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Tragedies in Northern Iraq, Liberia, Yugoslavia, and Haiti — Revisiting the Validity of Humanitarian Intervention Under International Law — Part I*

Ved P. Nanda**

I. INTRODUCTION

Several recent situations call for a reexamination of “humanitarian intervention,” a controversial international law doctrine that suffers from normative ambiguities.1 These situations include: (1) the Kurdish plight in northern Iraq in the aftermath of the Gulf War; (2) the tragedy of the Liberian civil war; (3) the protracted civil war in Yugoslavia between Croats and Serbs; and (4) the brutal oppression in Haiti following the

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ouster of a democratically elected government by military leaders.

Competing claims based on territorial integrity versus humanitarian assistance present a dilemma for the publicist and the decision-maker alike. It may be recalled that Iraq invoked traditional rules of international law — sovereignty and territorial integrity — to claim that the world community was prohibited from intervening in its internal affairs. Despite frequent challenges on these grounds, a persistent issue presents itself: Is there an emerging right, and perhaps even a duty, on the part of the world community to intervene in the internal affairs of a state when egregious violations of basic human rights occur there?

This article and a later companion piece examine the pertinent issues involved in a determination of the validity under international law of claims to humanitarian intervention. Part I will examine the recent foreign intervention in Iraq, the presence of U.S. and allied forces to establish safe havens, and the stationing of the United Nations guards in northern Iraq to protect the Kurds from the forces of Saddam Hussein — all of which occurred pursuant to U.N. Security Council action under Chapter VII of the U.N. Charter.

The thesis of these articles goes a step further. The right to provide humanitarian assistance exists even in those situations where Chapter VII is not invoked, suggesting that the doctrine of nonintervention should be interpreted in light of the equally strong and complementary norms of international human rights law. The right to provide humanitarian assistance must be balanced against the duty of nonintervention. The choice between these complementary norms, the former reflecting developments in international human rights law and the latter reflecting state sovereignty with its attributes of territorial integrity and political independence, must be based on specific criteria which I will enunciate.

First, this article analyzes humanitarian intervention as an exception to nonintervention, the widely recognized principle of customary international law. This is followed by six case studies of unilateral state intervention, justified by the intervening state in part on grounds of humanitarian intervention. The next section applies the doctrine to the Kurdish situation. Finally, the paper concludes with an appraisal and recommendations.

In Part II, which will be published at a future date, I will discuss the situations in Liberia, Yugoslavia, and Haiti.

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II. HUMANITARIAN INTERVENTION

If intervention is to be defined as "interference by a State in the domestic or foreign affairs of others in opposition to its will and serving by its design or implication to impair its political independence," the conclusion is inescapable that, under state practice, nonintervention has become a governing principle of international law.6

The principle of nonintervention is premised on respect for sovereignty, territorial integrity, and political independence, and is an adjunct to the principle of the nonuse of force embodied in Article 2(4) of the United Nations Charter.7 Numerous resolutions, declarations, and conventions adopted by international organizations and conferences reflect state acceptance of the principle of nonintervention as customary international law. To illustrate, the 1928 Convention on the Duties and Rights of States in the Event of Civil Strife prohibited intervention even by nationals of one state in the affairs of another state.8 In 1933, the Montevideo Convention on Rights and Duties of States9 explicitly stated that no state "has the right to intervene in the internal or external affairs of another."10 Three years later, the Buenos Aires Additional Protocol Relative to Non-Intervention affirmed that the parties "declare inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason in the internal or external affairs of any of the contracting parties."11

Following the Second World War, the 1947 Inter-American Treaty of Reciprocal Assistance (Rio Treaty)12 reaffirmed the inviolability of the territorial integrity, sovereignty, and political independence of each member state.13 The following year, the Charter of the Organization of American States (OAS)14 stated in Article 15:

7. Article 2(4) of the U.N. Charter reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."
10. Id. at art. 8.
13. Id. at arts. 1 and 6.
No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.

Article 17 of the O.A.S. Charter is unequivocal in its prohibition on intervention: "The Territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever." Charters of other regional organizations, including the Organization of African Unity, Pact of the League of Arab States, and Treaty of Friendship, Co-operation and Mutual Assistance (the now defunct Warsaw Pact), contain similar prohibitions.

Pertinent United Nations declarations include the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, which stated that "no State may use or encourage the use of economic, political, or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign right or to secure from it advantages of any kind." Five years later, the General Assembly adopted a Declaration on Principles of Law Concerning Friendly Relations and Cooperation Among States, which approved the principles enunciated in the 1965 Declaration as the "basic principles" of international law.

The International Court of Justice noted in its decision on the merits in the case of Nicaragua v. U.S. that, "in view of the generally accepted formulations, the principle [of nonintervention] forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States." Earlier, in the 1949 Corfu Channel case, the International Court of Justice had stated:

[T]he alleged right of intervention as the manifestation of the policy of force, such as has, in the past, given rise to most serious abuses and such as cannot . . . find a place in international law . . . [especially

20. For a discussion of this declaration, see Nicaragua v. U.S., supra note 4, at 100, 107.
21. Supra note 4, at 108.
when] it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.23

States, however, have not faithfully complied with the principle of nonintervention, for history is replete with instances of state intervention. In the post-War era, superpowers have often used coercive measures, directly or indirectly, against other states in flagrant violation of this principle. Examples abound: the U.S. interventions in the Dominican Republic, Viet Nam, Grenada, and Nicaragua; the Soviet interventions in Hungary, Poland, Czechoslovakia, and Afghanistan. Similar instances can be cited in Angola, Mozambique, and Central America. The point is that states regularly justify forcible intervention by invoking complementary norms of international law, such as self-defense and collective self-defense.

As an exception to the general prohibition on intervention, states have, however, traditionally asserted their right to intervene on humanitarian grounds to protect their own nationals or a third state's nationals in another state, or even the nationals of the state against which coercive measures were undertaken.24 Most publicists writing in the late 19th century and at the turn of the 20th century supported this assertion on the assumption that if a state denied certain minimum basic rights to the people within its territory, any other state could remedy the situation by intervention.25 In the words of one commentator, such intervention was, however, justified only "in extreme cases . . . where great evils existed, great crimes were being perpetrated, or where there was danger of race extermination."26 Similarly, another commentator considers intervention permissible on the grounds of "tyrannical conduct of a government towards its subjects, massacres and brutality in a civil war, or religious persecution."27

The doctrine of humanitarian intervention is subject to a major criticism: only powerful states are able to exercise the alleged right, and hence they are likely to abuse it, especially since international law has traditionally lacked effective safeguards against such abuse. Professor Ian Brownlie contends that humanitarian intervention was, in fact, occasionally abused during the 19th century, and had fallen into disuse by 1945.28 Another observer, however, concludes after his study of state practice, that,

while divergences certainly existed as to the circumstances in which

23. Id. at 35.
25. See, e.g., id.; IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 338 nn. 1-5 (1963) for citations to the works of these publicists. See also Ellery C. Stowell, Intervention in International Law 53 (1921); Ellery C. Stowell, International Law: A Restatement of Principles in Conformity With Actual Practice 349 (1931).
27. HALL, INTERNATIONAL LAW 302 (4th ed. 1895).
28. See Brownlie, supra note 25, at 338-42.
resort could be had to the institution of humanitarian intervention, as well as to the manner in which such operations were to be conducted, the principle itself was widely, if not unanimously, accepted as an integral part of customary international law.29

