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The Kurdish Crisis: An International Incident Study

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I. INTRODUCTION

In the past two years, the leading democratic nations increasingly feel it was their responsibility to interfere in what has traditionally been considered the internal matters of other states. The largest intervention since the Gulf War occurred when western states intervened in Iraq on behalf of the Kurds. The western democracies, encouraged by nations from all corners of the world, provided humanitarian relief and a degree of security so that the Kurdish refugees could come down from the mountains on the border of Iraq, where starvation and intense cold threatened their survival. Invoking the doctrine of humanitarian intervention, these states acted to protect international peace and security but met resistance in the fundamental notion of state sovereignty.

As a term of art, *humanitarian intervention* traditionally refers to interference on behalf of nationals or inhabitants of foreign countries "in cases where a State maltreats its subjects in a manner which shocks the conscience of mankind."[1] The doctrine purports to allow a state to intervene in what would otherwise be an unlawful action, but, as its definition suggests, the doctrine is full of ambiguities. The approximately ten major actions ventured under the modern doctrine have met with a mixed response from the international community.[2] Scholars have been no less divided over whether, and in what circumstances, the United Nations Charter authorizes humanitarian intervention.[3]

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1. Richard B. Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 IOWA L. REV. 325, 332 (1967) (quoting H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 32 (1950)).

2. The modern doctrine predates the U.N. Charter and is usually traced from the early nineteenth century. W. Michael Reisman & Myres S. McDougal, *Humanitarian Intervention to Protect the Ibos*, *in* HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 167, 179 (Richard B. Lillich ed., 1973). For an analysis of humanitarian interventions undertaken in the past, see Reisman and McDougal, *supra*, at 178-87; *see also* Nigel S. Rodley, *Human Rights and Humanitarian Intervention: The Case Law of the World Court*, 38 INT'L & COMP. L.Q. 321 (1989).

3. Some scholars believe that Article 2(4) of the United Nations Charter, which renounces "the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations," and Article 2(7), which prohibits intervention by the United Nations "in matters which are essentially within the domestic jurisdiction of any state," forbid humanitarian intervention entirely. *See, e.g.*, Michael Akehurst, *Humanitarian Intervention*, *in* INTERVENTION IN WORLD POLITICS 98, 104-08 (Hedley Bull ed., 1984) (arguing that humanitarian intervention is illegal); Thomas B. Franck and Nigel S. Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 AM. J. INT'L L. 275 (1973).

Others believe that humanitarian intervention is well-grounded in the United Nations

Following the Gulf War, Iraqi treatment of the Kurds aroused, for the first time, a substantial world response. Some countries suggested the removal of Saddam Hussein, while others offered proposals for restructuring Iraq, including a plan to create autonomous enclaves for the Kurds. Indeed, the Kurdish situation provided the international community with a prime opportunity to expand the contingencies for and the scope of humanitarian intervention.

Despite calls for a New World Order and an increased interest in human rights, however, the world's most effective actors failed to broaden the doctrine and sustained only a moderate intervention on behalf of the oppressed Kurds. This result may be understandable given the exigent political realities. The United States was reluctant to become involved in what the President viewed as a potential military "quagmire." The English, who led the European Community's response, expressed a greater willingness to interfere but could not act without U.S. support. The United Nations had among its members too many potential targets for accusations of human rights violations to take aggressive action. The weak response was particularly unfortunate, however, because the need for aid was so extreme and clear-cut. Moreover, respect for human dignity and minimal human rights standards demanded more aggressive action.

A brief look at the history of the Kurdish community in Iraq and the history of international interference on their behalf provides a background for an evaluation of the humanitarian intervention which has occurred in Iraq since the Gulf War.

II. HISTORY OF THE KURDS

A. *The Iraqi Population*

Although Saddam Hussein and his government publicly maintain that Iraq is one nation and all of its inhabitants Iraqis, Iraq is a country of deeply divided ethnic and religious sects. Approximately 73.5 percent of Iraq's population is Arab, a figure which perhaps belies Hussein's claim to be the leader of the Arab world, as in few other Arab states is there

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Charter and subsequent conventions. These scholars argue that the use of force for the purposes of humanitarian intervention not only is consistent with the Charter's purpose of protecting human rights but also does not fall within Article 2(4)'s proscription against the use of force. They note further that an important qualification is added to Article 2(7), which excepts enforcement measures under Chapter VII, including action with respect to threats to the international peace and security. The latter exception may be particularly relevant to interventions in matters of human rights, because the international community has increasingly recognized the interdependence of the preservation of international peace and security and the protection of fundamental human rights. *See* Lillich, *supra* note 1, at 326-38; Reisman & McDougal, *supra* note 2, at 171-72, 177.

Several scholars have suggested criteria by which one may evaluate the legitimacy of a particular humanitarian intervention. *See* Lillich, *supra* note 1, at 347-51; Reisman & McDougal, *supra* note 2, at 187.

such a high percentage of non-Arabs.[4] The Kurdish population constitutes Iraq's second most prominent ethnic group, the nation's largest ethnic minority.[5] The Iraqi Kurds have historically been an economically independent, non-Arabic speaking minority group in Iraq, who are linked by cultural, religious, community, and linguistic ties which have stretched over thousands of years.[6] They survive a history of persecution. Mass murders and forced exodus have been the preferred methods of Saddam Hussein and his government of Sunni Arab elites for dealing with this ethnic minority. And the Kurdish struggle for autonomy has been punctuated by little international effort on their behalf. The Kurds have never received more than partial recognition, from the time of the creation of the modern state of Iraq to the present.

B. *Early Hope for Self-determination*

At the close of the First World War, the fall of the Ottoman Empire offered the Kurds their first great hope of self-determination in this century. The Allied powers envisaged a partitioned Turkey, from which they hoped to carve an independent Kurdish state to be called Kurdistan. President Woodrow Wilson expressed this hope in point twelve of his Fourteen Point Program for World Peace which stated that non-Turkish minorities of the Ottoman Empire should be "assured of an absolute unmolested opportunity of autonomous development."[7]

The Treaty of Sevres, the 1920 armistice agreement between Great Britain and Turkey, stated that a commission of Allied appointees would "prepare for local autonomy in those regions where the Kurdish element is preponderant."[8] In 1923, however, the British were forced to renegotiate the terms of the Treaty at Lausanne, after Kemal Ataturk, the

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4. SIMON HENDERSON, INSTANT EMPIRE: SADDAM HUSSEIN'S AMBITION FOR IRAQ 26-27 (1991).

5. Although the Iraqi government refuses to provide population figures, one 1989 estimate places the Kurdish population at 21.6 percent. *Id.* at 26.

6. In the Middle East, the Kurds constitute the fourth largest ethnic group, behind the Arabs, Persians, and Turks, boasting a population of approximately twenty to twenty-five million. They are thought to descend from Indo-European tribes who settled many years ago in the mountains of what is now broadly referred to as Kurdistan. Although the Kurds speak a common language, no universal written and spoken form of Kurdish has evolved, and numerous dialects make communication between some groups difficult. Religiously, approximately eighty-five percent of the Kurds are Sunni Muslim, and strong religious loyalties exist among them. They have traditionally been a tribal and agricultural people and remain so to some extent today. Vast differences exist, however, between the often nomadic, mountain Kurds and the urban Kurds, a group that generally views traditional Kurdish tribalism as backwards. In any case, tradition remains a large part of Kurdish life, and the Kurds struggle to protect a unique cultural identity. DAVID MCDOWELL, THE KURDS: THE MINORITY RIGHTS GROUP REPORT NO. 23, 5-9 (1985).

7. Woodrow Wilson, *Address on the Conditions of Peace Delivered at a Joint Session of the Two Houses of Congress* (Jan. 8, 1918), *in* PRESIDENT WILSON'S FOREIGN POLICY: MESSAGES, ADDRESSES, PAPERS 361-62 (James B. Scott ed., 1918).

