.¹⁵¹ A faction called the National Islamic Front (NIF) gained political clout and military power in the north as the civil war raged on.¹⁵² The NIF

148. *Question of the Violation of Human Rights and the Fundamental Freedoms in Any Part of the World, Situation of Human Rights in the Sudan*, Report of the Special Rapporteur, Gerhart Baum, U.N. ESCOR, 59th Sess., Provisional Agenda Item 9, U.N. Doc. E/CN.4/2003/42 (2003) [hereinafter 2003 Special Rapporteur Report], at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/898215e39269a2a3c1256cd3004ba3d8?OpenDocument> (last visited May 26, 2004).

149. DeJuan Bouvean, *A Case Study of Sudan and the Organization of African Unity*, 41 *HOW. L.J.* 413, 416-22 (1998) (The entire population of Sudan is approximately 26 million people); William L. Saunders, Jr. & Yuri G. Mantilla, *Human Dignity Denied: Slavery Genocide, And Crimes Against Humanity in Sudan*, 51 *CATH. U. L. REV.* 715, 718-21 (2002). Sudan, approximately one quarter the size of the United States, gained independence from Britain in 1956. Approximately 2/3 of the population located in the north was Arab or Muslim and the remaining 1/3 located in the south was composed of black African tribes practicing animism or Christianity. Even as far back as 1956, the Muslims of the north and the non-Muslims of the south maintained strained relations. Immediately after independence, the Sudan government mandated the reading of the Koran in the south, nationalized missionary schools and imposed other arbitrary regulations to hinder the practice and promulgation of non-Muslim religions. With fomenting unrest already present, President Nimeiri imposed *shari'a* law in 1983 and thereby sparked the present war, with the population of the south struggling for self-determination and that of the north seeking to impose their cultural, political and religious ideology.

150. DRINAN, *supra* note 5, at 6.

151. 1993 Special Rapporteur Report, *supra* note 147, at 8; Bouvean, *supra* note 149, at 416-21. All factions in Sudan are guilty of human right violations, however, the Arab Muslims commit by far the most violations. Additionally, as a government actor sponsoring the violations, the NIF has a greater responsibility to and is better able to address the human rights violations and implement policy likely to end these violations. See also Human Rights Watch, *Briefing to the 59th Session of the UN Commission on Human Rights: Sudan*, at <http://www.hrw.org/un/chr59/sudan.htm> (last visited Aug. 5, 2003).

152. Saunders & Mantilla, *supra* note 149, at 719; Peter Woodward, *Islam and Politics, in SUDAN SINCE INDEPENDENCE* 5 (1986).

was unhappy with Nimeiri because he was not as extremist as they would have liked him to be in imposing their version of Islamic rule on all of Sudan.¹⁵³ Thus, in 1989, the NIF staged a military coup overthrowing President Nimeiri and taking control of the entire Sudanese government in Khartoum.¹⁵⁴ From the beginning, the NIF government engaged in a systematic campaign to eliminate all dissent, whether political or religious, including attacks against other Muslim groups that did not embrace the extremism of the NIF government.¹⁵⁵ While both SPLM and NIF have committed human rights violations in the on-going Sudanese civil war, it is a duty of the NIF, as a state actor in control of the government, to protect civilians.¹⁵⁶ Instead, the NIF persistently engages in summary executions, uses the military and government-owned equipment to raid villages, murders adult males and takes women and children as slaves.¹⁵⁷

Reports detail common occurrences of government armies entering villages, killing all adult males, rounding up women and children and marching them northward towards the capital where they would be sold as slaves or traded for cows and camels.¹⁵⁸ Young girls are often forced into sexual slavery.¹⁵⁹ Also, one minister has reported how he “interviewed women and children and heard stories of youngsters who saw their parents slaughtered, and women who endured unimaginable sexual abuse, including forced genital mutilation.”¹⁶⁰ After capture and sale, the black African slaves are then systematically stripped of their identity and females are raped and subsequently forced to bear their master’s children.¹⁶¹

In 1989, after massive flooding escalated the devastation from the civil war, the international community finally began to take notice of the plight of the Sudanese — and the United Nations initiated Operation Lifeline Sudan (OLS) in response to 200,000 starvation deaths.¹⁶² Despite a

153. Saunders & Mantilla, *supra* note 149, at 719.

154. Bouvean, *supra* note 149, at 418.

155. See generally Bouvean, *supra* note 149; Saunders & Mantilla, *supra* note 149; 2003 Special Rapporteur Report, *supra* note 148.

156. Lauterpacht, *supra* note 3, at 149.

157. 1993 Special Rapporteur Report, *supra* note 147, at 5.

158. Bouvean, *supra* note 149, at 423-24.

159. Steven Wales, *Remembering the Persecuted: An Analysis of the International Religious Freedom Act*, 24 HOUS. J. INT’L L. 579, 626 (2002).

160. *Id.* at 627.

161. Bouvean, *supra* note 149, at 426. Arabs purchasing Black Africans immediately begin the demoralizing process of “Arabizing” the person. The slave is given an Arab name, forced to learn and speak only Arabic and live in conformity with the laws of the religious autocratic rulers. *Id.* at 423-24.

162. Ted Dange, Foreign Affairs, Defense and Trade Division, *Sudan: Humanitarian Crisis, Peace Talks, Terrorism, and U.S. Policy*, Issue Brief for Congress, Library of Congress, Order Code IB98043, Updated Jan. 23, 2003, Congressional Research Service at <http://fpc.state.gov/documents/organization/17342.pdf> (last visited May 24, 2004).

glimmer of hope for the Sudanese provided by such humanitarian aid, the NIF government's terror campaign continued.¹⁶³ The NIF government bombed OLS aid distribution centers, thereby preventing food from reaching civilians in southern Sudan — just one of many illustrations of the NIF's effective and frequent use of food as a weapon against its dissenters.¹⁶⁴ It took the United Nations four years after its initial humanitarian aid to Sudan to finally commission Gaspar Biro in 1993 as Special Rapporteur of the Commission of Human Rights to Sudan.¹⁶⁵ Biro eventually resigned, frustrated by the slow and inadequate response by the United Nations to the atrocities in Sudan.¹⁶⁶ As late as 2003, both NGOs and the U.N. Special Rapporteur still cry out for an increased U.N. involvement.¹⁶⁷ While the sense of urgency might not come naturally in the posh offices of the U.N. building in New York, perhaps a little urgency is due when, for southern Sudanese, *every day* is a struggle between life and death.

Thus, even today, twenty years later, the bloodshed continues.¹⁶⁸ The NIF government continues to wage war not only on SPLM and other fringe militias, but on civilians as well.¹⁶⁹ The United Nations is acutely aware of the human rights abuses in Sudan.¹⁷⁰ Scores of reports from the Special Rapporteur and volumes of U.N. Resolutions condemning Sudan speak to the awareness of the United Nations of the ongoing tragedy and suffering.¹⁷¹ Perhaps legitimacy is lost when it appears that the United Nations choose to find the souls of black Africans in Sudan are just not worth the U.N.'s involvement? Is it perhaps because Sudan has oil reserves on which international investors are spending significant exploration and development dollars?¹⁷² Many of these investors see Sudan as an inexpensive source for obtaining crude oil and subsequently boosting

163. Bouvean, *supra* note 149, at 421.

164. 1993 Special Rapporteur Report, *supra* note 147; Saunders & Mantilla, *supra* note 149, at 723.

165. 1993 Special Rapporteur Report, *supra* note 147.