Opponents of humanitarian intervention contend that the prohibition on the use of force, which is enshrined in Article 2(4) of the U.N. Charter, should be interpreted broadly and consistently with its plain language. Consequently, they argue, there is no scope for considering humanitarian intervention as a valid exception to the Article 2(4) norm.30

On the other hand, one can claim validity for humanitarian intervention by: (1) arguing that the proper interpretation of Article 2(4) would be to proscribe the use of force when it is directed at sovereignty, territorial integrity, or political independence of a state; (2) suggesting that humanitarian intervention, by definition, does not seek to challenge these attributes; or (3) focusing on the promotion and protection of human rights as constituting an important obligation under the United Nations Charter.31 Also, the doctrine was widely accepted by states and publicists alike under traditional international law.32

In the U.N. era, unilateral humanitarian intervention remains highly controversial. Although publicists generally view it with skepticism, a proponent, Professor Tesón, has recently suggested after studying four such cases — the 1979 Tanzanian intervention in Uganda, the 1979 French intervention in central Africa, the 1971 Indian intervention in East Pakistan, and the 1983 U.S. intervention in Grenada — that state sovereignty and prohibition of the use of force should be interpreted in a manner consistent with “other well-established principles — those that have to do with upholding a modicum of human dignity.”33 He concludes: “The problem of the legal status of humanitarian intervention is not a problem of fidelity to international law. Rather, it is one of determination of the law and of proper balance between competing principles.”34

29. Fonteyne, supra note 1, at 235.
31. See, e.g., U.N. CHARTER preamble, arts. 1, 55 and 56.
32. See, e.g., authorities cited in supra notes 24-25.
33. Tesón, supra note 1, at 200.
34. Id. (emphasis in original). See also id. at 245: “The right of humanitarian intervention is consistent with the United Nations Charter and positively supported by state practice, when both are examined in light of [a] normative theory [under which rights of states derive from human rights].” See also Bazyler, supra note 1, at 619:

Recent history shows the need for the doctrine of humanitarian intervention. Nations must be prepared to utilize the doctrine where necessary — not
An observer must nevertheless acknowledge the absence of a general consensus on the definition of humanitarian intervention, the set of criteria to judge its permissibility or impermissibility under international law, and the safeguards necessary to prevent its abuse. However, a limited use of humanitarian intervention, consisting of claims to rescue one's nationals or a third state's nationals, is generally regarded as permissible under international law, even though it causes a temporary breach of a state's territorial integrity. To illustrate, the Restatement (Third) of the Foreign Relations Law of the United States states:

It is increasingly accepted that a state may take steps to rescue victims or potential victims in an action strictly limited to that purpose and not likely to involve disproportionate destruction of life or property in the state where the rescue takes place. Whether a state may intervene with military force in the territory of another state without its consent, not to rescue the victims but to prevent or terminate human rights violations, is not agreed or authoritatively determined. Such intervention might be acceptable if taken pursuant to resolution of a United Nations body or of a regional organization such as the Organization of American States.

It should be added that any use of force is subject to the limitations of "necessity" and "proportionality."

III. Case Studies

In this section, I will examine six cases of unilateral state intervention in which a claim was made that intervention was based in part on humanitarian grounds: the United States' 1965 intervention in the Dominican Republic, 1983 intervention in Grenada, and 1989 interven-
tion in Panama;\textsuperscript{41} India's 1972 intervention in East Pakistan;\textsuperscript{42} Tanzania's 1979 intervention in Uganda;\textsuperscript{43} and Vietnam's 1978 intervention in Cambodia.\textsuperscript{44}

A. \textit{The 1965 U.S. Intervention in the Dominican Republic}\textsuperscript{45}

The U.S. marines landed in Santo Domingo on April 28, 1965,\textsuperscript{46} four days after an internal conflict began in the Dominican Republic.\textsuperscript{47} The United States justified its action on several grounds,\textsuperscript{48} including humanitarian intervention.\textsuperscript{49} The State Department Memorandum outlining legal bases for U.S. action in the Dominican Republic specifically stated that the landing of the U.S. troops was "an emergency action to protect lives," which was taken "under conditions in which immediate action was essential to preserve the lives of . . . nationals of the United States and many other countries."\textsuperscript{50} Justifying the action on humanitarian grounds, the Memorandum said that the action was taken

after the United States had been officially notified by Dominican authorities that they were no longer able to preserve order. The factual circumstances of the breakdown of order in the Dominican Republic [sic] were such that the landing could not have been delayed beyond the time it actually took place without needless sacrifice of lives . . . [including] foreign nationals . . .\textsuperscript{51}

Similarly, in several statements President Johnson made following the sending of the U.S. marines to the Dominican Republic,\textsuperscript{52} he reiterated the necessity of taking this action because the military authorities in the Dominican Republic had informed the U.S. government that lives of American and foreign nationals were in danger, the Dominican authorities were "no longer able to guarantee their safety," and the assistance of U.S. military personnel was needed for their protection. In a statement President Johnson made at a news conference on June 17, 1965,\textsuperscript{53} he explicitly recalled the situation preceding his decision to send the U.S.

\textsuperscript{41} See infra § III(F).

\textsuperscript{42} See infra § III(B).

\textsuperscript{43} See infra § III(C).

\textsuperscript{44} See infra § III(D).

\textsuperscript{45} In this section I have relied extensively on my prior work, Ved Nanda, \textit{The United States, Action in the 1965 Dominican Crisis: Impact on World Order}, 43 DENV. L. J. 439 (1966) (Part I); 44 DENV. L. J. 225 (1967) (Part II).

\textsuperscript{46} See N.Y. TIMES, Apr. 25, 1965, at A1.

\textsuperscript{47} See \textit{U.S. Acts to Meet Threat in Dominican Republic}, 52 DEP'T ST. BULL. 738 (1965) (President's statements on sending the United States marines to the Dominican Republic).

\textsuperscript{48} See generally Nanda, supra note 45, Pt. I, at 443-44 (enumerating several claims forwarded by the United States).

\textsuperscript{49} See id. at 472-79.

\textsuperscript{50} 111 CONG. REC. 10733 (daily ed. May 20, 1965).

\textsuperscript{51} Id. at 10734.

\textsuperscript{52} See 52 DEP'T ST. BULL. 738 (1965); 53 DEP'T ST. BULL. 19, 20 (1965).

\textsuperscript{53} See 53 DEP'T ST. BULL. 19 (1965).
troops. He said that Ambassador Bennett was talking to him over the phone from under his desk as he had "a thousand American men, women, and children assembled in the hotel who were pleading with their President for help to preserve their lives," and while "bullets were going through [Ambassador Bennett's] windows." The President further said that

as we had to go into the Congo to preserve the lives of American citizens and haul them out when they were being shot at, we went into the Dominican Republic to preserve the lives of American citizens and the citizens of a good many other nations . . . . We removed 5,600 people from 46 nations, and we didn't sprain an ankle doing it.