8. Treaty of Sèvres, Aug. 20, 1920, art. 62, *quoted in* MCDOWELL, *supra* note 6, at 11.

founder of modern Turkey, came to power. By the terms of the Treaty of Lausanne, the Kurdish population was split largely among the five countries of Turkey, Iran, Iraq, Syria, and the U.S.S.R., reminiscent of their split before the war, between the Persian and Ottoman Empires. After some debate, the League of Nations ultimately awarded the Kurdish area of Mosul and the oil-rich land surrounding it to Great Britain.[9]

Choosing to rule the Kurdish region under its control through traditional Kurdish leadership, the British government appointed Shaikh Mahmud Barzinji to act as governor in 1919. Barzinji was immediately challenged, however, by other tribal leaders who resented their loss of power. Troubled by Turkish attempts to re-establish control of the area by inciting Kurdish rebellion and unable to work through tribal leadership, the British ultimately incorporated the Kurdish area into Iraq under a provisional Kurdish administration. In doing so, the British defined the territory of the modern state of Iraq.[10]

C. *An Independent Iraq*

The British surrender of political control of Iraq in 1932 signalled the beginning of the oppression of the Kurds. The Arab leadership of Iraq had encouraged the British hope that the Kurds could be reconciled to incorporation with Arab Iraq, by promising to honor the League of Nations stipulations to the grant of Mosul to Iraq in March 1925—that Kurdish should be the official language of the area and that the Kurds should be placed in administrative and educational positions in their region. Neither pledge, however, was recorded in the Anglo-Iraqi treaty of 1930 (implemented in 1932) that granted Iraq its independence.[11]

The weakening of British ties, the lack of written guarantees in the Anglo-Iraqi treaty, and the failure of the Iraqi government to take any steps to implement its oral promises caused the Kurds to fear for their status in Iraq. Led first by Shaikh Mahmud Barzinji and later by Mulla Mustaf Barzani, the Kurds revolted. The series of revolts have alternately been termed tribal uprisings and the first popular movement for an independent Kurdistan.[12] Kurdish rebellions in the North did not die down until the Second World War, at which time the Kurds became increasingly integrated with Arab society.[13]

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9. The entire area of the modern state of Iraq was placed by League of Nations mandate under British control. HENDERSON, *supra* note 4, at 16.

10. MARION FAROUK-SLUGLETT & PETER SLUGLETT, IRAQ SINCE 1958: FROM REVOLUTION TO DICTATORSHIP 14-15, 24-25 (1987).

11. *Id.* at 26-27.

12. *See* PHEBE MARR, THE MODERN HISTORY OF IRAQ 43, 51, 54 (1985); FAROUK-SLUGLETT & SLUGLETT, *supra* note 10, at 26-29. *Compare* Sa'ad N. Jawad, *The Kurdish Problem in Iraq, in* THE INTEGRATION OF MODERN IRAQ 171 (Abbas Kelidar ed., 1979) [hereinafter Jawad, *Kurdish Problem*] *with* MCDOWELL, *supra* note 6, at 19.

13. MARR, *supra* note 12, at 146.

D. *The Beginnings of the Republic of Iraq*

The next stage of Kurdish history began with the establishment of the Republic of Iraq in July of 1958, when a group called the Free Officers overthrew the Iraqi monarchy and established Abdel Karim Qasim as prime minister. The Kurds initially greeted the revolution with enthusiasm, expecting the new government to be more sympathetic to their cause. Mulla Mustaf Barzani, the Kurdish leader who enjoyed a larger tribal following than any other tribal leader, came back from twelve years of exile and quickly took an active role in the Kurdish Democratic Party (K.D.P.), the urban, professional wing of the Kurdish movement founded by Barzani and others in 1946. A new constitution promised the Kurds equality with the Arabs.[14]

When Barzani and the Kurds demanded further government concessions and became increasingly aligned with Communist forces, however, Qasim began to realize the extent of the Kurdish goals. He responded to Barzani's demands with the first major offensive of what became a lengthy conflict. Qasim's bombing of Barzan, Barzani's homeland, and his banning of the K.D.P. escalated the situation to an all-out war for Kurdish autonomy and, ostensibly, for democracy in Iraq. Barzani's rebels made formidable opponents. Gaining widespread support from other anti-republic Kurdish tribal leaders, they adopted guerilla tactics and maintained mountain strong-holds.[15]

Plagued by defections to the Kurdish army, betrayal by officials in his own government, and scant support left in the Army, Qasim was defeated in 1963 by the Ba'ths, who were in turn overthrown that same year by Abdel Saslam Arif. Despite periodic cease-fires, the Kurds remained in a state of civil war for nearly the entire period between 1961 and 1968, as successive military governments attacked the Kurdish uprisings. These governments called the Kurdish revolts attempts to achieve separation and sought a military solution to the problem. In doing so, they failed to acknowledge the experience, magnetism, and military experience of Barzani and the tenacity of the Kurdish fighting forces known as *pesh merga*, or "those who face death."[16]

E. *The Ba'th Rise to Power*

1. The March Manifesto

When the Ba'th party regained power in July 1968, they intended to find a more permanent solution to the Kurdish issue but were plagued by

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14. *Id.* at 176-77; MCDOWELL, *supra* note 6, at 19.

15. MARR, *supra* note 12, at 177-79; MCDOWELL, *supra* note 6, at 19-20; SA'AD JAWAD, IRAQ AND THE KURDISH QUESTION 324-31 (1981) [hereinafter JAWAD, KURDISH QUESTION]; Jawad, *Kurdish Problem*, *supra* note 12, at 175-76.

16. MCDOWELL, *supra* note 6, at 20; JAWAD, KURDISH QUESTION, *supra* note 15, at 51-52; Jawad, *Kurdish Problem*, *supra* note 12, at 177.

the obstacles familiar to previous regimes. Among the obstacles were the extensive following of Barzani, the Iraqi army's resistance to peaceful settlement, and public opinion in the Arab world that autonomy for the Kurds was equivalent to separation.[17]

Despite inflexibility on both sides, the government and the Kurds reached an agreement, in March of 1970, that recognized the Kurds as free and equal partners of the Arabs and promised them full recognition of their national autonomy within four years. The Manifesto granted the Kurds several specific rights, including government posts, economic concessions, and rights to use and be taught the Kurdish language. The enforcement of these rights, however, quickly became subject to disputes.[18]

International involvement intensified the problems between the Ba'th regime and the Kurds both during this period and later, because the Ba'ths resented interference in what they viewed as a sovereign matter.[19] Among the Kurds' supporters were the governments of Iran and Turkey, whose aid was granted contingent on understandings that the movement for Kurdish separatism would not be spread into their countries.[20] The Israelis also allegedly provided the Kurds with assistance.[21]

Foreign support, however, did not exist to liberate the Kurds but rather to encourage the Kurds to wage war against the Ba'ths, in order to neutralize the danger of the Iraqi regime in the Middle East.[22] The Kurds were repeatedly betrayed by temporary supporters. The Soviets, for example, after helping the Kurds negotiate the March Manifesto, allied themselves with the Iraqi government, whom they began supplying with arms.[23]

2. Autonomy Law and the Civil War of 1974-1975

The crisis culminated in 1974, when the Ba'th invited K.D.P. support of an Autonomy Law, to be announced March 11, 1974, and gave them fifteen days in which to respond in order to participate in the National Patriotic Front (N.P.F.). The Kurds found the law insufficient to meet their demands. They felt that they had not been provided with solid guarantees of meaningful participation in their government, they differed

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17. JAWAD, KURDISH QUESTION, *supra* note 15, at 331.

18. MCDOWELL, *supra* note 6, at 20-21; Jawad, *Kurdish Problem*, *supra* note 12, at 179-80.

19. Saddam Hussein, who became president in 1979 after rising to power through the Ba'th, commented: "Looking at it within its national framework, the Kurdish question is a purely internal matter which sometimes takes dubious forms because of the intrusion of foreign influences, and stands aggressively in the way of the national movement and struggle for the construction of a new society." Interview with Sakina al-Sadat, Egyptian journalist (Jan. 19, 1977), *in* SOCIAL AND FOREIGN AFFAIRS IN IRAQ 95 (Khalid Kishtainy trans., 1979).