166. Saunders & Mantilla, *supra* note 149, at 724.

167. 2003 Special Rapporteur Report, *supra* note 148, at 3, 20; *see generally* <http://www.hrw.org> and <http://www.amnesty.org>. A search of the web sites for Human Rights Watch and Amnesty International for the word "Sudan" produces numerous documents calling for some type of U.N. response to the crises in Sudan.

168. *See generally* Wales, *supra* note 159; Saunders & Mantilla, *supra* note 149; Bouvean, *supra* note 149.

169. 2003 Special Rapporteur Report, *supra* note 148.

170. 1993 Special Rapporteur Report, *supra* note 147.

171. *Id.*; 2003 Special Rapporteur Report, *supra* note 148. We highlighted these two reports from our research because they represent the earliest report and the latest report, respectively, on the U.N. web site.

172. Amnesty International, *Canada, Oil and Sudan*, *Terror Trade Times*, at http://web.amnesty.org/web/web.nsf/pages/ttt3_canada (last visited May 24, 2004).

investors' portfolios.¹⁷³ As in Sierra Leone, perhaps the "Somalia Syndrome" has provided a convenient façade behind which the international community has been able to evade its international responsibility of preserving the basic human rights of those in Sudan.¹⁷⁴ When evaluating the disparity in intervention decisions, illustrative of the notion that the "Somalia Syndrome" is only a façade is the fact that interventions have occurred only where there were interests of a particular state at stake.¹⁷⁵ Here, economic concerns — that is, possible new oil sources, deep pocket oil company money and political loyalty — are the driving force behind the U.N. disinterest in the plight of the oppressed Sudanese.¹⁷⁶ Some of the U.N.'s member states with major corporations doing oil business with the NIF government include China (PetroChina), Canada (Talisman Oil and Greater Nile Petroleum Operating Company), Sweden (Lundin Oil), Malaysia and Italy.¹⁷⁷ These companies often profit at the peril of the Sudanese people who are forcibly removed from their property to make way for government oil projects.¹⁷⁸

Overall, the United Nations has done little more than study the ominous situation in Sudan in order to offer it some humanitarian aid and negotiation assistance.¹⁷⁹ By July 2002, the two sides, brought together under the auspices of the Inter-Governmental Authority on Development in Kenya, managed to come to an agreement on some issues of religion and state, self-determination and free humanitarian access.¹⁸⁰ By October 2002, the two sides had even worked out a cease-fire agreement.¹⁸¹ However, unlike in the cases of Somalia and Liberia, in Sudan, there were no blue helmets on the horizon to help ensure compliance with the cease-fire agreement and so fighting commenced once again in January 2003.¹⁸²

173. Wales, *supra* note 159, at 625-26; Amnesty International, *supra* note 172.

174. See *supra* Parts III.B & III.F (case studies of Somalia and Sierra Leone in this Open Letter).

175. See *supra* Part III (for all case studies in this Open Letter).

176. Wales, *supra* note 159, at 625-26; Amnesty International, *supra* note 172.

177. Wales, *supra* note 159, at 625-26; Amnesty International, *supra* note 172. Sources are strangely quiet about the American corporate involvement. However, many of the international petroleum companies listed in the text do trade on Wall Street. These corporations and governments that deal in Sudanese oil supply the NIF with war money.

178. Wales, *supra* note 159, at 625-26; Amnesty International, *supra* note 172.

179. A search at the U.N. web site at <http://www.un.org> results in scores of resolutions, reports, studies and statements issued by the United Nations regarding the human rights abuses in Sudan.

180. Human Rights Watch, *supra* note 151; Statement from the Secretary-General Kofi Annan, *Secretary-General Welcomes Sudan Peace Talks Being Held in Kenya*, Press Release, Apr. 9, 2003, SG/SM/8845, AFR/696, at <http://www.un.org/News/Press/docs/2003/sgsm8845.doc.htm> (last visited May 24, 2004).

181. Human Rights Watch, *supra* note 151.

182. See *supra* Parts III.B & III.C (case studies of Somalia and Liberia in this Open Letter); 2003 Special Rapporteur Report, *supra* note 148, at 18 (The Special Rapporteur calls on the United

In light of the absence of any meaningful commitment to nurturing a lasting peace in Sudan, and the total failure of the several ad hoc short-term rescue attempts by the United Nations and regional bodies, truly, the most successful intervention thus far seems to be that of the Black Ministerial Alliance, which has managed to send three people to Sudan to redeem 6700 slaves for \$33 US each.¹⁸³

Two million Sudanese have been slaughtered.¹⁸⁴ Two million is more deaths than the deaths in Somalia, Bosnia, and Rwanda combined.¹⁸⁵ How many more will die while the United Nations merely discusses this human catastrophe? Is it that two million black African souls, when weighed against economic interests, political capital and maybe even the life of a white soldier, are just not worth saving?

J. Gujarat, India

We find even more discouraging the cases where there is an absolute lack of protection, whether regional or via a Chapter VII initiative. This is the case of Gujarat, India, where on February 27, 2002 violence exploded after a gang of Muslims burned a boxcar with fifty-eight Hindu activists inside, an incident known as the Godhra attacks.¹⁸⁶ The Hindu activists were returning from the Gujarati town of Ayodhya where they sought construction of a Hindu temple on the disputed site of the Babri mosque destroyed by a Hindu activist a decade earlier.¹⁸⁷ In retaliation for the Godhra attacks, Hindu citizens terrorized Gujarat's minority Muslim population on a six-week killing and torture campaign.¹⁸⁸ While a heavy concentration of carnage took place within a period of seventy-two hours in Ahmedabad, Gujarat's largest city, daily communal violence still held a steady pace for three months after the initial slaughter.¹⁸⁹ These scenes of carnage are not new to Gujarat, the birthplace of the beloved Gandhi, which has suffered periods of occasional violence since 1969.¹⁹⁰

Nations to become politically involved in addition to being involved with humanitarian issues); Human Rights Watch, *supra* note 151.

183. Wales, *supra* note 159, at 626. Some critics say that groups such as this only bolster the trade and do little for long-term change. Perhaps the 6700 redeemed souls might think differently.

184. Saunders & Mantilla, *supra* note 149, at 715.

185. *Id.* at 736.

186. *Gujarat Muslim Women "Rape Victims,"* BBC News, Apr. 16, 2002 [hereinafter *Rape Victims*], at http://news.bbc.co.uk/2/hi/south_asia/1933521.stm (last visited May 24, 2004).

187. *'We Have No Orders to Save You': State Participation and Complicity in Communal Violence in Gujarat*, Human Rights Watch Report, Apr. 2002, Vol. 14, No. 3(C) at 13 [hereinafter *Human Rights Watch Report*], at <http://www.hrw.org/reports/2002/india/gujarat.pdf> (last visited June 7, 2004).

188. *Id.*

189. Jill McGivering, *Gang Violence in Gujarat*, BBC News, Apr. 26, 2002, available at http://news.bbc.co.uk/2/hi/south_asia/1953437.stm (last visited Jan. 21, 2004).