This assertion was reiterated by several United States government officials, including Ambassadors Bunker, Stevenson and Bennett; Secretary of State Rusk; Undersecretaries Mann and Ball; Legal Adviser to the Department of State Meeker; and the President's special adviser to the Dominican Republic, former Ambassador Martin.

Following the U.S. intervention, on May 1, 1965, the Organization of American States (OAS) sent a special committee to the Dominican Republic to offer its good offices to obtain, urgently, a cease fire. On May 14, the U.N. Security Council adopted a resolution, inviting the Secretary-General "to send, as an urgent measure, a representative to the Dominican Republic for the purpose of reporting to the Security Council on

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54. Id. at 20.
55. Id.
57. See id. at 739-40, 876-77.
58. See 111 CONG. REC. 23668, 23669 (daily ed. Sept. 21, 1965) (speech in Atlanta).
59. See 52 DEP'T ST. BULL. 842-43, 938 (1965) (press conference of May 26, 1965). He said:

As late as 4 o'clock in the afternoon of that Wednesday, we had in front of us reports from our Ambassador in which he himself was not recommending that we use our own forces with respect to that situation. But then, as you now know from other sources, the President and Secretary of Defense and I were in a meeting on another matter and about 5:15 we were handed a telegram from our Ambassador, saying that the situation had completely deteriorated, disintegrated, that the police and military authorities there had indicated that they could no longer undertake responsibility for the security of American and foreign nationals, and that if these people were to be safe, U.S. forces would have to be employed.

Id. at 942.
60. See 53 DEP'T ST. BULL. 733-34 (1965).
64. See 52 DEP'T ST. BULL. 741 (1965) for the text of a resolution adopted on May 1, 1965, by the Tenth Meeting of Consultation of Ministers of Foreign Affairs, under which the special committee was dispatched.
the present situation." The Secretary-General's representative arrived on the scene on May 18, 1965. Subsequently, the bulk of the U.S. troops formed the core of an Inter-American Peace Force which was established with the "sole purpose" of cooperating in the restoration of normal conditions in the Dominican Republic.

The OAS committee was successful in negotiating a cease-fire on May 5. This, however, did not last long, for on May 13, armed hostilities started again. Eventually, on May 21, another cease-fire was arranged through the good offices of both the United Nations and the OAS. This was followed by the formation of a provisional government on September 3, 1965. General elections in the Dominican Republic were held in June 1966; a gradual withdrawal of the Inter-American forces started in July 1966 and was completed on September 21, 1966.

Opponents of the U.S. intervention challenged the action, suggesting that the United States had overreacted and had failed to provide sufficient evidence to justify the necessity of such action, and asserting that while the action was undertaken "on the pretext of protecting American lives," its real reason lay in other political objectives. However, the U.S. is to be faulted primarily not because of its failure to meet the necessity criterion, but on other grounds. First, its action was not limited to accomplishing that objective. It also claimed other objectives for its intervention: (1) to prevent a Communist takeover, and (2) to take unilateral action to give the OAS competence to address the situation. Second, the U.S. intervention was not limited in duration; troops stayed in the Dominican Republic for over a year, long after there was any perceived or claimed justification for its presence to protect American lives. Third, the question has been raised about the validity of the request by the Dominican military junta for the U.S. armed forces. Finally, the action was uni-

67. For the text of the resolution establishing this force, see 52 DEP'T ST. BULL. 862-63 (1965). See also U.N. Doc. S/381, at 3 (OAS Secretary-General's speech after the signing of the Constituent Act, Inter-American Armed Forces, at Santo Domingo on May 28, 1965).
69. See generally TED SZULC, DOMINICAN DIARY 207-68 (1965).
70. For a summary report, see UN MONTHLY CHRON., 1965, at 9-10.
71. For the OAS report to the U.N. Secretary-General on the formation of the provisional government, see U.N. Doc. S/6676 (1965).
72. See Paul L. Montgomery, Balaquer Defeats Bosch in Dominican Balloting, N.Y. TIMES, June 3, 1966, at 1, col. 7.
75. See, e.g., UN MONTHLY CHRON., 1965, at 3, 4 (speech in the Security Council by the Soviet representative).
76. See Nanda, supra note 45, Pt. II.
lateral, without prior consultation with the OAS or the United Nations. Thus, the United States did not meet the test of proportionality.

B. India’s 1971 Intervention in East Pakistan (Bangladesh)

The genesis of this intervention lies in the partition of India in 1947 which created the state of Pakistan, composed of two disparate parts physically separated by a distance of over 1,000 miles and also divided by ethnic, cultural, and linguistic differences. The two elements tending to bind these parts — a common religion, Islam, and alienation from India — did not suffice to ensure stability. By the late 1960s the economic and political domination of East Pakistan by West Pakistan had caused serious political unrest in East Pakistan.

In the Pakistani general elections of December 1970, the Awami League party, led by Sheikh Mujibur Rahman, won an overwhelming victory, capturing 167 of 313 seats in the National Assembly on a program of political and economic autonomy for East Pakistan. The election results were apparently unacceptable to the elites in West Pakistan who, undoubtedly, faced with some alarm the East Pakistani demand for autonomy and the prospects of being ruled by the East Pakistani Awami League party.

In early 1971, negotiations for the convening of the National Assembly to draft a constitution broke down, causing the simmering unrest in East Pakistan to surface in mass demonstrations against the Pakistani government. This crisis was intensified by Sheikh Mujib’s call for non-cooperation with the government. Serious acts of civil disobedience followed, including refusal to pay taxes and a total strike in government offices and businesses. The East Bengali mood began to reflect a desire for complete independence as opposed to mere autonomy.

Eventually, on March 25, 1971, the Pakistani military struck Dacca without warning and initiated a reign of terror throughout East Pakistan which continued with increasing intensity until December 1971. Villages

78. See id. at 467-68.
79. See id. at 468-70.
80. For events leading to the eventual breakup of Pakistan, see generally Ved Nanda, Self-Determination in International Law, 66 AM. J. Int’l L. 321, 323 (1972); Ved Nanda, A Critique of the United Nations Inaction in the Bangladesh Crisis, 49 Denv. L. J. 53, 54-56 (1972); Choudhury, Bangladesh: Why It Happened, 48 Int’l Aff. 242 (1972); International Commission of Jurists, The Events in East Pakistan 1971 (1972), and the authorities cited in these publications.
82. For accounts of the alleged atrocities by the Pakistani army, see Hearings Before the Subcomm. to Investigate Problems Connected with the Refugees and Escapees of the Senate Comm. on the Judiciary, 92d Cong. 1st Sess., pt. 1 at 95-226, pt. II at 311-53, pt. III at 431-81 (1971) [hereinafter Senate Hearings]; Hearings Before the Subcomm. on Asian
were burned; civilians were indiscriminately killed; Hindus were mass-
sacred, as were university teachers and students, lawyers, doctors, Awami 
League leaders, and Bengali military and police officials. The horror of 
these events led observers to accuse the Pakistani armed forces and 
_razakars_, the local volunteer militiamen who were collaborators of the 
Pakistani armed forces in East Bengal, of committing selective genocide, 
purportedly to deprive East Pakistan of Bengali leadership.