20. MCDOWELL, *supra* note 6, at 20.

21. FAROUK-SLUGLETT & SLUGLETT, *supra* note 10, at 104.

22. MCDOWELL, *supra* note 6, at 21; Jawad, *Kurdish Problem*, *supra* note 12, at 180-81.

23. JOHN BULLOCH & HARVEY MORRIS, SADDAM'S WAR: THE ORIGINS OF THE KUWAIT CONFLICT AND THE INTERNATIONAL RESPONSE 178 (1991) [hereinafter SADDAM'S WAR].

over the interpretation of the Manifesto and the extent of the government's efforts to implement it, and they disagreed with the government as to the extent of the Kurdish area, particularly concerning the city and environs of Kirkuk.[24]

Full-scale war soon developed, and by the end of the summer, the Iraqis controlled much of Kurdistan. Only when Iran increased aid to the Kurds, providing long-range heavy artillery support and perhaps even troops, did the Kurds stage a serious comeback.[25]

Kurdish prospects were soon thwarted, however. Arab governments brought the Shah of Iran and Iraqi Vice-President Saddam Hussein together in Algiers, and the two leaders reached a settlement. In return for a new delimitation of the Shatt al-Arab waterway at the deepest navigable channel, Iran sealed its borders to the Kurds and withdrew their field guns from Iraq. The Iranians then proceeded to threaten to join the Iraqis in a combined attack, if the Kurds did not accept the Agreement's terms.[26] After the Agreement, Mulla Mustaf Barzani went into exile, where he died.

Samir al-Khalil, in his book *Republic of Fear: The Politics of Modern Iraq*, describes what he views as a decline of the army under the second Ba'th regime, which evidenced itself in increasingly violent behavior.[27] A major escalation in violence against the Kurds was particularly evident towards the end of the civil war in 1974, when the principle function of the army was internal repression. In 1974 and 1975, the army napalmed and bombed Kurdish villages and districts systematically, leaving many thousands of civilians homeless. Al-Khalil describes the arrests, deportations, executions, assassinations, and public hangings to which the Kurds were subjected, including the summary execution of one thousand *pesh merga* fighters after they surrendered to government troops.[28]

3. The Resettlement Program and the Kurdish Refugees

The violence continued after the civil war in the form of continued, massive Kurdish resettlement conducted by the Iraqi army. The army

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24. FAROUK-SLUGLETT & SLUGLETT, *supra* note 10, at 166-68; MCDOWELL, *supra* note 6, at 21-22. Both the Kurds and the government maintained that they were conforming to the March Manifesto. Jawad, *Kurdish Problem*, *supra* note 12, at 180. Estimates suggest, however, that the "autonomous region" designated by the Ba'ths excluded half of the area of Iraqi Kurdistan and that the provinces of Kirkuk were redrawn to ensure that the city had an Arab majority. Furthermore, a detailed study indicates that few of the benefits set forth in the Agreement were implemented. FAROUK-SLUGLETT & SLUGLETT, *supra* note 10, at 188.

25. MCDOWELL, *supra* note 6, at 21-22.

26. FAROUK-SLUGLETT & SLUGLETT, *supra* note 10, at 170.

27. In one 1969 incident, for instance, in the village of Dakan in Northern Iraq, sixty-seven women and children were knowingly burnt alive, while hiding in a cave which they had entered to seek protection from an artillery shelling. The incident was brought to the attention of the United Nations. SAMIR AL-KHALIL, REPUBLIC OF FEAR: THE POLITICS OF MODERN IRAQ 22-23 (1989).

28. *Id.*

forced Kurdish inhabitants to new cities easily accessible to the Iraqi army and then to settlements nearer major Kurdish cities. Al-Khalil describes massive deportations to the southwestern desert region of Iraq, an area vastly different in climate than the hills of Kurdistan. Families were taken to the south by truck, to destinations where they were left, supplied only with a tent. The Ba'th relocated Kurds from the provinces of Diyala, Kirkuk, and Mosul.[29] Al-Khalil estimates that eighty-five percent of those who returned to Iraq on the strength of amnesty or because they were expelled by the Shah's army were sent to these camps.

Jalal Talabani, leader of the Patriotic Union of Kurdisan (P.U.K.), and others, say that the Iraqi army dynamited twenty-eight Kurdish cites and at least four thousand villages from 1974 to 1990, as part of "Saddam's plan to depopulate rural Kurdistan and relocate its people in the more easily controllable big cities."[30] Kurdish villages were reduced to rubble in Saddam's campaign, as the Iraqis forced evacuation and dynamited the remaining towns. Iraqi soldiers sealed off and guarded, at numerous checkpoints, what remained of the towns.[31] By demolishing villages along the borders of Iran and Turkey, the Iraqi government created a *cordon sanitaire* in those areas most susceptible to infiltration of aid from other countries.[32]

F. *The Iran-Iraq War*

The Algiers Agreement of 1975 not only led to the end of the Iraqi-Kurd civil war but also precipitated an eight-year war between the parties represented by the signatories. Iraq's *casus belli* was an alleged violation of the Algiers Agreement by the Khomeini regime and an allegation that Iraq had been forced to cede control of the Shatt al Arab waterway under duress.[33] After Saddam Hussein tore up the Algiers treaty in a symbolic gesture, the war started in September of 1980. For the Kurds, the war created yet another opportunity for rebellion. They maintained a revolt throughout the period with aid from Ayotollah Khomeini.[34]

Ultimately, a curtailed ability to obtain arms (in large part due to the U.S.-led Operation Staunch), the command of the Gulf sea lanes by American ships, and a collapse of morale after years of conflict forced Iran to accept United Nations Resolution 598 calling for a cease-fire. Although Iraq had accepted the agreement a year earlier, it sought to impose new conditions, delaying negotiations long enough for the Iraqi army

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29. *Id.* at 24; *see also* HENDERSON, *supra* note 4, at 199-200.

30. Michael Kelly, *Back to the Hills*, NEW REPUBLIC, June 3, 1991, at 23, 24.

31. *Id.* at 25.

32. FAROUK-SLUGLETT & SLUGLETT, *supra* note 10, at 188.

33. The dispute over the waterway, however, went back hundreds of years to a dispute between the Persian and Ottoman Empires. See JOHN BULLOCH AND HARVEY MORRIS, THE GULF WAR 33-38 (1989), for a history of the conflict. [hereinafter GULF WAR].

34. SADDAM'S WAR, *supra* note 23, at 87-88.

to turn their arms on the Kurdish dissidents in the north.[35]

On July 19, 1988, the Iraqi army proceeded to drop poison gas on Kurdish villages, starting a campaign of bombing and forced exodus by which the government eliminated Kurdish resistance and forced one hundred thousand refugees into Turkey and Iran. Concerned with the Geneva cease-fire accords and anxious to do nothing to threaten negotiations, the West did not criticize Iraq's actions.[36] Nor did the United Nations publish details of the Kurdish incidents until negotiations were under way, after Saddam dropped his demands on Iran on the sixth of August.[37]

The campaign against the Kurds which followed the war had been foreshadowed by an incident which received widespread press coverage in March of 1988, when some five thousand Kurdish civilians were killed at Halabja. The deaths resulted from a gas attack which occurred immediately after the town switched hands, allowing Iranian television crews to capture the horrors.[38] The incident represented not only Iraq's first chemical attack against its own civilians but also the first recorded use of nerve gas. The international community, however, fell short of condemning Iraq at this time.

Two staffers sent by the U.S. Senate Foreign Relations Committee, Peter Galbreith and Christopher Van Hollen, went to Iraq and returned with reports of Iraq's use of chemical weapons to depopulate Kurdistan and relocate the population. Their report led to the introduction of the Prevention of Genocide Act 1988, which, despite unanimous Senate approval was deemed premature and counterproductive by the White House and ultimately failed.[39]

Britain attacked Iraq's policy of using chemical weapons but, like other Western states, preferred to maintain relations with Iraq, in what the government saw as its best means of wielding influence over future Iraqi behavior. The Soviet bloc made no comment on the events. At the United Nations, Saddam's half-brother succeeded in accumulating the votes necessary to remove Iraq from a list of persistent human rights offenders.[40]

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35. GULF WAR, *supra* note 33, at 258; SADDAM'S WAR, *supra* note 23, at 20.

36. Although George Shultz, in a meeting with Saddam's deputy prime minister, publicly condemned Iraq's actions, the nation's Middle East experts urged him to take a "less emotional position." He consequently approved a recommendation for an administrative policy opposed to sanctions against Iraq for the use of chemical weapons against the Kurds. ELAINE SCIOLINO, THE OUTLAW STATE: SADDAM HUSSEIN'S QUEST FOR POWER AND THE GULF CRISIS 171 (1991).

37. GULF WAR, *supra* note 33, at 259.

38. There is some debate as to whether the Iranians were also involved in the gassing, as two different types of gas were used. *Cf.* GULF WAR, *supra* note 33, at 262 *with* THE IRAN-IRAQ WAR: IMPACT AND IMPLICATIONS (Efraim Karsh ed., 1989). *See also* FAROUK-SLUGLETT & SLUGLETT, *supra* note 10, at 114 (maintaining that Iran initiated the use of chemical weapons).