190. Sanjeev Srivastava, *Analysis: Why is Gujarat so Violent?*, BBC News, Sept. 25, 2002, at http://news.bbc.co.uk/2/hi/south_asia/1856049.stm (last visited Jan. 21, 2004). In 1969, when

The latest communal violence followed a public campaign of hatred that infiltrated public schools and streets via anti-minority propaganda which was sponsored by the reigning political party, known as the Bharatiya Janata Party (BJP).¹⁹¹ Gujaratis were called on to rid their

the subcontinent divided into India and Pakistan, approximately 2,500 Gujaratis were killed in clashes between Hindus and Muslims, followed by clashes in the 1980s and again in 1992, after the Babri Mosque in the Gujarati town of Ayodhya was demolished. Between 1992 until 2002, anti-Christian violence sometimes erupted in tribal areas so that it is doubtful how tranquil was this so-called decade of peace. *See id.*

191. Anna Bigelow, *Hulladiya Hanuman: The Return or the End of History?*, Social Science Research Council/Contemporary Conflicts, at 2, at <http://conconflicts.ssrc.org/gujarat/biglow/pf/> (last visited May 26, 2004). The readiness of Gujarat's residents to murder, maim, mutilate, rape, torture, and expel their minority neighbors also thrives within the public education curriculum. The BJP began a campaign to encourage national pride, and in doing so, reportedly relied on the RSS, a propagandist organization funded by Hindu nationalist networks.

The current Minister for Human Resources Development, Murli Manohar Joshi, is not only a former pracharak, or regional leader, of the RSS but also was present, and visibly jubilant, at the destruction of the Ayodhya mosque in 1992. Under his leadership, this Ministry, which includes the Department of Education, has sought to standardize the addition of Vedic mathematics and astrology to the course list.

Id. Gujarati public education textbooks teach high school students about the "valorous" strides that Germany accomplished in racial pride and prosperity under Nazism, while never mentioning the Holocaust. These students are also encouraged to ponder current social plagues, the subjects of which are minority citizens. At the University level, students are taught that outside religions in India are simply colonizing measures imposed by political and military opportunists, which should be resisted. *See also* Human Rights Watch Report, *supra* note 187, at 43 (stating that the goal of the RSS is to place anti-minority propaganda on the streets and inside the classrooms).

A 1999 Human Rights Watch report documented the August 1998 distribution of fliers by RSS and Hindu Jagran Manch (HJM) — an offshoot of the sangh parivar consisting of people who belong to the Bajrang Dal — in Dangs district in southeastern Gujarat, site of a ten-day spate of violent and premeditated attacks on Christian communities and institutions between December 25, 1998 and January 3, 1999. The fliers proclaimed, "India is a country of Hindus. . . . Our religion of Rama and Krishna is pious. To convert [or] leave it is a sin." Another flier by the VHP in Bardoli, Gujarat, warned, "Caution Hindus! Beware of inhuman deeds of Muslims. . . . Muslims are destroying Hindu Community by slaughter houses, [sic] slaughtering cows and making Hindu girls elope. Crime, drugs, terrorism are Muslim's empire." A flier produced by the Bajrang Dal and VHP in November 1998 described the Bajrang Dal as a "wide organisation of youth," "working under the Vishwa Hindu Parishad," with the objectives of "protect[ing] mother India," "rais[ing] a loud voice against people who ignore Hindu Sabha [assembly]," raising people's awareness against the "trapping of Hindu girls by Muslims and anti-national activities of Christian missionaries," and working for the "protection of religion and culture." A parallel anti-Christian campaign was supported by the Gujarati-language press that printed false reports of Hindu temples being destroyed, cited an increase in the percentage of Christians in the area, printed announcements for upcoming rallies, and repeatedly branded Christians as the main instigators of violence in December 1998 and January 1999.

neighborhoods of minorities and thereafter victims were burned alive, hacked to death, maimed and raped.¹⁹² In addition, their possessions were either confiscated or destroyed.¹⁹³ The gruesome details reveal that family members were forced to watch the beheading and torture of their loved ones before they themselves were killed.¹⁹⁴ Women were especially targeted, many of whom were gang-raped by public officers and rioters before being burned alive.¹⁹⁵ The police itself would physically, verbally

Id. at 43-44.

192. See, e.g., Human Rights Watch Report, *supra* note 187, at 3; see generally *An Interim Report to the National Human Rights Commission*, People's Union for Civil Liberties, Mar. 21, 2002 [hereinafter PUCL Interim Report], available at <http://www.pucl.org/Topics/Religion-communalism/2002/gujarat-nhrc-submission.htm> (last visited Jan. 21, 2004).

193. PUCL Interim Report, *supra* note 192, at 5 ("Today, there is practically no Muslim property in non-Muslim areas undamaged by the loot and arson").

194. *Id.* at 8-9.

195. Human Rights Watch Report, *supra* note 187, at 16, 27-28 (citing the observations of Harsh Mander, "Cry, the Beloved Country: Reflections on the Gujarat Massacre," South Asia Citizens' Web, Mar. 13, 2002. Mander observes:

I have never known a riot which has used the sexual subjugation of women so widely as an instrument of violence as in the recent mass barbarity in Gujarat. There are reports everywhere of gang-rape, of young girls and women, often in the presence of members of their families, followed by their murder by burning alive, or by bludgeoning with a hammer and in one case with a screw driver. Women in the Aman Chowk shelter told appalling stories about how armed men disrobed themselves in front of a group of terrified women to cower them down further.

Id.; see also *Panel for the Initiative for Justice in Gujarat*, The International Initiative for Justice in Gujarat: An Interim Report, Dec. 19, 2002, available at <http://conconflicts.ssrc.org/gujarat/report/pf/> (last visited May 24, 2004).

The use of systematic rape and sexual violence as a strategy for terrorizing and brutalizing women in conflict situations echoes experiences of women in Bangladesh in 1971, and in countries such as Rwanda, Bosnia and Algeria. In Gujarat, as in all these other countries, women have been targeted as members of the "other" community, as symbols of the community's honor and as the ones who sustain the community and reproduce the next generation. This has become an all too common aspect of larger political projects of genocide, crimes against humanity and subjugation. In Gujarat, sexual violence against Muslim women as well as against women in inter-religious marriages is central to the organized political project of *Hindutva*. During our visit, we have been struck by the explicit use of male sexuality as the mechanism and mobilising tool for recruiting members for the "cause" and as a means of imposing "Hindu" dominance upon the Muslim community. We find chillingly unique the incitement to sexual violence as a means of proving the masculinity of the "Hindu" man, as reflected in the political propaganda of the forces of *Hindutva* prior to, during and after the violence in February/March 2002 and as carried out through patterns of men stripping and exposing themselves to women in an aggressive and threatening manner, and committing acts of mass rape and burning of victims.

and sexually abuse women who only sought refuge and would even drag the women from shelter to parade them through the streets and beat them.¹⁹⁶ Perhaps pregnant women suffered the worst fate, as their bellies were sliced open, the fetuses removed and burned before the mothers were finally killed.¹⁹⁷

The death toll rose to as high as two thousand, which incidentally, equals the estimated death toll in Kosovo before NATO's response.¹⁹⁸ In addition, the Indian government estimates that 98,000 more became refugees living in relief camps run by NGOs.¹⁹⁹ NGO reports put the refugee numbers at 150,000.²⁰⁰ These refugees fear returning to their homes, knowing that they are members of a despised minority group.²⁰¹

Sharp criticism surfaced as subsequent reports indicated a high level of state complicity, not only in the propaganda leading up to the carnage, but in the actual violence itself.²⁰² Eyewitness accounts tell of officers standing by as women were gang-raped and burned alive.²⁰³ Also, riot members

Id.

196. PUCL Interim Report, *supra* note 192, at 6.

In Bahaar colony of Ajwa Road, women went out to request the police to set up a police point as tension had been increasing in the face of violence. The police refused to listen to the women and in fact, *laathi* charged to force them into their homes. At Rain Basera, Machchipith, under Karelibag Police Station, several women were assaulted by the police during the "combing operations." Four policemen entered the *basti* at around 3:00 pm on March 16, 2002, and started beating them indiscriminately — Sairaben Shaikh, Faridabanu Shaikh, Hamidabibi Pathan, all aged between 30 and 45 were among those who were beaten so badly that their wounds are still visible. Faridabanu was hit on her chest by a *laathi*, and Hamidabibi in her pubic region. In Bahaar colony, women were pulled out of their homes by dragging them by their breasts. Even 18 year old girls were not spared — they were threatened with swords and sticks by the police. Rukiabibi, a 70 year old woman in Kasamala Kabristan, who went out to prevent the police from taking away her young son, was hit by the *laathi* so hard that her head split open.