By December 1970, this wave of terror forced approximately 10 mil-
lion people to flee from East Pakistan and take refuge in India. This put 
a severe strain on India-Pakistan relations and on December 3, 1971, full-
scale war erupted between the two nations.

The war lasted two weeks, with horrible destruction: "Thirty million 
people dislocated by the war. More than 1.5 million homes destroyed. 
Nine million refugees returning from India to rebuild their lives and 
homes. War damage drastically reducing rail traffic. Key rail and road 
bridges destroyed." According to the Swiss U.N. Chief in Dacca, Toni 
Hagen, the destruction suffered by Bangladesh was greater than that suf-
fered by Europe in World War II. On December 16, 1971, India won the
war, and on December 17 it declared a unilateral cease-fire after the surrender of the Pakistani armed forces.\textsuperscript{88} This resulted in the rebirth of East Pakistan into a new independent country, Bangladesh.

India justified its intervention on two grounds: to protect the Bengalis from gross and persistent violation of their human rights by the Pakistani armed forces, and to address the problem of ten million Bengali refugees on Indian territory. In the Security Council discussion on India's intervention, the representative of India urged the Council on December 6, 1971, to "consider some realities."\textsuperscript{89} He said:

Refugees were a reality. Genocide and oppression were a reality. The extinction of all civil rights was a reality. Provocation and aggression of various kinds by Pakistan from March 25 onwards were a reality. Bangladesh itself was a reality, as was its recognition by India. The Council was nowhere near reality.\textsuperscript{90}

Subsequently, on December 12, he said:

It was not India which declared or started war; it was not India which was responsible for creating the conditions that led to the present unfortunate conflict; it was not India which deliberately and systematically refused to meet the aspirations of the 75 million people inhabiting the country, once part of Pakistan; it was not India which perpetuated the repression, genocide and brutality which provided the springboard for the freedom movement of Bangla Desh, which led to the decision of the people of that region to create a free and independent nation; it was not India which forsook the long period of nine months during which a reasonable political settlement could have been evolved with the leaders and people of Bangla Desh.

The United Nations had been unable to deal with the root cause of the problem in East Bengal. Informal consultations in the Security Council in July and August indicated that the international community could not, due to limitations born of its commitments to the doctrine of domestic jurisdiction, act in the matter. In the face of a direct violation of the Universal Declaration of Human Rights and the provisions of Articles 55 and 56 of the Charter by Pakistan, the Security Council and the United Nations should have found themselves in a

\textsuperscript{88} See Statement by Mrs. Gandhi on Truce and Surrender, N.Y. Times, Dec. 17, 1971, at A16, col. 5 (Prime Minister Indira Gandhi's statement in the Indian Parliament on the truce and surrender).
\textsuperscript{89} UN Monthly Chron., Jan. 1972, at 3, 25.
\textsuperscript{90} Id.
position to intervene and persuade Pakistan to return to reason. That did not happen. While developments proceeded on their inexorable course towards the present tragedy, the United Nations continued to be inhibited by considerations of domestic jurisdiction. 91

After two resolutions calling for a cease-fire were vetoed by the Soviet Union, 92 the Security Council eventually adopted a resolution, deciding to refer the question to the General Assembly, 93 as apparently there were no prospects for a consensus among the major powers.

The Assembly met twice on December 794 and adopted a resolution, by a vote of 104 in favor to eleven against, with ten abstentions, which called for an immediate cease-fire and a mutual troop withdrawal by India and Pakistan. 95 Since India did not comply with the Assembly recommendations, the Council was again called into session at the request of the United States. The Council met seven times between December 12 and 21. 96 The Soviet Union vetoed one more resolution calling for an immediate cease-fire and troop withdrawal; 97 and finally the Council adopted a resolution on December 21, by which it demanded that a durable cease-fire and cessation of all hostilities on the India-Pakistan subcontinent be strictly observed until troop withdrawals had taken place. 98 Ironically, India had already unilaterally declared a cease-fire on December 17 after the surrender of the Pakistani armed forces. 99

This round of Council meetings is of significance only in its rehash of the earlier arguments. Pakistan accused India of "aggression" and violation of its territorial integrity, while several representatives called for both a cease-fire and a political settlement in East Pakistan, referring to the Pakistan oppression in East Pakistan and the need to acknowledge the wishes of people in East Pakistan. However, as the eventual surrender of the Pakistani army became imminent, the tone of the Council debates shifted from an emphasis on an immediate cease-fire to a fresh concern for a political settlement. For instance, on the evening of December 15, 1971, the Soviet delegate said that "many delegations had told him personally that the Soviet approach to the solution of the problem regarding the interrelationship between cessation of hostilities and a political settlement, was perfectly correct." 100 The delegate from Ceylon (now Sri

91. See id. at 29.
92. See id. at 19, 20.
93. See id. at 25.
94. For a summary report, see id. at 89-91.
96. For a summary report, see id. at 26-45.
97. For the text of the draft resolution, see id. at 28. For voting on the resolution, see id. at 34.
98. S.C. Res. 307 (1971). For the text, see id. at 45-46.
100. UN MONTHLY CHRON., Jan. 1972, at 38.
Lanka) considered "a political settlement in East Pakistan to be central to any solution, and negotiations between the Government of Pakistan and the acknowledged leaders of the people of East Pakistan to be the only effective and legitimate means of achieving it."\textsuperscript{101}

Commentators were divided in their response to India's intervention. Some considered it a valid act of "humanitarian intervention,"\textsuperscript{102} while others argued that it was unlawful.\textsuperscript{103} An observer must, however, conclude that there was no doubt regarding the nature or extent of the Pakistani military's atrocities on Bengalis. The United Nations' inaction over a period of nine months of continuing onslaught in East Pakistan is equally well documented. India promptly withdrew its forces. Also, India was not condemned at the United Nations for its intervention. As to India's motives, it unquestionably must have welcomed the opportunity to split Pakistan into two countries and weaken it, thereby minimizing the perceived threat to India from a strong neighbor. However, in Security Council discussions, the Indian representative's statement is worth noting, as he said: "We are glad that we have on this particular occasion nothing but the purest of motives and the purest of intentions: to rescue the people of East Bengal from what they are suffering."\textsuperscript{104}

C. Tanzania's 1978 Intervention in Uganda

Throughout Idi Amin's dictatorship of Uganda, the world community found itself outraged by the gross and consistent pattern of human rights violations that occurred.\textsuperscript{105} Reports of public executions, rape, torture, and arbitrary arrests surfaced from a variety of sources.\textsuperscript{106} Estimates were that nearly 300,000 people perished at the hands of the regime and that thousands more were forced to flee.\textsuperscript{107} Amnesty International concluded in its June 1978 report that convincing evidence existed to indicate that the Ugandan military regime was in fact responsible for these atrocious violations of human rights.\textsuperscript{108}

After years of human rights violations in Uganda, as well as a series of border skirmishes between Tanzania and Uganda, Tanzanian troops, along with Ugandan exiles and refugees, launched a full scale invasion
into Uganda. By April 11, 1979, within four months of the time the invasion began, the mission to overthrow Amin was completed, and the Ugandan National Liberation Front (UNLF) had formed a provisional government.\textsuperscript{109} In spite of the rejoicing by the Ugandans and relief felt by the world community, this was a transgression of Uganda’s sovereignty that raised the issue of permissible humanitarian intervention.