39. SADDAM'S WAR, *supra* note 23, at 88-89; GULF WAR, *supra* note 33, at 263-64.

40. GULF WAR, *supra* note 33, at 89. Nevertheless, Arab states criticized western states

III. THE GULF WAR

A. *The Invasion of Kuwait*

Significantly, Saddam Hussein emerged from the Iraq-Iran war as a victor, at least in the eyes of his own people. This status encouraged his aggression. Attempting to gain in regional supremacy and the Arab leadership ranks, Saddam no doubt saw the invasion of Kuwait as a means of furthering his goals.[41] In seeking to build Arab support for the invasion, Hussein appealed to *gawmiya*, Arab loyalty which transcends the national boundaries imposed by western imperialists.[42] He no doubt also hoped to play on the dislike of the northern Arab world for their oil-rich neighbors on the Arabian peninsula.

Saddam also faced economic problems. Recognizing that Kuwait threatened Iraqi livelihood by driving down the world oil price, Saddam painted the Kuwaitis as aggressors. He announced that the Kuwaitis had lied and broken agreements with the Iraqis, a complaint perhaps originating in the Kuwaitis' refusals to forgive Iraq's loans as had the government of Saudi Arabia.[43]

Iraqi soldiers began the invasion of Kuwait on August 2, 1990, and by August 8, Saddam had annexed the country.

B. *The Fighting*

Clearly U.S. involvement in the Iran-Iraq War would have created the threat of opposing Soviet military intervention. Such an intervention might have resulted in a nuclear attack, since the U.S. did not have a large number of forces in the Gulf region at that time. By the summer of 1990, however, the situation had changed. The U.S.S.R. had retreated from the international scene in an effort to deal with the collapsing Soviet empire. The terms of the Iraqi invasion likewise differed from the invasion of Iran. Unlike Iran in the Iran-Iraq war, which was on fairly equal

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for what they termed intervention in the internal matters of the Iraqi government. At least three of these countries—Syria, Libya, and Egypt—had obtained or were in the process of obtaining the capacity to produce chemical weapons. As such weapons are cheap and easy to produce, these countries no doubt had their own futures in mind. Turkey, while opening its borders to the Kurds, refused to furnish international bodies with evidence that its own doctors found use of gas. Likewise, the Turkish government actively discouraged outsiders from gathering evidence. Many Iraqi civilians returned to Iraq. Of those that did, many were separated into male and female groups, and the males were never again heard from. At the end of the war, Republican Guard units went into the marshes north of Bassra, and called for the surrender of the many deserters known to be hidden there. Those that gave themselves up were imprisoned or shot, and gas was used in the marshes, killing those that remained. *Id.* at 264-66.

41. SADDAM'S WAR, *supra* note 23, at 74.

42. For a further discussion and an excerpt of a letter to this effect from Tariq Aziz, then foreign minister of Iraq, to the leader of the Arab League, see *Out of Joint; A New Arab Order*, ECONOMIST, Sept. 28, 1991, at 4.

43. SADDAM'S WAR, *supra* note 23, at 13, 21.

footing with Iraq in what could be characterized as a regional border dispute, Kuwait appeared to be an innocent victim of an aggressive takeover.[44]

Thomas R. Pickering, the chief U. S. representative to the United Nations called for the Security Council to condemn the invasion. On August 6, the Council voted to impose a worldwide trade embargo on Iraq, sanctions of unprecedented scope.[45] Resolution 678 authorized the American-led coalition to use force if necessary, setting a deadline for Iraq's withdrawal from Kuwait of January 15 at midnight, New York time.[46]

In early January, last minute negotiations in Geneva between Tariq Aziz and James Baker dissolved. Therefore, on January 17, 1991, shortly after the United Nations deadline passed, Operation Desert Storm began and President Bush proclaimed that "the liberation of Kuwait" had begun. By the time the war started, the U. S. had the support of a coalition of twenty-eight members, a coalition that grew to thirty-seven members by the end of the war. The American-led force, commanded by General H. Norman Schwartzkopf, began a massive air campaign which was to include one hundred thousand sorties, the primary destination of which were military command and control targets.[47]

Saddam responded by attacking Saudi Arabia and Israel with improved Scud missiles, failing to distinguish between military and civilian targets. He also used an environmental weapon. By opening pumping stations ten miles off of Kuwait, he unleashed ten million barrels of crude oil into the Gulf. He did so, perhaps, to complicate an amphibious landing off Kuwait, to cloud the atmosphere making bombing more difficult, or to disrupt water supplies in Saudi Arabia.

The hundred-hour ground war began six months and two weeks after the invasion of Kuwait and ended quickly with Iraq's surrender. Soon after the surrender, Iraq accepted the United Nations' twelve resolutions and arranged a cease-fire with General Schwartzkopf and Saudi Arabian Prince Khalid bin Sultan.[48]

C. *Post-war Civil Fighting*

With the end of the war came widespread civil fighting in Iraq. Opponents of Saddam's regime, predominantly the Shia Muslims in the south and the Kurdish population in the north, seized the chance to try to topple what was perceived as an already vulnerable government.[49]

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44. *Id.* at 3-6.

45. SCIOLINO, *supra* note 36, at 221-22.

46. S.C. Res. 678, U.N. SCOR, 46th Sess. (1990).

47. SCIOLINO, *supra* note 36, at 25-30.

48. *Id.* at 255-62.

49. Religiously, the Iraqi elites represent what is alternately estimated to be the dominant branch of Islam in their country, the Sunni Muslims. The Sunnis have a twelve hundred year history of conflict with the Shia Muslims, the other prominent Islamic sect in Iraq, whose members dominate the population of the territory stretching from Baghdad

The Kurdish uprising, like the Shiite rebellion, ended quickly. Although broadcasts on Voice of Free Iraq, a covert radio station alleged to be C.I.A.-supported, called for the destruction of Saddam's regime as late as March 29, Iraqi troops quashed the main of the Kurdish resistance in about five days.[50] In violation of the cease-fire agreement, the Iraqi government used helicopters to shoot down the resistance fighters. Many were killed and hundreds of thousands of Kurds fled the country.

Fighting has persisted intermittently on the border of Kurdistan. In October, Massoud Barzani, the son of Mulla Mustaf Barzani and current leader of the P.U.K., and Hussein Kamal al-Takriti, the then Iraqi defence minister, arranged a cease-fire, albeit too late to stop a new mass exodus of Kurds from the fighting area.[51]

D. *The Status of Kurdistan*

After the war, Kurdish guerrillas reclaimed large parts of Kurdistan. Refugees and Kurdish businessmen and their families alike seized the chance to return to their homelands and rebuild the towns destroyed by the Iraqi army under the government's policy of forced mass relocation which began in 1976 and peaked at the end of the Iran-Iraq War. On March 18, 1991, the *pesh merga* reclaimed the city of Halabja, the scene of one of Saddam's greatest crimes.[52] The Kurds continue to reclaim their cities in northern Iraq and, in doing so, have discovered new evidence of the cruelty of Saddam Hussein's dictatorship. Journalists report that the Kurds have uncovered "mass graves, torture chambers, elaborate prison systems and comments from secret police files that attest to the inner workings of one of the region's harshest dictatorships."[53] Some of the newly-discovered mass graves appear to be of recent origin.[54]

The Kurds returned to their homelands under the protection of allied forces. As of this writing, military observers continue to monitor the security zone in northern Iraq, whose southern boundary approximates the thirty-sixth parallel, that the American-led forces established after the war. Overflights by allied warplanes based in Turkey continue to patrol the skies.[55]

Due in part to the security zone, the Kurds maintain *de facto* control in many of the towns in northern Iraq, although the towns are supposed

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southeast along the Tigris and Euphrates to Basra. HENDERSON, *supra* note 4, at 26-27.

50. *See* Michael Wines, *Kurd Gives Account of Broadcasts to Iraq Linked to the C.I.A.*, N.Y. TIMES, Apr. 6, 1991, at A1.

51. *The Kurds; The Horror at Sulaymaniyah*, ECONOMIST, Oct. 12, 1991, at 43.