Id.

197. Human Rights Watch Report, *supra* note 187, at 28.

198. Jill McGivering, *Gujarat's Muslims Live in Terror*, BBC News, May 9, 2002, at http://news.bbc.co.uk/2/hi/south_asia/1977246.stm (last visited Jan. 21, 2004).

199. Human Rights Watch Report, *supra* note 187, at 6.

200. McGivering, *supra* note 189.

201. Human Rights Watch Report, *supra* note 187, at 59.

202. McGivering, *supra* note 189.

203. *Id.*; see also PUCL Interim Report, *supra* note 192, at 15 (reporting that a few residents of the town of Sama went to appeal to the Councillor of their region for peace. The Councillor claimed that he could do nothing.).

He ranted at length about the unpatriotic and criminal nature of the Muslim community (such as for instance their habit of abducting Hindu girls), and dwelt

were spotted inside police stations during the carnage and public officers refused to broker a peace.²⁰⁴ During the bloodiest days in Ahmedabad, between February 28th and March 2nd, reports indicate that the perpetrators were all dressed in khaki shorts and saffron scarves, which is a signature of the nationalist factions, *hindutva*, in addition to carrying weapons and explosives that those of the nationalist factions carry.²⁰⁵ These groups, which carry the banner of the *hindutva* ideology, are actually sponsored by the BJP.²⁰⁶

Supporters of this ideology reach all the way up to the Prime Minister, Atal Bihari Vajpayee, who reportedly waited until hundreds lay slain before commanding his party not to concentrate on how to stop the violence, but rather to investigate who started the pogrom.²⁰⁷ Vajpayee did not even visit Gujarat until thirty-six days after the attack at Godhra and the riots that followed.²⁰⁸ His entourage consisted of controversial and incendiary players, such as Central Minister Uma Bharati, who issued inflammatory speeches in support of the demolition of the Babri mosque in 1992.²⁰⁹ Vajpayee could have censured the Gujarati government under Article 356 of the Indian Constitution on the grounds that the government would not maintain law and order, yet he refused.²¹⁰

on the desirability of Muslims going and living in "their own areas (ilakhas)." He also produced a list which, he explained, showed the voting patterns . . . in the most recent assembly bye-election, and how Muslim localities had voted against the BJP. On being repeatedly asked whether he could assure that there would be no further violence in the area, he replied that he could not do so, and one of his associates explained that what had happened that day (Feb. 28th) was "only a sample," and that it was best to be prepared for what would follow the next day.

Id.

204. See *supra* text accompanying note 203.

205. Human Rights Watch Report, *supra* note 187, at 22.

206. Bigelow, *supra* note 191, at 1. Research indicates that the BJP is behind the extreme nationalist factions that call for the purging of all non-Hindu elements, an ideology known as the *Hindutva* movement. See also Paul R. Brass, *The Gujarat Pogrom of 2002*, Social Science Research Council/Contemporary Conflicts, at 4 (The BJP party signature rally is of support for Hindu political unity, at the expense of disenfranchising Muslims and Christians by supporting violent outbreaks against both groups), available at <http://conconflicts.ssrc.org/gujarat/brass/pf/> (last visited Jan. 21, 2004); see also Srivastava, *supra* note 190, at 3. The previous minister, LK Advani, stamped his commitment to extremist Hindu nationalism when he concentrated resources on replacing Islamic monuments with Hindu temples. His hinch-man was Narendra Modi, who has succeeded to his term and is reported to have encouraged the mobs in the most recent outburst of violence. With such hard-line factions in the government of Gujarat, Hindu nationalist movements such as Vishwa Hindu Parishad, the World Hindu Council, were able to find support from those in power.

207. Bigelow, *supra* note 191, at 1; see also Brass, *supra* note 206, at 4; Srivastava, *supra* note 190, at 3.

208. Brass, *supra* note 206, at 3.

209. *Id.*

210. *Id.*

At the local level, perpetrators were equipped with computer printouts identical to those furnished by the municipal authority.²¹¹ The printouts provided the names and addresses of the dwellings and proprietorships of Muslim inhabitants.²¹² It appears that the press was also focused on a systematic campaign to eliminate the Muslim population; the publications printed in the Gujarati language embellished stories and issued directives to Hindus to avenge the deaths of those who were murdered in the boxcar tragedy.²¹³

Perhaps the most controversial regional figure in this massacre is Narendra Modi, the right-wing Chief Minister of Gujarat and a member of Vajpayee's BJP.²¹⁴ British intelligence sources indicate that the massacre was premeditated with the aid of public officials.²¹⁵ Amid the controversy, the BJP party tried to reduce international criticism by claiming that the violence was contained and a purely local problem.²¹⁶

Refuting that statement are reports which indicate that at least twenty-six major towns suffered the spill-over effect of the worst massacres, which took place in the city of Ahmedabad and which were carried out systematically.²¹⁷ Intelligence reports confirm that the massacre was state-sponsored terrorism aimed at purging a religious minority group from a majority Hindu state.²¹⁸

Reports also indicate that since the attacks, the victims have been denied equal protection under the law, which contrasts with India's profession that it is the world's largest democracy.²¹⁹ Government officials who gather First Information Reports, which are the preliminary

211. *Id.*

212. *Id.*

213. Brass, *supra* note 206, at 3.

A leading Gujarat newspaper, *Sandesh*, featured a front-page headline on February 28, "Avenge Blood with Blood," above a story concerning a statement from the VHP. *Sandesh* and *Gujarat Samachar* featured many other false and incendiary stories in the following days, some of which virtually encouraged Hindus, in areas where violence had not yet spread, to kill Muslims.

Id.

214. Srivastava, *supra* note 190, at 3; *see also* Gujarat Vote in Indian Parliament, BBC News, Apr. 23, 2002 [hereinafter Gujarat Vote], at http://news.bbc.co.uk/2/hi/south_asia/1945421.stm (last visited May 24, 2004).

215. UK Report Censures Gujarat Chief Minister, REDIFF.COM, Apr. 27, 2002 [hereinafter UK Report], at <http://www.rediff.com/news/2002/apr/27train.htm> (last visited May 24, 2004).

216. Gujarat Vote, *supra* note 214, at 2.

217. Human Rights Watch Report, *supra* note 187, at 22.

218. UK Report, *supra* note 215. A review of UK intelligence sources ultimately resulted in the censure, whereby "British officials claimed the violence had all the 'hallmarks of ethnic cleansing' . . . the riots 'far from being spontaneous, were planned possibly months in advance and were carried out by an extremist Hindu organization with the support of the state government.'"