Undoubtedly, the Amin regime persistently and grossly violated the basic human rights of the Ugandan people. Amin’s barbarous, and well documented, treatment of Ugandan and foreign nationals alike left little question as to how extreme the violations had become.\textsuperscript{110} While many countries condemned the actions of Amin, nothing tangible was done by the United Nations or the Organization of African Unity to put an end the regime’s abhorrent conduct. There existed such a widespread loss of life, as well as many other deprivations of human rights,\textsuperscript{111} that the need for intervention was apparent.

Tanzania’s actions appear, however, to have failed the test of proportionality. Tanzanian troops were without a doubt the decisive element in Uganda’s liberation.\textsuperscript{112} Tanzanian troops, which numbered in excess of 20,000, emerged as the ultimate liberators.\textsuperscript{113} While Tanzania would have been justified in protecting exiles and defending its borders from the Ugandans, the amount of force used to overthrow the incumbent regime far exceeded that required to accomplish these goals.\textsuperscript{114}

As to the duration of intervention, months after the fighting ended, Tanzanian troops still occupied much of the nation they had liberated. After the intended goal of liberation was accomplished, withdrawal was slow to occur. It appeared that Tanzanian troops stayed long after their objectives could be viewed as “humanitarian.”\textsuperscript{115}

As to the purpose of intervention, Tanzania’s motives seemed to be partly for humanitarian reasons, but mainly out of self interest. Although Tanzania “often decried Amin’s human rights record,” Tanzania intervention was undertaken not merely to rectify an immediate human rights problem.\textsuperscript{116} From the outset of the conflict, Tanzania justified its intervention as being a reaction to the armed attack launched by Uganda at the end of October 1978.\textsuperscript{117} Tanzania “seemed determined to pursue a military solution and overthrow Amin’s government.”\textsuperscript{118} Had Tanzania

\textsuperscript{109} Natalino Ronzitti, Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity 102 (1985).
\textsuperscript{110} See AI Report, supra note 106, at 19.
\textsuperscript{111} See id. at 12.
\textsuperscript{112} See Hassan, supra note 105, at 905.
\textsuperscript{113} See id.
\textsuperscript{115} See Hassan, supra note 105, at 898.
\textsuperscript{116} See id. at 893.
\textsuperscript{117} See Ronzitti, supra note 109, at 102.
\textsuperscript{118} See Hassan, supra note 105, at 893.
“sincerely only wanted the Ugandan government to recognize the sanctity of human life, it should have drastically curtailed its forces following the fall of Kampala and completely withdrawn after the war.”

The action was also clearly unilateral. Tanzania's President Nyerere made this clear when he stated: “What we did was exemplary at a time when the OAU found itself unable to condemn Amin. . . . When African nations find themselves collectively incapable of punishing a single country, then each country has to look after itself.” Although the majority of the world community would have liked to see Amin removed as president, it was only through the actions of the Tanzanian government acting unilaterally that such a goal was finally accomplished.

Finally, how should alternatives and outcomes be balanced? First, inhumane treatment and the massive loss of life of Ugandans was a fact. Second, although many countries had condemned Amin for such gross violations of human rights, nothing was done to immediately stop them. Thus, while one could argue that the Tanzanian intervention was not justified in many respects, it seemed necessary to put an end Amin's egregious behavior. In fact, the Tanzanian action was welcomed by most members of the world community.

D. Vietnam's 1978 Intervention in Cambodia

In April 1975, the Khmer Rouge forces took control of the Kampuchean capital of Phnom Penh and defeated the remains of the republican government. Immediately afterward, the Pol Pot regime began a program of reorganization that led to human rights violations of the worst sort. Reports of torture, killings, and mass deportation became well documented. In a three-year period, it is estimated that more than 2 million lives, out of a population of 7 million, were lost through disease, starvation, and slaughter.

In spite of the outrage by the international community, no concrete measures were taken “to prevent the continued perpetration of atrocities in Kampuchea.” Instead, reports continued of how hundreds of
thousands of refugees were still fleeing to neighboring countries. Finally, on December 25, 1978, the Vietnamese army, along with the Popular Liberation Front (PLF), invaded Kampuchea and gained control of the government. The invasion marked the end of the Pol Pot regime and the installation of the Vietnamese-supported Peoples’ Republic of Kampuchea.

There exists no doubt that the Kampuchean people suffered some of the most egregious human rights violations ever documented. Their case under the Khmer Rouge regime became “a perfect candidate for humanitarian intervention.” Undoubtedly, gross and persistent human rights violations occurred, along with alleged acts of genocide, as is evidenced by the deaths of nearly one-third of the Kampuchean population during the Pol Pot regime. As stated by the chairman of the United Nations Human Rights Subcommission, the human rights violations by the Khmer Rouge were “the most serious to have occurred anywhere since Nazism.”

The Vietnamese invasion failed the test of proportionality. Thousands of Vietnamese troops were used to overthrow the Khmer Rouge and were the virtual creators of the PLF. The Vietnamese were, in essence, controlling operations, and even a decade after the invasion continued to keep troops and advisors in Kampuchea. The amount of force used and the duration of intervention can in no way be justified as merely humanitarian, considering the massive role the Vietnamese played in overthrowing the Khmer Rouge.

As to the motives of the Vietnamese, there is some doubt as to whether their purpose was in fact merely humanitarian. The Vietnamese were known to harbor territorial ambitions over Kampuchea, and were themselves frequent abusers of human rights. In fact, Vietnam had at first “denied that it had even invaded Kampuchea,” and later asserted that they never even gave military help to the PLF. These flagrantly incredible remarks, combined with the violent and hostile attitudes the Vietnamese and Pol Pot’s regime had for each other, were strong indicators that Vietnam’s intervention was undertaken for other than humanitarian reasons.

The Vietnamese acted unilaterally, without seeking “the assistance of any other nation when invading Kampuchea. Moreover, before taking unilateral action, Vietnam did not ask for approval of the United Nations
or any regional organization." In fact, the majority of the international community, with the exception of the Soviet Union and some of its aligned states, openly condemned Vietnam's actions and refused to recognize the new government.  

It must be added that the international community, including the United Nations, took no effective action to respond to the tragedy in Kampuchea. It took three years to get the issue of human rights violations by the Khmer Rouge on the United Nations' agenda. Even then, actions were postponed. There was no diplomatic solution available; only the Vietnamese invasion of Kampuchea put an end to Pol Pot's regime.

E. **The 1983 U.S. Intervention in Grenada**

On October 25, 1983, the United States led an armed intervention in Grenada; assisting 1,900 U.S. troops were 300 soldiers from six Caribbean states. In announcing the landing of these troops in Grenada, President Reagan said that the action was taken in response to "an urgent, formal request" from the five-member Organization of Eastern Caribbean States (OECS) "to assist in a joint effort to restore order and democracy" in Grenada. He justified the U.S. action, in part, on the ground that it was needed to protect American lives.