52. Kelly, *supra* note 30, at 25; Patrick E. Tyler, *In Town Iraqis Gassed, Kurds Now Breathe Free*, N.Y. TIMES, Nov. 18, 1991, at A4.

53. Chris Hedges, *Kurds Unearthing New Evidence of Iraqi Killing*, N.Y. TIMES, Dec. 7, 1991, at A1.

54. *Id.* at A7.

55. Chris Hedges, *As Kurds Enjoy Freedom, They Wake Neighbors*, N.Y. TIMES, Aug. 16, 1992, Sec. 4, at 6.

to be run by the Kurds and the Iraqi army jointly.[56] In July, the Kurds swore in a new, popularly elected government, intended to fill the administrative vacuum created by Baghdad's withdrawal from the area after the arrival of the American-led forces.[57] Although Saddam denounced the elections as illegal, the presence of Western forces has thus far prevented military retaliation.[58] Additionally, the two main Kurdish political parties, the K.D.P. and the P.U.K., have agreed to combine their guerrilla units into a single force under Kurdish Government command. Negotiations with smaller Kurdish parties that have their own guerilla forces are expected to add to the new force.[59]

Despite the allied presence, Saddam's forces continue to wage harassing attacks on the Kurds as well as U.N. relief workers.[60] The government has imposed an embargo on the north which the Secretary General of P.U.K, Jalal Talabani, described as a policy of starvation of the Kurds in Kurdistan meant to force their surrender.[61]

Defying Saddam's refusal to renew its aid agreement with the United Nations, the Security Council has ordered United Nations aid agencies to continue efforts to supply food and medicine to Iraqi citizens. Iraq has succeeded in hampering international relief efforts, by refusing to renew expiring visas or to issue the travel permits that allow relief workers to travel around the country.[62]

Saddam ostensibly welcomes the Kurdish refugees back to Iraq, after their mass exodus during the civil strife which followed the Gulf War.[63] Thousands of Kurds, have not yet returned to their homes. Saddam has attempted, as of yet unsuccessfully, to negotiate a deal with the Kurds to guarantee them a degree of autonomy and national rights.[64] Although

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56. *See* Tyler, *supra* note 52, at A4.

57. Hedges, *supra* note 55.

58. *Kurds Convene Parliament*, N.Y. TIMES, June 5, 1992, at A9.

59. *Two Kurdish Parties Agree to Merger*, N.Y. TIMES, Sept. 15, 1992, at A15. Reports indicate that Kurdish leaders have also met to negotiate with other Iraqi opposition groups, from Shiite Muslims to Arab nationalists, in attempts to consolidate their efforts against Saddam. *Iraq Opposition Says Parley In North Unifies Its Ranks*, N.Y. TIMES, Sept. 27, 1992, at A5.

60. Hedges, *supra* note 55; *The House the UN Built*, ECONOMIST, July 11, 1992, at 38; Paul Lewis, *U.N. Agencies Ordered to Continue Efforts in Iraq*, N.Y. TIMES, Sept. 3, 1992, at A10.

61. *Kurdish Leader Talabani Warns of New "War of Extermination"* (British Broadcasting Corporation broadcast, November 12, 1991) [hereinafter *"War of Extermination"*].

62. Lewis, *supra* note 60.

63. Such promises have held little meaning in the past, however. For instance, in June 1990, when Kurdish refugees were promised amnesty in returning from Turkey, Amnesty International reported that the Iraqi government had executed at least seven Kurdish refugees and that several hundreds of returning Kurds had disappeared. *Amnesty Claims Iraq Killed Returning Kurds*, WASH. TIMES, June 21, 1990, at A2.

64. Kurdish leaders say they had little choice but to begin these talks, as they lack consistent international support. Tim Post et. al., *A Nation in the Valley of the Three Frontiers*, NEWSWEEK, May 6, 1991, at 42.

Saddam promised democracy,[65] Kurdish leaders maintain that he persists in silencing anyone calling for democratic measures.[66]

For the present, the Kurdish refugees are forced to rely on the protection of a United Nations security force and the allied presence in Turkey. The Iraqi Kurds, however, are understandably skeptical that the United Nations forces will provide them with adequate security and are painfully aware that troops will not monitor the situation forever. Furthermore, allied attention has recently turned to the Shiites in the South, and indeed to crises elsewhere in the world, deflecting attention from the plight of the Kurds.

IV. EXAMINATION OF INTERNATIONAL INTERVENTION ON BEHALF OF THE KURDS

A. *Historical Analysis*

Historically, the Kurdish movement has been unable to use international force for its protection. Unlike other minority groups, such as the Blacks in South Africa or the Palestinians, the Kurds have not historically benefitted from United Nations resolutions for their protection. Lacking a representative at the United Nations, the Kurds have been unable to find a state willing to promote their case and thereby prejudice its relation with Iraq.[67] Events following the Gulf War suggested that the situation was about to change.

B. *Intervention After the Gulf War*

1. World Reaction

Engaging Saddam Hussein's forces militarily forced the international community to acknowledge the extent of the violence committed by the Iraqi leader's regime. After the war, the international community finally

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65. Saddam stated, "Our decision to build a democratic society based on the constitution, the rule of law and political pluralism is irrevocable." In the same speech, however, he ominously warned that the Kurds were "repeating the same fateful error . . . and facing the same fate as those who came before." *In the Backwash of the Gulf*, ECONOMIST, Mar. 23, 1991, at 43.

66. *War of Extermination*, *supra* note 61.

67. After being told in 1961 that they could not bring their own case to the United Nations, the Iraqi Kurds persuaded the Mongolian Soviet Socialist Republic to do so in 1963, perhaps in response to the overthrow of Qasim and the persecution of his communist supporters. The Soviet delegation sent a letter to the President of the Security Council which accused the Iraqi army of violence against the Kurds and threatened to introduce the topic for discussion. ADNAN PACHACHI, IRAQ'S VOICE AT THE UNITED NATIONS 1959-69: A PERSONAL RECORD 378 (1991). The Republic withdrew, however, before doing so, perhaps fearful of hostile Arab pressure. The USSR brought the Kurdish case up in the Economic and Social Council of the United Nations the same year. In the sixties and seventies the Kurds sought sponsors in both the Arab and non-Arab worlds but were unsuccessful in their consultations, including those with Cyprus, Ireland, and Iceland. MCDOWELL, *supra* note 6, at 27.

recognized not only the suffering that Saddam inflicted on the Kurds following the end of the war but also the fact that the regime had a long history of oppressing the Kurdish people.

The Allies, however, stopped the war short of ending Saddam's regime. In fact, the quick cease-fire following the hundred-hour ground war left the Iraqi government with sufficient force to oppress resisters. A realization of the significance of the Gulf War in creating the Kurdish tragedy intensified public pressure to respond to the Kurds' plight. No doubt revelations of the role played by some western democracies in instigating the Kurdish rebellion also contributed to a feeling of moral responsibility. After the war, it became clear that the C.I.A. supported a radio campaign over Voice of Free Iraq calling for a Kurdish rebellion, although President Bush surely never thought such a rebellion would succeed. Furthermore, British special forces reportedly worked with the Kurds to instigate an uprising.[68]

Although the official British position was that no country or coalition of countries should send troops to Iraq for any reason other than to protect relief missions, politicians, including Members of Parliament, were not insensitive to the implications of having provided British support for a Kurdish uprising and the growing public pressure to protect the Kurds. One M.P., Nicholas Budgen, added his query to more than an hour of hostile questioning of Douglas Hurd, the British Foreign Secretary: "Wouldn't it be truly dreadful if they [the Kurds] were encouraged to fight on by vague talk about the use of forces on their behalf, when President Bush has already said the forces of the U.S.A. will not be engaged in a civil war in Iraq?"[69]

The media likewise contributed to the call for intervention by bombarding viewers with images of a starving people, ravished by war and seeking safety across the Iraqi border. The images reinforced a near universal recognition of the gross human rights violations which Saddam had committed and the resulting precariousness of the Kurds' plight.

The world's leaders ultimately responded to public pressure, albeit slowly, and through a series of complex signalling suggested an intent to

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68. *See* Wines, *supra* note 50; Tom Mathews et. al., *A Quagmire After All: How the Bush Administration Trapped Itself While Trying to Wage Peace*, NEWSWEEK, Apr. 29, 1991, at 24. Talabani reported in an interview:

> After the appeal of the Americans, spontaneous and unorganized demonstrations erupted everywhere. The Peshmerga fighters were outside the town, and only later did we decide to support the demonstrators. It is also forgotten that the 150,000 allegedly loyal Kurdish militia and large parts of the Iraqi Army defected to us. Therefore, one cannot claim that the political forces initiated the uprising.