219. Human Rights Watch Report, *supra* note 187, at 6.

eyewitness accounts that victims must file, have left the names of the accused perpetrators out of the reports.²²⁰ Those who were successfully pinpointed in the reports were seldom arrested and public pressure was intense to reduce the severity of the charges.²²¹ Meanwhile, false charges were issued against young Muslims who were picked up while forces searched through the remnants of the destruction.²²² Other Muslims faced innocuous charges while mob members went free at the peril of poor, innocent, migrant Hindu workers, who police rounded up in large numbers to show that arrests were being made.²²³ As for the thousands living in relief camps, their survival has been placed, for the most part, in the hands of Muslim charity groups and NGOs.²²⁴

Considering the extent of the loss of life, damage to property and spill-over effect, we feel that this “humanitarian crisis,” as William H. Lash III, a U.S. Commerce Department official, has termed it,²²⁵ might have been met with *some* response by the S.C. Whether attention would have come in the form of a peacekeeping mission, humanitarian mission, or other U.N.-sponsored initiative is unknown. While parties may disagree as to the level of U.N. involvement that should have come immediately in the aftermath of the Ahmedabad violence, the S.C. should have at least taken the preliminary step of authorizing a fact-finding mission. We did consider whether the absolute lack of a response was justified since most of the violence occurred solely within India’s borders.²²⁶ However, we find the sovereignty argument less potent in light of the fact that the violence in Somalia and Haiti was also contained within a sovereign’s borders.²²⁷ In light of all these cases, we struggle to find consistency in the response to very similar conflicts. Sometimes the response is swift, yet at other times lagging and inept, and even, on occasion, nonexistent.

220. *Id.*

221. *Id.*

222. *Id.*

223. PUCL Interim Report, *supra* note 192, at 7.

While Muslims are arrested under several and manifold sections, the Hindus are arrested under innocuous sections, such as violating curfew timings. In order to show that Hindus are arrested in large numbers, the police has [sic] resorted to arresting innocent and poor Hindus. In Indira Nagar, Makarpura, on March 17, 2002, migrant workers from Bihar who were enjoying their Sunday afternoon naps were dragged away from their homes by the police, whereas those Hindus who were part of the mobs on the rampage have yet to be arrested.

Id.

224. *Id.*

225. Gujarat Situation is a ‘Humanitarian Crisis,’ REDIFF.COM, May 6, 2002, at <http://www.rediff.com/news/2002/may/06train7.htm> (last visited May 25, 2004).

226. See generally Human Rights Watch Report, *supra* note 187.

227. See *supra* Parts III.B & III.E (Somalia & Haiti case studies).

IV. “REGIO-COPS” AND HUMANITARIAN INTERVENTION: ARE “REGIO-COPS” TAKING OVER THE U.N.?

When the initiative is left up to regional actors, we find that the protection is far from adequate. The NATO response in Kosovo leads some scholars to question why similar protection has not been deployed to other people where the U.N. has not reacted with a Chapter VII initiative.²²⁸ While it is true that regional protectionism was at work in the Kosovar, Liberian, Rwandan, and Sierra Leonean conflicts, the strength of each regional system was not the same.²²⁹ We sense that NATO is able to act with greater precision, oversight and speed than coalitions such as ECOMOG because of greater economic power. The context within which NATO is operating is different from that of ECOMOG and similar regional defense networks. Individuals living under the umbrella of the latter regional systems are building their economies and political infrastructures, which were so exploited during colonial rule. These brown victims who inevitably live beyond NATO’s reach are exposed to a fate where the death toll is much greater because they do not have the type of equipment and manpower to guarantee greater protection. It appears on the surface, at least, that if these citizens are not living in close enough proximity to powerful entities they are in the most vulnerable position on the globe, left to fend for themselves — ignored.

We question whether the United Nations has passed the torch onto “regio-cops” to accomplish the purpose of the U.N. Charter.²³⁰ Some scholars maintain that human rights violations are best left to regional policing because they are more familiar with the political landscape.²³¹ Yet others maintain that it is dangerous to assume that geopolitical arrangements are better equipped to stop violations, because to do so is to provide a convenient window through which powerful states may enter with less noble goals.²³²

We seek to understand if these regional initiatives are legitimate or rather extralegal. Clearly there are exceptions to Article 2(4)’s deference to sovereignty. For instance, Article 51 gives members a right to react militarily in the absence of S.C. approval if there is a need for individual

228. See Lodico, *supra* note 16, at 1029 (“Although the rebels’ rampage in Freetown killed as many people in just a few days as the Serbs killed in one year in Kosovo, the international community did not undertake any NATO-like response.”).

229. Different regional coalitions were at work in each conflict.

230. Voon, *supra* note 9, at 67.

231. Weisburd, *supra* note 19, at 272.

232. Richard Falk, *The Complexities of Humanitarian Intervention: A New World Challenge*, 17 MICH. J. INT’L L. 491, 510 (1996).

or collective self-defense.²³³ Otherwise, the S.C. can make an investigation to determine if there is a “threat to the peace, breach of the peace, or act of aggression,” and if all the peaceful remedies have been exhausted, it may then intervene.²³⁴ If regional networks do intervene, they must proceed with the authorization of the S.C. pursuant to Article 53, otherwise they would be in violation of the U.N. Charter.²³⁵

If regional coalitions constantly circumvent these provisions, they erode the legitimacy of the United Nations. Regional coalitions’ intentions may be noble, although we cannot say for sure, and while the outcome may prove beneficial, there is no justification for violating legal obligations to restore the rule of law.²³⁶

V. SCHOLARS’ ANALYSIS: THE “LEGAL STANDARDS” APPROACH

After investigating some of the cases in which Humanitarian Intervention has or has not been employed, we turned our focus towards scholars who have addressed solutions to the problem of inconsistencies in the use of power. We then paused and envisioned ourselves in the difficult role of policymakers and considered our own solution. We imagined the intense pressure we would face, knowing that people’s lives were at stake. Yet, not without hope, we realized, that equipped with our legal training we might find a way to lay the foundation for a solution.

Addressing these inconsistencies is a worthy analysis because the legitimacy of the United Nations is questioned when there is the perception that protection and peace are at the mercy of political agendas,

233. U.N. CHARTER art. 51.

234. *Id.* art. 39.

235. *Id.* art. 53.

236. Reppas, *supra* note 25, at 480.

It has been suggested that due to the change in the world political arena in which nation-states become major players, the value and use of the United Nations may slide. If this happens, the G-7 or another similar group may fill a void left by the United Nations and emerge as the increasingly autonomous and dominant decision-maker, without the Charter and answerable to none other than its own members. The United Nations, however, remains the only meaningful organization in the world that can legitimately act for the betterment of mankind as a whole. . . . [T]he United Nations plants the seed for future intervention; without this initial participation, that seed might never have been planted at all. Although altruism and politics can never go hand in hand, the United Nations remains our best hope of making this world free for all its peoples. We must do everything we can to fashion the United Nations into a world policeman of human rights violations. The future of the United Nations is the future of mankind.

Id. (citations omitted).

rather than existing pursuant to the honorable purpose of promoting basic human rights as outlined in the U.N. Charter.²³⁷

We have evaluated the different criteria for Humanitarian Intervention and have discovered that many scholars favor applying the “legal standards” approach. The following are the most often cited standards set forth by scholars wishing to provide a legal framework to justify Humanitarian Intervention. Professor Bertram Brown maintains that a humanitarian necessity should be present.²³⁸ Necessity at a minimum “would need to be quite serious and widespread in order to approach this critical threshold.”²³⁹ Expanding on this notion, Professor Tania Voon stresses that quantifying the number of lives lost before an intervention can occur would be counterproductive.²⁴⁰ Voon highlighted the case of Kosovo where intervention followed the death of 2000 people.²⁴¹ She compares this to the 200,000 deaths that occurred in East Timor before a Humanitarian Intervention occurred.²⁴² Voon points out that in both cases a public outcry signaled that the scope of the atrocity should be sufficient to trigger intervention, not mere numbers.²⁴³

Professor Malvina Halberstam suggests that instead of maintaining that a specific body count must be found before intervention can occur, the danger must be imminent.²⁴⁴ This contrasts with Richard Falk who suggests a standard of great danger and defines great danger as “crimes against humanity,” thereby suggesting that we may rely on an international legal definition.²⁴⁵ Most of the language we found puts the threshold fairly high, with such terms as “massive violations of human rights,” “genocide

237. Judy A. Gallant, *Humanitarian Intervention And Security Council Resolution 688: A Reappraisal In Light of a Changing World Order*, 7 AM. U. J. INT’L L. & POL’Y 881, 892 (1992) (“The Charter’s preamble expresses the determination of the members to uphold essential human rights and to make certain that armed force is only utilized for the collective good”); see also Sellen, *supra* note 40, at 248-49 (“Promoting respect for the Security Council’s authority is most important; respect is a prerequisite to effectiveness. Therefore, the United States should promote United Nations operations, and maintain its channels of communication”).