The invasion force, which eventually grew to 7,000, met little resistance and succeeded in just three days in securing "all significant military objectives ... including the two airports, the campuses of the St. George's University School of Medicine, the Governor-General's residence, the radio and power stations, Forts Frederick and Rupert, and the Richmond Hill prison." Within a week, the remaining pockets of resistance were
eliminated. United States casualties included eighteen killed and 116 wounded in action, while forty-five Grenadian civilians were killed and 337 wounded, and twenty-four Cubans were killed in action and fifty-nine wounded. The U.S. forces began withdrawing from the island in early November 1983. The last 950 U.S. Combat troops left Grenada in mid-December, seven weeks after the invasion.

On November 3, 1983, the Queen's representative and the only civilian authority on the island announced that he would appoint a broad-based nonpolitical interim government, and expressed hope that elections to form a government would take place within six months. An interim governing council was appointed on November 9, 1983, and sworn in on November 15. The Council promised to hold elections “as soon as practical,” and its legal adviser announced that a state of emergency imposed in Grenada after the U.S. invasion had been lifted. The Council established an Advisory Tribunal to review the cases of persons under detention and, after reviewing these cases, the tribunal decided that thirty-nine prisoners should continue in detention. Following the invasion, Grenada began receiving foreign economic assistance, the bulk of which was provided by the United States.

For several months preceding the intervention, Grenada's Marxist regime was torn by internal dissension. On October 14, 1983, Prime Minister Maurice Bishop was placed under house arrest. On October 19, a crowd freed Bishop and proceeded to Fort Rupert. Bishop took over the Fort while the crowd disarmed the garrison. In a few hours, the Grenadian People's Revolutionary Army troops captured Bishop, as well as three of his ministers and two union leaders, brought them into the Fort's courtyard and executed them.

Subsequent events included the formation of a Revolutionary Military Council (RMC) headed by General Austin, an official proclamation of a round-the-clock, shoot-on-sight curfew, more arrests, the closing of the Pearls Airport, and the cancellation of flights. During the next five days there was disorder in Grenada. International journalists and diplo-
mats were not permitted entry into the country. However, on October 22, 1983, two U.S. diplomats from Barbados arrived on a charter flight to discuss evacuation of U.S. nationals. Two more U.S. diplomats arrived by another charter flight on October 23. The Grenadian authorities denied that there was any need for evacuation. On October 24, a few small planes were allowed to land and depart, but the airport was not open to normal traffic. The invasion occurred the next day.

U.N. Security Council discussion on the issue was spirited. The invasion was condemned "with varying degrees of harshness" by most of the speakers, and defended only by a small number of Caribbean States. On October 28, 1983, the Council's vote on a resolution deploring the invasion was eleven in favor, one (the United States) against, and three (Britain, Togo, and Zaire) abstaining. The resolution, vetoed by the United States, stated that the Security Council "DEEPLY DEPLORES the armed intervention in Grenada, which constitutes a flagrant violation of international law and of the independence, sovereignty and territorial integrity of that State." The resolution also called for "an immediate cessation of the armed intervention and the immediate withdrawal of the foreign troops from Grenada." Subsequently, on November 2, the U.N. General Assembly adopted a resolution virtually identical to the Security Council Resolution of October 28 by a recorded vote of 108 in favor to nine against, with twenty-seven abstentions. In a separate recorded vote of seventy-one in favor to twenty-three against, with forty-one abstentions, the Assembly approved a Belgian amendment calling for free elections in Grenada "as rapidly as possible to choose its government democratically."

On November 6, 1983, the U.N. Secretary-General reported that he had sent Diego Cordovez, Under Secretary-General for Special Political Affairs, to Grenada where he held a number of consultations during his stay. Among the items discussed were the multinational force established by the OECS (numbering about 300 and supported by a U.S. Task Force on land and off-shore), withdrawal of the U.S. combat forces, formation of an Advisory Council by Governor-General Sir Paul Scoon, and preparations for general elections.

On the day following the intervention, the Permanent Council of the

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154. Id.
156. Id. at Operative Paragraph 4.
157. See Assembly Calls for Cessation of "Armed Intervention" in Grenada, UN MONTHLY CHRON., Jan. 1984, at 4 [hereinafter Cessation].
158. Id.
160. Id.
Organization of American States met in an extraordinary session. At that session, representatives of several Latin American States, including Colombia and Argentina, criticized the action in Grenada on the ground that it was in violation of the principle of nonintervention as embodied in the OAS Charter.

Criticism of the United States' action was muted for several reasons. First, the invading forces struck fast and decisively, crushing the initial resistance and taking over the island with a minimum cost in lives and property. This was possible because the Revolutionary Military Council (RMC), which had taken over on October 19, 1983, received no external military assistance except for the help of the Cubans already on the island. Second, the population of Grenada responded favorably, indeed enthusiastically, to the invasion. Subsequent events in Grenada, such as the withdrawal of the occupying troops and the formation of an interim government, were perhaps additionally responsible for a modification of the positions taken by critics.

The Reagan administration consistently argued that its intervention in Grenada was justified, in part, on humanitarian grounds. Following President Reagan's invocation of the doctrine of humanitarian intervention, other Government officials relied on humanitarian intervention to justify the United States action.

To illustrate, in his news conference on October 25, 1983, Secretary of State Schultz asserted that one of the reasons for the President's decision to commit U.S. forces in Grenada was "[t]o secure the safety of American citizens — and, for that matter, the citizens of other countries — and to assure that any who wish to leave may do so." The next day, at a meeting of the OAS Permanent Council, Ambassador Middendorf expressed the "particularly humanitarian concern" of the United States in the following words:

The deteriorating conditions on the island posed a threat to the continued safety of U.S. citizens there, who number 800-1,000, largely consisting of medical school students and faculty. There is substantial precedent for military action to ensure the safety of foreign nationals.
in such conditions of disorder. While there have been no specific threats against U.S. citizens, a number had sought to flee, even in the absence of organized evacuation efforts, at great risk. The military council on the island had promised to reopen the airport on October 24 but did not do so, thus heightening concern over the continued welfare of these citizens. The lack of respect for human rights and the degenerating conditions, of course, also posed a threat to other foreign nationals, and indeed, to the people of Grenada.

The U.S. Permanent Representative at the United Nations, Ambassador Kirkpatrick, made similar statements at sessions of the United Nations Security Council and the United Nations General Assembly. Kenneth Dam, Deputy Secretary of State, on November 4, 1983, presented the clearest legal brief for the United States' position:

U.S. action to secure and evacuate endangered U.S. citizens on the island was undertaken in accordance with well-established principles of international law regarding the protection of one's nationals. That the circumstances warranted this action has been amply documented by the returning students themselves. There is absolutely no requirement of international law that compelled the United States to await further deterioration of the situation that would have jeopardized a successful operation. Nor was the United States required to await actual violence against U.S. citizens before rescuing them from the anarchic and threatening conditions the students themselves have described.