Kurdistan Front Leader Criticizes U.S., Allies (Wochenpresse broadcast from Vienna, in German, Apr. 14, 1991).

69. Judy Jones, *Parliament and Politics: MPs Demand More Action by West in Support of Kurds; Kurdish Refugee Crisis: Commons Statement*, INDEPENDENT, Apr. 16, 1991, at 9.

intervene on behalf of the Kurds. It appeared for several weeks as if the traditional notion of humanitarian intervention might be expanded to ensure the Kurds' security. Comments by international leaders reflected this possibility. Douglas Hurd, Britain's Foreign Secretary, announced that the division between a country's external and internal affairs is not absolute.[70] Roland Dumas, the Foreign Minister of France, stated that he believed, "the Kurdish crisis could act as a detonator" for re-thinking of the concept of non-intervention, a concept which the French have long argued to redefine. Similarly, Austria pledged that it would call on the international community (in the United Nations General Assembly) to state unequivocally that defence of human rights does not constitute interference in a country's internal affairs.[71]

2. The European Community's Response

On April 8, the European Community (E.C.) held an emergency summit meeting in Luxembourg to respond to the crisis. In addition to voting for one hundred eighty billion dollars in aid, the European leaders supported a plan to create a Kurdish safe haven. It was the British Prime Minister, John Major, who proposed the creation of enclaves, something close to an international protectorate for the Kurds. The area involved was to cover northern Iraq, presumably including most mountain towns, the city of Irbil, and the city of Kirkuk, an oil-producing city over which the Kurds have long argued for control.[72] The British originally appeared to be prepared to use force if necessary, in order to establish and maintain the enclaves.[73] Major emphasized the need not only for relief but also for "a degree of protection which the average United Nations relief worker cannot do."[74] There was even some mention of sending over British bobbies.[75] The enclave idea was accepted within three hours, and Francois Mitterrand, the French president, offered to co-sponsor it at the United Nations.[76]

The plan that the E.C. endorsed was novel, indeed so novel that it appeared to be almost deliberately unworkable. The plan contemplated the division of Iraq and the removal of a block of territory from Iraq's sovereign control. Its enforcement would likely have led to a long-term

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70. Sarah Helm, *Sovereignty Law May Be Stretched But Not Broken*, INDEPENDENT, Apr. 12, 1991, at 10.

71. *G-7 Backs Greater U.N. Role in Internal Conflicts*, REUTERS (BC cycle), July 16, 1991.

72. *See, e.g.*, *That Slippery Slope*, ECONOMIST, Apr. 13th, 1991, at 39; William Tuohy & Rone Tempest, *Europeans Seek Haven for Kurds; Refugees: Britain's Plan to Create a Shelter Zone in Northern Iraq Wins EC Endorsement*, L. A. TIMES, Apr. 9, 1991, at A6.

73. William Drazdiak, *Europeans to Press Bush to Back Enclave Plan; EC Responds to Outrage Over Kurds' Plight*, WASH. POST, Apr. 11, 1991, at A34.

74. *Hurd on UN Police Plan* (Press Association Broadcast (London) Apr. 28, 1991).

75. *Id.*

76. R.C. Longworth, *Wrong Turn: Europe's Effort to Aid Kurds Had Too Many Holes*, CHI. TRIB., Apr. 14, 1991, at D1.

allied commitment in the region if not, ultimately, to an independent Kurdish nation. Once the Kurds tasted such independence, they would no doubt find permanent independence a more attractive alternative than a renegotiated autonomy agreement with an untrustworthy regime.

The land considered for inclusion in the enclave plan included at least one city, Kirkuk, over which the Kurds and the Iraqi government had long struggled for control. The creation of enclaves would have created complex problems not only concerning the delimitation of borders but also involving the international legal status of the zones and the relationship of the zones to the Kurds in the neighboring countries of Turkey and Iran. The E.C. surely did not believe that Saddam would have ceded his sovereignty over this broad expanse of Iraq without any military resistance. Simultaneously, the leaders knew of Bush's desire to withdraw all American troops from the area.

One commentator suggested that the plan "grew from a compost of Western guilt, European ambition, British politics and Luxembourg's machismo, plus the concern of two powerful women in London and Paris [Margaret Thatcher, who called on John Major to aid the Kurds quickly and 'without standing on legal niceties,' and Danielle Mitterand, wife of the French president and long-time champion of the Kurds]."[77] Indeed, the British Prime Minister faced pressure to act on the Kurd's behalf not only from his predecessor, Margaret Thatcher, but also from the entire E.C. He undoubtedly felt the need to cooperate with and even lead the E.C, having spent several months attempting to mend rifts created under Thatcher, when Britain was repeatedly the lone dissenter to E.C. initiatives. Also, the E.C. likely felt the need to restore its push for unity after the Gulf War, and indeed, to show its outrage at Saddam's behavior.[78]

The U.S. entertained the idea of safe havens outside the authority of the Iraqi government but reconsidered when Iraq expressed its outrage at the plan, thereby suggesting that an attempt to implement the plan might have entailed further military intervention. Iraqi Prime Minister Saddoun Hammadi claimed that the idea had been "engineered and conducted by the C.I.A." and vowed Iraqi resistance to it by all possible means.[79] Similarly, Iraqi Ambassador Abdul Amir Anbari called the enclave proposal a "wild idea," proclaiming that "[t]he whole of Iraq is a safe haven to everyone."[80]

On April 15, the twelve members of the E.C. met again in Luxembourg and, at Germany's initiative, agreed to ask the United Nations if Saddam could face a war crimes tribunal. They maintained that the Iraqi leader should be charged for attacking other states, using chemical weap-

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77. *Id.*

78. *Id.*

79. Ann Devroy & John M. Goshko, *U.S. Shifts on Refugee Enclaves; Safe Zones Inside Iraq Seen as Unrealistic; Aid Increase Stressed*, WASH. POST, Apr. 10, 1991, at A1.

80. William Drozdiak & David B. Ottaway, *U.S., Allies Want Refugee Havens Established in Iraq; Europeans Back Protective Zone for Kurds*, WASH. POST, Apr. 9, 1991, at A1.

ons against his own civilians, and carrying out genocide against the Kurds. The members also endorsed a French plan calling for the creation of humanitarian aid centers in the northern part of Iraq and United Nations-protected "corridors" to allow the safe return of the refugees.[81]

In response to the call for a war crimes tribunal, the U.S. argued that the Arab states would support Saddam against allegations for war crimes, thereby preserving his power and causing Western pressure to be ineffective. Furthermore, U.S. officials felt that such a tribunal would preempt Saddam from seeking exile abroad.[82]

3. United States Action

The U.S. was slower than the E.C. to offer a proposed plan of response to the Kurdish emergency. President Bush had repeatedly pledged during the build-up of troops in Iraq that the deployment would be only temporary. The decision to end the ground war quickly was made without considering the implications for the Kurds or the possibility of a civil war but rather out of concern for public opinion. Bush told the press: "All along I have said that the United States is not going to intervene militarily in Iraq's internal affairs and risk being drawn into a Vietnam-style quagmire. . . . Nor will we become an occupying power with U.S. troops patrolling the streets of Baghdad."[83]

International pressure, however, particularly from Turkey's President Turgut Ozal, forced the U.S. to compromise and begin an open-ended relief plan. On April 6, the U.S. began relief efforts contained to the Iraqi-Turkish border in a mission labeled "Operation Provide Comfort." As the name implies, the U.S. operation was deemed humanitarian and not political. The President warned the Iraqis against using gas and flying aircraft in the area of Northern Iraq, thereby creating a *de facto* zone of safety around the Kurds.[84] The United Nations Security Council promptly voted to dispatch its own peacekeeping observers and soldiers to the Iraqi-Kuwait border to help expedite the withdrawal of allied troops.[85] The original relief efforts, proved insufficient. On April 16, Bush

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81. Adam Kelliher & Robin Oakley, *Iraq Allows UN Access to Aid Starving Kurds*, TIMES, Apr. 16, 1991, at 1.