238. Brown, *supra* note 16, at 1726.

239. *Id.* at 1727.

240. Voon, *supra* note 9, at 65; see also Burton, *supra* note 24, at 449-50.

241. Voon, *supra* note 9, at 64-65.

242. *Id.*

243. *Id.*; see also Burton, *supra* note 24, at 449-50 (1996) (citing Michael J. Bazylar, *Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia*, 23 STAN. J. INT’L L. 597, 599-600 (1987) (stating that although “intervention should not be predicated upon some minimum body-count, the legitimacy of intervention rises in proportion to the death toll”).

244. Halberstam, *supra* note 26, at 1 (“First, there must be a threat of imminent death or grave injury”).

245. Falk, *supra* note 232, at 503.

or gross violations,” “severe humanitarian crisis,” “ethnic cleansing,” “loss of life on a massive scale,” and “shocks the conscience.”²⁴⁶

Next, we found support for the notion that there must be a requirement of proportionality.²⁴⁷ Professor Ruth E. Gordon articulates that the level of intervention should be “commensurate to the evil it seeks to curtail.”²⁴⁸ Gordon further illustrates that the standard of proportionality should be such that troops should not use more or less force than necessary to accomplish the humanitarian goals.²⁴⁹

Perhaps when domestic interest is nonexistent, Humanitarian Intervention is less likely to occur, as illustrated by the Rwandan, Liberian, and Sierra Leonean conflicts.²⁵⁰ While a pure human rights motive is the ideal, some scholars indicate that it is not possible to completely eliminate all private interest in the conflict.²⁵¹ The reality is that the smaller states with little or no private interest that do recognize these injustices are militarily and financially incapable of suppressing them; therefore, the world community has no choice but to call on the great military powers to intervene, albeit for their own domestic interests.²⁵² The superpowers that do intervene must be careful not to put their private interests above the cost of human lives.²⁵³ Therefore, Humanitarian Intervention does not always follow private interests, but private interest can be found in Humanitarian Interventions.²⁵⁴ It has been argued that one way to assure that a state’s interests are more closely aligned with humanitarian

246. Nanda et al., *supra* note 61, at 827; Lodico, *supra* note 16, at 1029; T. Modibo Ocran, *The Doctrine of Humanitarian Intervention in Light of Robust Peacekeeping*, 25 B.C. INT’L & COMP. L. REV. 1, 8 (2002); Mahalingam, *supra* note 28, at 263; Richard B. Lillich, *Kant and The Current Debate Over Humanitarian Intervention*, 6 J. TRANSNAT’L L. & POL’Y 397, 398 (1997).

247. Brown, *supra* note 16, at 1729.

248. Gordon, *supra* note 28, at 45; *see also* Nanda et al., *supra* note 61, at 827.

249. Gordon, *supra* note 28, at 46.

250. Adam Roberts, *The So-Called “Right” of Humanitarian Intervention*, in 3 Y.B. OF INT’L HUMANITARIAN L., 2000, at 3 (T M C Asser Press, 2001); *see also* Nanda et al., *supra* note 61, at 827.

251. Gurtov & Mekjavich, *supra* note 31, at 509; Voon, *supra* note 9, at 78-80.

252. Yogesh K. Tyagi, *The Concept of Humanitarian Intervention Revisited*, 16 MICH. J. INT’L L. 883, 890, 897 (1995).

253. Voon, *supra* note 9, at 79. Voon writes,

[i]nterestingly, it may be impossible to assess the underlying reasons for an intervention before the event. The extent and range and human rights violations may not be apparent until foreign troops or international bodies are on the ground, collecting evidence and witnessing the trauma. . . . Thus, the manner in which NATO conducted the bombing campaign against the F.R.Y. caused some to speculate about the NATO’s other motive for the interventions, such as “keeping NATO alive” or testing new military weapons.

Id. (citations omitted).

254. *Id.* at 76.

objectives is by looking at that state's own human rights record.²⁵⁵ Obviously, if the intervening power's record is poor in its own jurisdiction, its resources will only be wasted.²⁵⁶ This is well illustrated by an old American proverb: "people in glass houses should not throw stones." Halberstam contravenes the notion that we must limit private interest and instead focuses on the end result.²⁵⁷ So long as the intervention rectifies the problem, it deserves the title of "Humanitarian Intervention."²⁵⁸

Falk argues that the presence of anarchy is yet another standard that should be present to declare a legitimate intervention.²⁵⁹ When the state lacks the characteristics of a state, such as an active government, intervention based on humanitarian objectives would not conflict with the principle of sovereignty.²⁶⁰ The logic follows that Humanitarian Intervention is justified in situations where there is a lack of civil order that has the potential to translate into a substantial loss of life.²⁶¹ In addition, Ravi Mahalingam maintains that there is a history associated with intervening when the sovereign authority has deteriorated, which, in turn, lends more legitimacy to the standard requiring anarchy or governmental collapse.²⁶²

Even in the absence of anarchy, however, supporters of standards maintain that unwillingness on the target state's part to stop the atrocities is another indicator that intervention is needed.²⁶³ The scholars argue that the independence of the state is not violated simply because the interveners attempt to bring humanitarian aid to its people.²⁶⁴ The legitimacy that is lost is not that of the intervening power, but of the state that is incompetent or incapable in the face of tragedy.²⁶⁵

In addition, before an intervention is deemed legitimate, all peaceful alternatives should be exhausted.²⁶⁶ However, this exhaustion of remedies should not drag out while the death toll rises.²⁶⁷ Clearly, this requirement seems straightforward, but it can be difficult to effect it in practice.²⁶⁸ There is no standard set in stone that dictates when a diplomatic effort has

255. *Id.* at 80.

256. *Id.* at 80.

257. Halberstam, *supra* note 26, at 2.

258. *Id.*

259. Falk, *supra* note 232, at 502-03.

260. Tyagi, *supra* note 252, at 887.

261. Ocran, *supra* note 246, at 8-9.

262. Mahalingam, *supra* note 28, at 225.

263. Scheffer, *supra* note 17, at 288; *see also* Tyagi, *supra* note 252, at 890.

264. Halberstam, *supra* note 26, at 4.

265. Tyagi, *supra* note 252, at 887-88.

266. Roberts, *supra* note 250, at 36-37.

267. Scheffer, *supra* note 17, at 291.

268. Roberts, *supra* note 250, at 36.

been exhausted and an intervention is inevitable.²⁶⁹ Perhaps this type of standard is therefore most susceptible to political manipulation and so less likely to be applied consistently.²⁷⁰

An offshoot of this standard is consent. Gordon points out that consent is rarely obtained because once consent is given, the mission, by definition, is no longer an intervention.²⁷¹ Also, Professor Adam Roberts illustrates the paradox in obtaining consent when consent is granted by a target state only when faced with a threat of military intervention.²⁷² Although consent is advocated, scholars still maintain that consent is merely preferable and should not be an ultimate barrier to intervention when human rights are at stake.²⁷³

Finally, a recurring theme on the subject of standards is based on the principle that the target state should be better off as a result of an intervention.²⁷⁴ Scholars do not specify a clear measure by which we can determine whether a state is better off but simply provide that at least some level of improvement should exist.²⁷⁵ This contrasts with the current post-Somalia U.S. guideline, as articulated by Yvonne C. Lodico, that there must be a guarantee of total victory before a Humanitarian Intervention can be initiated.²⁷⁶ While it is debatable whether the possibility of absolute victory is required or whether merely making an improvement is enough, it seems the consensus is that *at least* some progress towards improving human rights should be made.