The uncontroverted facts are that the rescue mission of the U.S. medical students was completed within a few days after the U.S.-led forces landed in Grenada. The U.S. forces, however, remained on the island long after U.S. nationals had been evacuated. On two other factual issues, however, there is some controversy. One pertains to the nature of the threat to U.S. nationals, that is, whether it was imminent. The other relates to the airport operations out of Grenada on October 24, that is, whether American medical students were free to leave Grenada if they wished to do so.

Granting the validity of the Reagan administration's assertion that the lives of U.S. nationals were endangered and that the situation in Grenada was so chaotic that the promises of the military rulers could not have been trusted, there simply is no justification on humanitarian

169. See id. at 73 (Ambassador Middendorf's statement).
170. See id. at 74-76 (Ambassador Kirkpatrick's statement).
171. Id. at 79, 81 (Deputy Secretary Dam's remarks).
172. Although the rescue mission was completed within the first three days, the last combat troops remained on the island for two and a half months longer, withdrawing in mid-December.
174. See Hedrick Smith, Ex-U.S. Official Cites Ease in Leaving Grenada Day Before Invasion, N.Y. TIMES, Oct. 29, 1983, at A7, for a statement by the White House spokesman,
grounds for the continued presence and activities of U.S. troops in Grenada after the rescue operations were completed during the first few days of the military action.

F. The 1989 U.S. Intervention in Panama

U.S. military forces landed in Panama on December 20, 1989. President Bush explained that General Manuel Noriega had declared “a state of war with the United States and publicly threatened the lives of Americans in Panama.”

This, he said, had been followed by the murder of an unarmed American serviceman by Noriega’s forces and the beatings and harassment of others. He added that, as General Noriega’s “reckless threats and attacks upon Americans in Panama” had created an “imminent danger to the 35,000 American citizens in Panama,” he, as President, was obligated “to safeguard the lives of American citizens.”

Subsequently, on January 3, 1990, when Noriega was en route to Homestead Air Force Base in Florida, President Bush declared that he had accomplished all four objectives for which he had ordered U.S. troops to Panama. These were “to safeguard the lives of American Citizens, to help restore democracy, to protect the integrity of the Panama Canal treaties, and to bring General Manuel Noriega to justice.”

As to the validity of the humanitarian intervention claim, tensions between Panama and the United States had been steadily rising even prior to Noriega’s annulment of the May 1989 elections, and tensions had further escalated in the week preceding the armed invasion. On December 15, 1989, Panama’s legislature adopted a resolution formally declaring the country to be in a state of war with the United States. Noriega was named “Maximum Leader” and given sweeping new powers. According to the resolution, the move was prompted by U.S. “aggression” and the economic sanctions in effect against Panama since 1988. The Bush administration, however, described the Assembly’s action as “another hollow step in an attempt to force his [Noriega’s] rule on the Panamanian peo-

Larry Speakes, who stated, “What they told us, we simply did not trust. There was no way we could be at all assured that their promises would have been kept.”


176. President’s Address to the Nation Announcing United States Military Action in Panama, 25 WEEKLY COMP. PRES. DOC. 1974 (Dec. 20, 1989).

177. Id.


179. I have borrowed from my earlier analysis in AGORA, supra note 175, at 496-97.


Deputy Secretary of State Eagleburger called it "a charade and nonsense." In another public statement, a White House spokesman announced that U.S. troops "had not changed their alert status because of the declaration." Yet tension continued to build in the country as confrontations between Panamanians and Americans increased.

Noriega's "declaration of war" against the United States was a clear provocation. Following the invasion, Secretary of State Baker cited an unverified "intelligence report that General Noriega was considering mounting an urban commando attack on American citizens in a residential neighborhood," and added:

I cannot prove to you that this report was absolutely reliable, but I do know that if the President had failed to act as he did and Noriega's Dignity Battalions had killed or terrorized a dozen American families in Panama, you would be asking us today why didn't you act to prevent this kind of violence against our citizens?

Granted that the situation was tense and the U.S. was provoked, yet these facts alone provide little legal justification for the invasion under the test of "necessity." Nor can a full-scale invasion be considered a proportional response. The state of tension existing in Panama did not present an imminent danger to U.S. citizens. The most serious incident supposedly precipitating the invasion occurred on December 15 when one U.S. Marine officer was killed by members of the Panamanian Defense Force, another was wounded, and a third was beaten and his wife threatened at a roadblock. A second serious incident before the invasion occurred when an American officer shot and wounded a Panamanian police officer, who, the American claimed, appeared to be reaching for a gun.

These incidents are important, but on humanitarian grounds the U.S. response did not warrant the launching of "Operation Just Cause" — a full-scale invasion of a size not seen since the Vietnam War, eventually consisting of 12,000 American invaders (added to the approximately 12,000 U.S. military personnel already stationed in Panama), helicopter gunships, artillery and other heavy firepower. The military attack resulted in the death of twenty-six Americans and over 700 Panamanians, mostly civilians, in addition to severe and widespread physical devasta-

184. See Peace Offer, supra note 182. Assuming the United States was planning its invasion during the weekend of this announcement, the Government would not have wanted to disclose its plans.
186. See e.g., George J. Church, Showing Muscle, Time, Jan. 1, 1990, at 20, 23.
tion, property damage and dislocation.\textsuperscript{188}

In evaluating the validity of the U.S. response, one must acknowledge that the United States failed to provide sufficient evidence to prove that the invasion was necessary to protect U.S. lives. But assuming that some level of intervention was justified, the scale of the operation and the prolonged period of intervention, coupled with the other objectives cited for the invasion, cast serious doubt on its having been a legitimate case of humanitarian intervention.

Based on these case studies, I offer the following criteria to evaluate the permissibility of intervention on humanitarian grounds:

1. The Severity of the Rights Violations — The Necessity Criterion
   a. Genocide
   b. Gross, Persistent and Systematic Violations of Basic Human Rights

2. The Nature of the Intervention — The Proportionality Criterion
   a. Duration
   b. Was the force proper/excessive?

3. The Purpose of the Intervention
   a. Humanitarian Concern?
   b. Self-interest?
   c. Mixed?

4. Was the action:
   a. Collective?
   b. Unilateral?

5. Balancing Alternatives and Outcomes
   a. Does the intervention maximize the best outcomes?\textsuperscript{189}

IV. APPLICATION OF THE DOCTRINE TO THE KURDISH SITUATION

A. The Kurdish Crisis

This crisis began with the Kurdish insurrection in the aftermath of the Gulf War.\textsuperscript{190} As the Iraqi forces, especially the Republican Guard,


suppressed the uprising,\textsuperscript{199} approximately two million Kurds fled Saddam Hussein's terror;\textsuperscript{192} Turkey and Iran opened their borders to the fleeing refugees.\textsuperscript{193} Iraq's protest against interference in its internal affairs notwithstanding, the United States, Great Britain, and France initially provided relief operations and later sent their armed forces to carve out "safe havens" for displaced Kurds in northern Iraq.\textsuperscript{194} As the Kurds were unwilling to return to their homes without a foreign presence to ensure their protection, Iraq consented to the stationing of United Nations guards in its northern territory. Earlier, the U.N. Security Council adopted a resolution\textsuperscript{198} demanding that Iraq "immediately end [the] repression" of the Kurds,\textsuperscript{196} and insisting that Iraq "allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq . . . ."\textsuperscript{197}