82. Laurie Mylone, *The Way to Fell Saddam: Trial and Error*, NEW REPUBLIC, June 3, 1991, at 17.

83. John E. Yang & Barton Gellman, *U.S. Forces to Set Up Refugee Camps in Iraq; Expanded Kurdish Relief Effort Represents Fundamental Shift*, WASH. POST, Apr. 17, 1991, at A1.

84. The United States did in fact destroy one Iraqi fighter violating this ban; however, it seems not to have been strictly enforced. Mathews et. al., *supra* note 68, at 24. Kurdish leader, Jalal Talabani, testified that in violation of the cease-fire agreement, Saddam used planes, helicopters, heavy artillery, gasoline, and napalmphosphorous bombs. *Kurdistan Front Leader Criticizes U.S., Allies* (Wochenpresse broadcast from Vienna, in German, Apr. 11, 1991).

85. Stanley Meisler, *U.N. Approves Dispatching of Peacekeepers*, L.A. TIMES, Apr. 10, 1991, at A4.

committed U.S. forces to establishing five or six relief camps inside Iraq as an "interim measure," despite a deep reluctance to do so.[86] The United Nations eventually took over this relief effort, and the U.S. was quickly satisfied that its role was no longer necessary. As early as June 25, a Department of Defense spokesman announced that the U.S. mission was complete, referring to the mission of bringing Kurdish refugees safely down from the mountains and emphasizing that the goal of the U.S. was never ensuring the long-term well-being of the Kurds.[87]

Although they declined Kurdish requests to maintain a stronger military presence in northern Iraq, the U.S. and its allies agreed to leave a "brigade-sized" rapid-response military force in Turkey. The force was left to be used in the event it was deemed necessary to intervene on behalf of the Kurds.[88]

4. The Role of the United Nations

Although Iraq had been negotiating with the United Nations for aid, talks broke down abruptly when relief from U.S., British, and French sources appeared imminent. The advantage of the United Nations plan as originally discussed between Prince Sadruddin Aga Khan, the United Nations special envoy, and Ahmed Hussein, the Iraqi Foreign Minister, was its scope. The plan contemplated the establishment of special centers, manned by United Nations officials, throughout Iraq. The Iraqis preferred Bush's proposed plan, which limited protection to special enclaves for the Kurds in the northern part of Iraq, despite heavy fighting, severe casualties, and great destruction in the country's southern cities.[89] The Iraqis, of course, condemned even Bush's plan as " 'foreign meddling.' "[90]

Instead of condemning interference by other states, the United Nations signalled to member states that interference was appropriate and indeed appealed to the international community to contribute to humanitarian relief efforts. By passing Resolution 688, on April 5, the United Nations Security Council approved for the first time "the right to interfere" on humanitarian grounds in the internal affairs of a member state. As one jurist, from the Université de Paris-Sud, noted following the vote: "Although cross-border humanitarian aid long has been tolerated if not legally binding activity by nongovernmental organizations for moving food, medicines and other help to the needy, the Security Council vote marked the first time governments openly gave their seal of approval to

86. Yang & Gellman, *supra* note 83.

87. R. Jeffrey Smith & Barton Gellman, *U.S., Allies Agree to Form Force for Protection of Kurds; 5,000 Troops Would Be Stationed in Turkey*, WASH. POST, June 26, 1991, at A9.

88. *Id.*

89. Patrick Cockburn, *Iraq Backs Off Signing Accord for UN Centres*, INDEPENDENT, Apr. 18, 1991, at 14.

90. Russel Watson et al., *A Lifeline in Iraq*, NEWSWEEK, Apr. 29, 1991, at 18, 21.

such practices."[91] Indeed, it looked as if the United Nations was going to allow a redefinition of humanitarian intervention.

Resolution 688 was worded in terms of a response to the threat to international peace and security posed as a consequence of Saddam's oppression of the Kurds. By focusing on the consequences of Saddam's actions rather than on his human rights violations per se, the Security Council stayed clearly within its jurisdiction under Chapter VII of the United Nations Charter. The Resolution demanded that Iraq, "as a contribution to removing the threat to international peace and security in the region, immediately end this repression" and "[i]nsist[ed] that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and . . . make available all necessary facilitates for their operations."[92]

As for Iraq's treatment of the Kurds, in particular, the Resolution condemned the repression and "express[ed] the *hope* . . . that an open dialogue w[ould] take place to ensure that the human and political rights of all Iraqi citizens are represented."[93] The Resolution, made repeated reference to principles of sovereignty, including a specific reference to Article 2, paragraph 7 of the United Nations Charter.

As the debate concerning Resolution 688 underlined, the massive flow of refugees into Turkey and Iran, and even Saudi Arabia, indeed threatened interstate relations and regional security.[94] The border countries lacked the resources to handle such a massive influx of destitute people. The number of refugees vastly surpassed those of the 1988 exodus which followed the end of the Iran-Iraq War.[95]

Iran and Turkey feared that the refugee population would instigate Kurdish uprisings in their own countries. Noting Turkey's respect for the territorial integrity of other states, the Turkish representative to the United Nations argued that the scale of human tragedy and its international implications made the events in Northern Iraq beyond the scope of an "internal affair."[96] He pleaded with the Security Council: "[W]e are

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91. The writer traced the progress of United Nations support for humanitarian intervention back to the General Assembly's adoption by consensus of Resolution 43-131 on December 8, 1988, "which formally recognized the role of nongovernmental organizations in 'natural disasters and similar emergency situations.' " This concededly soft law, a political and moral statement, was followed two years later by General Assembly Resolution 45-100, which provided for catastrophe evaluation teams and specific access corridors for workers providing humanitarian relief. Mario Bettati, *The Right to Interfere*, WASH. POST, Apr. 14, 1991, at B7.

92. S.C. Res. 688, U.N. SCOR 46th Sess., 2982nd mtg., U.N. Doc. S/RES/688 (1991).

93. *Id.* (emphasis added).

94. For a description of the Saudi refugee problem, see Drozdiak & Ottaway, *supra* note 80.

95. U.N. SCOR, 46th Sess., 2982nd mtg. at 6-7, 13-15, U.N. Doc. S/PV.2982 (1991) (comments of the Representatives of Turkey and Iran respectively) [hereinafter Security Council Record].

96. *Id.* at 6.

duty bound to take whatever measures we deem necessary to prevent the anarchy and chaos reigning on the Iraqi side of the border from spilling over into our country."[97] The representative requested that the Security Council demand that the Iraqi government demonstrate respect for international borders as well as human rights.

Furthermore, Iraq's military attacks on the fleeing Kurds extended beyond the Iraqi borders. Iran's representative to the United Nations testified concerning the Iraqi shelling of Iranian border towns, in which at least three Iranian border guards were killed.[98] Likewise, the Turkish representative reported that Iraqi mortar shells were landing on Turkish territory.[99]

The three states that voted against Resolution 688—Cuba, Yemen, and Zimbabwe—argued, predictably, that the issue was an internal political matter over which the Security Council had no jurisdiction.[100] China and India abstained from the vote.

Iraq denounced any intervention. In a letter to the Security Council, Iraq's representative to the United Nations deplored what he called "abominable criminal acts" committed by "groups of saboteurs" and stated that certain Iraqi citizens, presumably the Kurds, "ha[d] been victims of the campaign of terror and lies disseminated by the saboteurs or have been compelled by armed force to leave the country . . . serving as a shield for the above-mentioned groups or a means of facilitating their escape abroad."[101]

C. *Evaluation*

Ultimately, the limited reading which member states gave to Resolution 688 did not stretch the meaning of humanitarian intervention. The U.S. maintained that another United Nations resolution would be necessary in order to ensure longer-term protection for the Kurds, a resolution which Bush suggested was unlikely.[102] Resolution 688 was certainly not read to permit military intervention on behalf of the Kurds, an arguably supportable reading that would have made it truly precedent-setting.

Then Secretary General of the United Nations, Javier Perez de Cuel-

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97. *Id* at 7.

98. Letter Dated 3 April 1991 from the Permanent Representative of the Islamic Republic of Iran to the United Nations Addressed to the Secretary General, U.N. SCOR, 46th Sess., U.N. Doc. S/22436 (1991).

99. Letter Dated 2 April 1991 from the Permanent Representative of Turkey to the United Nations Addressed to the President of the Security Council, U.N. SCOR 46th Sess., U.N. Doc. S/22435 (1991).