269. *Id.*

270. *Id.*

271. Gordon, *supra* note 28, at 45.

272. Roberts, *supra* note 250, at 37.

273. Scheffer, *supra* note 17, at 265. Scheffer lays out six reasons for when consent should not serve as a barrier:

- (1) To rescue or protect citizens abroad and other aliens whose lives are at risk. (2) To protect religious or ethnic minorities from genocide or violent oppression. (3) To end internal aggression or human rights atrocities. (4) To contain mass migration of people, to return large numbers of displaced people to their rightful homes, to repatriate large numbers of refugees and other migrants or to protect refugees and migrants from life-threatening circumstances. (5) To respond to mass human suffering caused by man-made or natural disasters. (6) To support anti-totalitarian rebellions or other movements of self-determination struggling for independence from oppressive regimes that violate human rights on a large scale.

Id.; see also Tyagi, *supra* note 252, at 894-95.

274. Scheffer, *supra* note 17, at 291; see also Tyagi, *supra* note 252, at 889.

275. Tyagi, *supra* note 252, at 894-95; Scheffer, *supra* note 17, at 265.

276. Lodico, *supra* note 16, at 1029.

VI. AUTHORS' PREFERENCE: THE APPLICATION OF A "PRECEDENT" APPROACH

Due to the difficulties that attend the creation of universally applicable standards for when and how to intervene on humanitarian grounds, we believe that precedent should therefore guide the U.N.'s future Humanitarian Interventions. Member states' disagreement on the basic definition of the concept of human rights, not to mention that of Humanitarian Intervention itself, leads us to recommend precedent as a measuring reed against which member states should decide whether to intervene or not. Past inconsistencies in the U.N.'s response to egregious human rights violations warranting Humanitarian Interventions reflect how politically-charged all U.N. actions are when an intervention is undertaken — the promotion of national interests of the intervening states predominates over humanitarian objectives. The Bosnian, Rwandan, Sierra Leonean, and Sudanese disasters, just to name a few, are good illustrations of how the past practices of the United Nations are simply ineffective and have only tarnished the U.N. role as a global organ of justice.

The precedent approach, however, leaves no room for selective or inadequate intervention; similar cases call for similar responses. We also recognize that the common law world's centuries-old reliance on precedent in the pursuit of consistency, predictability, fairness, efficiency, and objectivity,²⁷⁷ is a great example of the success and continued importance of the precedent approach in today's world. The precedent approach in American jurisprudence has a fundamental premise which states that "a judicial decision of an adjudicated issue, embodied and explained in an opinion by a judge is a 'precedent' which under the doctrine of *stare decisis* ['to stand by the decision'] has the quality of controlling law for the future."²⁷⁸ The value in such an approach is "fairness among similarly situated persons."²⁷⁹ When legal principles are applied across the board with consistency, "we see through the distracting detail and isolate the essence of disputes so that similarity between controversies arising among different people in different places and at different times becomes clear."²⁸⁰ Also, precedent provides the benefits of

277. Samuel C. Damren, *Stare Decisis: The Maker of Customs*, 35 NEW ENG. L. REV. 1, 2-4 (2000).

278. RICHARD B. CAPPALLI, *THE AMERICAN COMMON LAW METHOD* 9 (1997) (citing BLACK, *HANDBOOK ON THE LAW* (1912), §§ 59-70, 182-221, app. B); see also Todd E. Freed, *Is Stare Decisis Still the Lighthouse Beacon of Supreme Court Jurisprudence?: A Critical Analysis*, 57 OHIO ST. L.J. 1767, 1768 (1996) (stating that a supreme judicial body adhering to prior judicial decisions to solve current conflicts is known as a horizontal *stare decisis*, which is different from the vertical *stare decisis*, which occurs when the lower courts follow the prior *stare decisis* of higher courts. The horizontal *stare decisis* approach is advocated in this context.).

279. CAPPALLI, *supra* note 278, at 81.

280. *Id.*

predictability and stability because when similar cases are treated alike, the subjects of future controversies are able to predict the outcome and plan their affairs accordingly.²⁸¹

We contend that the same applies to the affairs of political actors in the international arena. If the S.C. responds to similar conflicts with deliberate consistency, human rights violators will likely be discouraged by the deterrent aspect in predictable responses. Furthermore, legitimacy is established through precedent. Observers of judicial decrees are more likely to find solace in decisions that contradict the observer's personal interest, if those outcomes serve a higher purpose than merely satiating the political will of the ruling elite.²⁸²

A good example of this in American jurisprudence is the conservative U.S. Supreme Court declining an opportunity to overturn the controversial *Roe v. Wade*,²⁸³ a landmark case which has established the principle that a woman's right to have an abortion is a constitutionally protected right in America.²⁸⁴ In *Akron v. Akron Center for Reproductive Health*,²⁸⁵ the U.S. Supreme Court struck down certain municipal abortion regulations that would have inhibited women from accessing abortion clinics.²⁸⁶ The conservative members of the Supreme Court, whose political affiliations did not comport with the principles established in *Roe v. Wade*,²⁸⁷ nevertheless respected the role of precedent in the American constitutional jurisprudence.²⁸⁸ In doing so, they sacrificed their political convictions in order to aspire to such laudable goals as fairness, objectivity, predictability, stability, and legitimacy of action.²⁸⁹

Would not the use of precedent in the deployment of Humanitarian Intervention missions lend the same legitimacy to the United Nations? The application of precedent would mitigate the tendency of political actors to subjugate human rights to state interests.

The creation of precedent to achieve the aforementioned enumerated goals within the United Nations would be *de jure stare decisis*, which is the result of an officially recognized and celebrated legal exercise.²⁹⁰ However, there is another avenue that international organizations are

281. *Id.* at 83.

282. *Id.* at 89.

283. *Roe v. Wade*, 410 U.S. 113 (1973).

284. Parisi G. Filippatos, *The Doctrine of Stare Decisis and the Protection of Civil Rights and Liberties in the Rehnquist Court*, 11 B.C. THIRD WORLD L.J. 335, 355 (1991) (citing *Roe*, 410 U.S. at 113).

285. *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983).

286. *Id.* (citing *Akron Ctr. for Reprod. Health*, 462 U.S. at 416).

287. *Roe*, 410 U.S. at 113.

288. *Id.*

289. *Id.*

290. Raj Bhala, *The Precedent Setters: De Facto Stare Decisis in WTO Adjudication (Part Two of a Trilogy)*, 9 J. TRANSNAT'L L. & POL'Y 1, 4 (1999).

known to rely on to arrive at a precedent approach, known as the *de facto stare decisis*.²⁹¹ Perhaps the use of *de facto stare decisis* demonstrates how vital the precedent approach is to international judgments. Recent observations of World Trade Organization's Appellate Body decisions reveal how the Appellate Body has established some variation of precedent "in the interests of developing a consistent, coherent, and legitimate body of jurisprudence."²⁹² We do not make this observation to advocate for the doctrine of *stare decisis* as the only appropriate method; but rather we recognize that the international trade communities rely on precedent and are willing to employ uncodified precedent-setting methods in the interest of justice. Why could not then the entire world embrace the precedent approach in its decision-making process at the U.N. headquarters?