Informal "safe havens" were established where aid and refuge could be given to the Kurds.\textsuperscript{198} The enclave developed through the initial warning by the U.S. prohibiting Iraqi military maneuvers in the Kurdish areas north of the 36th parallel, followed by the movement of U.S. and other coalition forces in the region, and the establishment of refugee camps for the Kurds.\textsuperscript{199} The design was to provide assurance to the Kurds that the refugee camps were secure so that they would return to their homes.\textsuperscript{200}

B. Application of the Suggested Criteria

The foreign intervention in Iraq meets the criteria suggested here to judge the validity of "humanitarian intervention." The sole purpose was to provide relief to the Kurds and to protect them from the Iraqi army, and consequently to ensure that relief operations were not at risk.\textsuperscript{201} President Bush expressly stated that the effort was purely "humanitarian," and the operation would consist of temporary relief stations to encourage the Kurds to move to areas where they could be provided with food, clothing, and medicine.\textsuperscript{202} Mr. Bush further stated that the move by the allied forces was not the initial step toward an occupation of Iraqi territory.\textsuperscript{203} The United Nations was to monitor the entire process so as to

\begin{itemize}
  \item 192. See, e.g., Want Another War?, THE ECONOMIST, Apr. 13, 1991, at 12.
  \item 193. See id.
  \item 195. See S/RES/688, supra note 3.
  \item 196. Id., Operative Paragraph 2.
  \item 197. Id., Operative Paragraph 3.
  \item 199. See id.
  \item 200. See id.
  \item 202. See id.
  \item 203. See id.
\end{itemize}
ensure that relief efforts would be undertaken in conformity with the purpose and spirit of Security Council Resolution 688.204

Hundreds of thousands of Kurds had already fled into Turkey and Iraq, with predictions that over two million would eventually leave Iraq, when the initiative was taken by Europeans urging an enclave for the Kurds.205 The Kurds fled in such large numbers because of their prior experience with the brutal use of chemical weapons on their villages by the Iraqi army and a history of oppression of the Kurds as an ethnic group by the Iraqi government, especially by the Saddam Hussein regime.206 According to some estimates, starvation and exposure were claiming lives of over 1,000 Kurdish refugees daily.207 The world community was shocked: there was consensus on the need for urgent action to aid and protect the refugees.

In view of the pattern of gross and persistent violation of the Kurds’ human rights in Iraq, the claim for humanitarian intervention on their behalf meets the first criterion set out above, that is, severity of the deprivation of their human rights. Urgent action was needed to save lives. U.N. Security Council Resolution 688 insisted that Iraq allow immediate humanitarian access for relief purposes, and condemned the Iraqi repression of the Kurds, which threatened international peace and security.208

As to the second criterion, the nature of the intervention, Britain’s Ambassador to the United Nations, Sir David Hannay, explicitly stated that the proposed safe havens were a “humanitarian concept.”209 The duration of the intervention lasted until July 15, 1991.210 As efforts from the beginning were underway to seek U.N. replacements,211 the coalition force was indeed proportionate to ward off the risk to the lives of the hundreds of thousands of Kurds.

As to the third criterion, the purpose of intervention, the plans specifically embodied a limited purpose of securing a safe region for the Kurds so that they could receive humanitarian aid and return to their homes.212 The coalition forces did not intend to affect Iraq’s territorial

208. See S/RES/688, supra note 3, Operative Paragraphs 1, 3.
211. See Sciolino, supra note 201.
212. See Tyler, supra note 198.
integrity, nor even Saddam Hussein's regime.\footnote{213} They had planned for an early withdrawal date,\footnote{214} and accordingly withdrew on July 15.\footnote{215}

At the outset of the intervention, the allied leaders agreed to provide protection to the relief workers as authorized by the Security Council Resolution 688.\footnote{216} Another goal was to protect the Kurds. Consequently, they felt it necessary to station troops to curtail the movement of Iraqi forces north of the 36th parallel.\footnote{217} Iraq was warned not to use ground or air forces anywhere near the Kurdish refugees.\footnote{218}

As to the fourth criterion, that is, whether the action is unilateral or collective, the initiative came from the British Prime Minister, John Major, but intervention took a collective form after consultations among the Security Council members.\footnote{219} A European Community delegation met with President Bush in efforts to gain further support for the plan as a collective action.\footnote{220} The decision was made to establish a multinational force to provide the needed relief.\footnote{221}

Security Council Resolution 688 expressed grave concern at the repression of the Iraqi civilian population, and the massive flow of refugees "threaten[ing] international peace and security in the region,"\footnote{222} and authorized humanitarian access and assistance to the refugees and displaced Iraqi people.\footnote{223} Although the intervening force was not under the U.N. auspices, there were consultations at the United Nations and considerable international support for the operation which drew over 20,000 troops from 13 countries.\footnote{224} Subsequently, the United Nations and Iraq signed an agreement, under which U.N. security guards would move into northern Iraq, allowing the U.S. and allied soldiers to withdraw.\footnote{225}

Finally, on balancing alternatives and outcomes, one has to conclude that the intervention was a justified response, for without the presence of the allied forces the Kurds were not willing to return to their villages and homes. After the Kurds' return and the withdrawal of the allied forces, a residual coalition force is to be stationed in Turkey to deter future Iraqi
aggression against the Kurds.\textsuperscript{226} Head of the coalition forces, General Shalikashvali, said that the allied forces retained the right to conduct reconnaissance flights north of the 36th parallel where Iraq is banned from flying fixed-wing aircraft and helicopters.\textsuperscript{227} The intervention gave the Kurds breathing space to negotiate with the Iraqi government an agreement for autonomy in their region.\textsuperscript{228}

\textbf{V. Appraisal and Recommendations}

Having concluded that the intervention in Iraq meets the criteria set out above to determine the validity of "humanitarian intervention" under customary international law, this interventionary action has serious implications. For example, could the world community take action to provide food and humanitarian assistance to the starving population in a state in opposition to that state's policy? Recent developments with a bearing on the subject include a General Assembly resolution adopted in December 1990 which calls for international relief corridors.\textsuperscript{229} In the United States Congress, Congressman Tony Hall introduced a bill asking the United States government to take the initiative for the drafting and negotiation of an international convention on the right to food.\textsuperscript{230}

The following statement of the International Court of Justice in Nicaragua v. U.S. is pertinent: "There can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law."\textsuperscript{231}

It is recommended that, as a last resort, such use of force be considered justified. The allied forces' response to the Kurdish crisis has demonstrated that in the post-cold war era "humanitarian intervention" remains a viable alternative. That it should be sparingly used is appropriate. But that it can be used should prove a powerful deterrent to oppressive regimes.

\begin{itemize}
\item \textsuperscript{226} See Brown, supra note 210.
\item \textsuperscript{227} See id.
\item \textsuperscript{229} See G.A. Res. 45/100, adopted on Dec. 14, 1990.
\item \textsuperscript{231} 1986 I.C.J. 14, 124.
\end{itemize}