100. *See* Security Council Record, *supra* note 95, at 27-30,31-32, 42-53 (reporting comments of the Representatives of Yemen, Zimbabwe, and Cuba respectively).

101. Letter Dated 3 April 1991 from the Permanent Representative of Iraq to the United Nations Addressed to the Secretary General, U.N. SCOR, 46th Sess., U.N. Doc. S/22440 (1991).

102. Yang & Gellman, *supra* note 83, at A1.

lar, spoke prematurely when he said, following the adoption of Resolution 688: "We are clearly witnessing what is probably an irresistible shift in public attitudes toward the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents."[103] The defense of the Kurds was not accomplished. Ultimately, sovereignty triumphed over civil rights. Several factors no doubt mediated against stronger action.

First, as discussed above, the U.S. in particular wished to avoid an extension of the war. In democratic countries, prolonged and bloody wars cause politicians to lose votes, and Bush did not want to threaten the widespread national support for the military operation that he had just completed. Therefore, Bush reacted hesitatingly to British and French calls for the continued use of force in the region.

Second, there are many reasons why the U.S. wished to avoid an interference on behalf of the Kurds that would have led to the creation of Kurdish enclaves or even an independent Kurdish state.

The U.S. has commitments to a number of Arab states. Among the Arab nations, there is a strong feeling of a Arab unity that transcends state boundaries.[104] There is a common concern for Arab security which extends to protecting Arab land against alienation. The U.S.' Arab allies would no doubt have viewed the creation of, or the facilitation of the creation of, a permanent Kurdish enclave or state as the usurpation of Arab land.

President Bush did not wish to provide a base for Kurdish guerilla activity, in Iraq or abroad. The U.S. feared the creation of a permanent Gaza-strip like area. The creation of such a zone would no doubt have led to the need for an extended military presence in the Gulf for its protection.

Nor did the international community wish to create an independent Kurdish state and thereby drastically alter the balance of power in the region. As it has been traditionally, the international community was wary of supporting a movement for Kurdish autonomy because of the Kurdish populations in other middle eastern states. A Kurdish enclave in Iraq could lead to new demands for a Kurdish homeland, threatening the stability of Turkey, Syria, and Iran.

Kurdish support has always been risky, because it is likely to lead to criticisms of other states with Kurdish populations. The Kurdish population in Turkey, for example, has historically enjoyed fewer rights than the Iraqi Kurds. The inherent tension of this situation was perhaps most recently exemplified by the fact that President Bush did not meet with Jalal Talabani, secretary general of the P.U.K. and president of the Kur-

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103. Stephen S. Rosenfeld, *As Borders Come Down*, WASH. POST, Oct. 11, 1991, at A27 (quoting De Cuellar).

104. *See A New Arab Order, in* ECONOMIST, Sept. 28 1991, at 4 (discussing the new dimensions of Arab unity and the threats to traditional Arab alliances).

distan Front, on his recent visit to the U.S., probably for fear of angering Turkish president, Turgut Ozal.

Part of Ozal's reluctance to allow Iraqi Kurds into his country has been his fear of feeding the Kurdish separatist movement in Turkey. Although Ozal met with Iraqi Kurds, including Talabani, and plead for international aid on their behalf, he would not support an independent Kurdish state or a divided Iraq.[105] In fact, the Iraqi Kurds' relations with Turkey have become strained since Ozal's initial call for relief on their behalf, because so many Turks feel that a power vacuum in Northern Iraq threatens Turkey's ability to control its own radical Kurdish separatist movement in southeast Turkey.[106] The allies no doubt were fearful of the implications of a Kurdish secession in such a volatile region.

Finally, and perhaps most importantly, there was a general fear among the member states of the United Nations, of creating a precedent for indiscriminate intervention based on human rights violations. No doubt it was this fear that prompted the drafters of Security Council Resolution 688 not only to reiterate the Council's respect for territorial sovereignty throughout the resolution but also to focus on the threat to the international community posed by the flow of refugees to other countries rather than the Kurdish repression itself.

Setting a powerful precedent was particularly a fear of countries with their own secessionist minorities, such as China and the U.S.S.R., as they could be the next countries to become the object of an attack on human rights measures. Yevgeniy Primakov, then a member of the U.S.S.R. Security Council, said that he would be "shocked" if American, British, and French forces remained in Iraq on a long-term basis to protect the Kurds, expressing the general Soviet take on the situation.[107] Even many Western countries would have feared such a precedent. For instance, Great Britain would not want interference in its control of Northern Ireland.

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105. *Trying to Please*, ECONOMIST, Mar. 30th, 1991, at 38.

106. The Turkish government claimed, in fact, that guerrillas from the Kurdish Workers' Party (PKK), which has fought for seven years for independence from Turkey, were hiding in "safe havens" in Northern Iraq. Although Ozal has tried to use the Kurdistan Front, the coalition of Kurdish parties in northern Iraq, to keep the PKK under control, the Turkish army responded to PKK raids, in the past, with retaliation on Kurdish enclaves across the border. *Turkish-Iraqi Border: Eye for an Eye*, THE ECONOMIST, Nov. 2, 1991, at 42; *Wages of Defeat*, THE ECONOMIST, Aug. 17, 1991, at 36. In return for Turkey's support for the allied security zone, however, Iraqi Kurds have shut down northern border camps belonging to Kurdish rebels in Turkey. In retaliation, the Turkish Kurds have imposed a retaliatory ban, supported by attacks, on trucks headed into northern Iraq. Hedges, *supra* note 55.

107. *Primakov in Paris on the Middle East and Internal Affairs* (BBC broadcast, Apr. 30, 1991). In a routine briefing, Mr. Ignatenko, the U.S.S.R. president's aide and leader of the USSR President's Press Club, stated: "For us to be drawn into someone's interethnic or civil war is inconceivable. In addition it is well known that the problem of the Kurds is complex. It also applies directly to our own country, where there are about 160,000 Kurds living." *Ignatenko Cited on Georgia, Kurdish Refugees* (Izvestiya broadcast, Apr. 11, 1991).

V. APPRAISAL

Several political factors could have facilitated a larger response on behalf of the Kurds. A growing concern about human rights could have made a larger international response more palatable. The international human rights movement of the past decade and a half would seem to have prepared the international community for some sort of political interference to hold states to their human rights commitments. Moreover, the end of the Cold War has provided a climate in which interference is less likely to be viewed as motivated by the naked self-interest of the intervenor.[108]

At the time of the Kurdish crisis, the U.S.S.R. faced a crumbling empire and severe economic problems. From that position, it was unlikely to seriously object to a unanimous intervention by the western democracies, particularly while it was appealing to those same nations for economic aid. Dissent to Security Council Resolution 688 was minimal. Even China, a country among those most likely to fear a more intrusive standard for humanitarian intervention, merely abstained from voting on the Resolution, rather than offering emphatic protest. Thus the political climate at the time of the Kurdish intervention appeared ripe for an expansion of the doctrine.

More importantly, the Kurdish issue was extremely clear cut. There was near universal consensus that Saddam was waging, and had in the past waged, a racially based campaign of terror against the Kurds. As Germany's representative to the United Nations declared during the debate of Security Council Resolution 688: "The brutal use of weapons and other agents of destruction against the Kurdish minority and other parts of the Iraqi population, and the mass exodus it has precipitated, harbor the danger of genocide."[109] As the representative from France maintained, human rights violations of the proportion of those waged against the Kurds "assume the dimension of a crime against humanity."[110] Under such circumstances, an intervention is not only allowed but would appear to be required.

By failing to intervene in a more meaningful way, the allies ultimately failed to uphold the most minimal human rights standards. When the fighting ended, the U.S. prematurely ended its watch over Saddam Hussein and allowed the massacre and forced exodus of over a million civilians. Entire towns were emptied as the residents fled, under intense mortar fire, to the cold, remote mountains on the Iraqi border. The Kurdish plea for help was unmistakable. Saddam's human rights violations called for a response that transcended borders and political interests.

Human dignity demanded an intervention to protect the Kurds from

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108. Rosenfeld, *supra* note 103.
109. Security Council Record, *supra* note 95, at 71.
110. *Id.* at 53.

Saddam's massive killing. In order to maintain a civilized community, the international community must not tolerate such blatant extermination of civilians. The responsibility is only intensified where international interference has contributed to the unrest. The U.S. owes more to the Kurds than simple encouragement to rise up against Saddam.

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