It is important to stress that we likewise do not advocate transplanting a judicial construct into the nonjudicial branch of a supranational organization such as the United Nations. However, we do advocate adherence to the underlying principles that comprise precedent and similar doctrines. While *stare decisis* is not necessarily applicable to decisions made by state actors, the universal principle of legitimacy in action warrants borrowing from the spirit of such a construct; and, of course, *stare decisis* is not the only doctrine under which precedent thrives. In civil law systems, where *stare decisis* is not practiced, the doctrine is adherence to the letter of the code to protect against the tyranny of the current political landscape.²⁹³ Presumably, civil law justices applying the letter of the code serve the same purpose as common law justices standing by the decisions of previous opinions. Both doctrines seem to aspire to judgments that lend legitimacy through deliberate predictability, insofar as the final outcome is not a political statement, born of excessive judicial discretion, but rather a predetermined course.²⁹⁴

Under the precedent approach, action or inaction would not be solely at the mercy of the political interests of veto-wielding states. A decision of whether or not to intervene based on precedent can be viewed as predictable, fair, rational and legitimate since it would encompass similar past situations, rather than be based on a general subjective set of malleable standards that are unable to pass the critical muster of the international community.

291. *Id.* at 3.

292. *Id.* at 110 (maintaining that the Appellate Body established a *de facto* precedent approach in its proceedings when it applied its "Japan-Alcoholic Beverages" test for what is a like product under GATT Article III:2 in both the "Korea-Alcoholic Beverages" case and "Canada-Magazines" case.).

293. David M. Reilly & Sarita Ordóñez, *Effect of the Jurisprudence of the International Court of Justice on National Courts*, 28 N.Y.U. J. INT'L L. & POL. 435, 445 (1996).

294. *Id.*

The United Nations is now at a crossroads. It can either reassert its commitment to fighting human rights abuses by making the doctrine of Humanitarian Intervention one of its leading weapons in the fight, to be deployed upon the happening of certain prerequisite events, or it can let U.N. legitimacy wither away and allow other organizations to replace it. If it chooses the former, then past practice and not past principles should guide its decision to intervene based on humanitarian objectives. The experiences of the interventions undertaken since the Cold War should be the platform from which the United Nations proceeds in the future. In retrospect, past interventions are the best source for re-evaluating the correctness of the undertaken actions. It is within this framework of past interventions that the United Nations should attempt to transform itself into a more powerful, legitimate, global force.

The post-Cold War international order, being replete with internal conflicts of international significance, has already dismissed the now archaic concept of a state's absolute territorial sovereignty and the principle of nonintervention in the internal affairs of the state. Human rights are no longer internal matters but have international significance; thus, whenever human rights are violated, an intervention to restore respect for human rights and dignity must be undertaken by the United Nations without the consent of the target state and based on past practice. In order for the United Nations to be recognized globally, it must therefore practice the preemptory norm of "equality before the law."²⁹⁵ The only mark of approval that it must receive is from the victims of human rights abuses themselves and no one else; only they can honestly appraise the success of the intervention.

Standards afford none of the benefits of precedent; they are simply expressions of a compromise among the various political interests of the member states. Therefore, standards are inherently incapable of consistently guiding Humanitarian Interventions as give-and-take diplomacy permits only those interventions that promote the intervener's ulterior domestic strategic interests.

VII. CONCLUSION

Mr. Secretary-General Kofi Annan and Distinguished Members of the United Nations:

After reviewing the post-Cold War era Humanitarian Intervention cases, we worry about the continued legitimacy of the United Nations, especially when the interventions proceeded on an *ad hoc*, arbitrary, and

295. Dino Kritsiotis, *Reappraising Policy Objections to Humanitarian Intervention*, 19 MICH. J. INT'L L. 1005, 1026 (1998) (citing A. V. DICEY, LECTURES INTRODUCTORY TO THE STUDY OF THE LAW OF THE CONSTITUTION 203 (1885)).

inconsistent basis. We have confronted and analyzed various opinions maintained across a wide spectrum of international law scholars. Of particular concern to us is a belief that decisions to initiate Humanitarian Intervention missions occur based on the paranoia surrounding the “Somalia Syndrome,” racial criteria and political will. These beliefs have definitely developed from an objective analysis of the long-standing pattern of the U.N. involvement in Humanitarian Interventions.

For instance, Somalia and Liberia were countries with no central authority and gross human rights violations. Though the United Nations was quick to respond to the Somalian crisis, the casualties suffered by U.N. troops have since frustrated the willingness of member states to intervene in like situations such as Liberia.

Response was also quick in coming in Kosovo, after Serbians murdered two thousand Kosovars. However, in Rwanda, more than half a million lives were lost before the United Nations decided to intervene militarily. Moreover, in Sudan, two million have died during a twenty year bloodshed and the U.N.’s response has amounted to little more than superficial involvement. Finally, in Gujarat, where the minority Muslim population was brutalized by factions with questionable government ties, the United Nations did not respond at all. Such inconsistent responses by the United Nations to similar atrocities might reflect how the human rights of Europeans seem more important than those of all others. We acknowledge that regional organizations with superior military prowess, like that of NATO, can enforce a cease-fire and save lives more quickly and effectively than supranational organizations like the United Nations. People who live beyond these types of regional organizations, and who coincidentally are not of European descent, are then in grave danger, especially in light of the fact that the United Nations is not likely to stop the violence.

In Haiti and Sierra Leone, both crises centered on the fact that a legitimately elected president was ousted by a military coup. In Haiti, the refugee crisis was quickly quelled by a U.S.-led multinational Humanitarian Intervention mission, while in Sierra Leone, the violence continued to escalate with no sign of blue helmets on the horizon. It seems that politics was the decisive factor in the U.N. approval of Humanitarian Intervention.

If the United Nations had a methodology with which to evaluate the appropriateness of Humanitarian Intervention, these criticisms could be avoided. One way to address the problem is through legal standards. That would mean formulating a codified set of rules by which to analyze new cases.²⁹⁶ However, it is possible that standards, alone, would not suffice

296. See Brown, *supra* note 16, at 1722-39 (outlining “The Elements of a Legal Standard for Humanitarian Intervention,” including reference to: the role of the Security Council, necessity and legitimate purpose, proportionality, duty to respect international humanitarian law and human

because they can be a safe haven for diplomatic language that frustrates action where action is critical. Precedent may provide the answer.

The theory behind precedent is that past practice provides a lens through which future cases can be determined. If the S.C. absolves itself of a humanitarian duty then that would set a bad precedent which could irreparably mar the reputation of the United Nations, an outcome that those who favor an international community would not wish to espouse. On the other hand, when the S.C. exercises its powers to intervene such as in Haiti, this sets a positive precedent to be followed in similar circumstances in the future, thereby cementing the United Nations as a legitimate institution.

An initiative to implement either the standards or the precedent approach sheds a positive light on the current state of Humanitarian Intervention. We must find some way to come to terms with past initiatives, or a lack thereof, and in that effort create a more stable foundation from which to move forward. Without this foundation, how can we encourage future generations to trust in the protection that the international community is professing to provide?

rights, duty not to make a humanitarian situation worse than it otherwise would have been, and responsibility for reconstruction.).