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### United Nation's Peace-keeping Role in the Post-Cold War Era: The Conflict in Bosnia-Herzegovina

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# United Nations' Peace-keeping Role in the Post-Cold War Era: The Conflict in Bosnia-Herzegovina

## I. INTRODUCTION

There has long been a notion that every individual has certain inviolable fundamental rights, including, among other things, the right to "life, liberty, and the security of person."<sup>1</sup> These basic human rights are not granted by the sovereign to an individual by virtue of his or her citizenship. Rather, they are universal rights retained by every individual that supersede state boundaries and territorial limitations. In recognition of this, the United Nations ("U.N.") has, since its inception, declared its policy of protecting these fundamental rights<sup>2</sup> and delegated to itself certain powers and responsibilities to further this purpose.<sup>3</sup>

With the end of the Cold War and the creation of a "new world order,"<sup>4</sup> it may be necessary for the world's peace-keepers to adjust to different needs of the global community in order to further the cause of international peace and stability. While the threat of strategic nuclear war has subsided, many former Soviet republics and Eastern European states are in transition and, as each asserts its independence and autonomy, the future of these nations is uncertain. Peaceful transition to independence and self-determination of these states are crucial to the new world order. Yet, current events in Eastern Europe reveal that this transition is difficult. In the case of Bosnia-Herzegovina, one of the six republics making up the former Yugoslavia, the road to independence has been far from peaceful. Since the day its citizens voted for independence from

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1. *Universal Declaration of Human Rights*, G.A. Res. 217A (III) art. 3, U.N. GAOR, 3d Sess., pt. 1, at 71-77, U.N. Doc. A/810 (1948).

2. *E.g.*, U.N. CHARTER pmbl. The Preamble states in pertinent part: "Determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . . And for these ends, to unite our strength to maintain international peace and security." *Id.*

3. Peace-keeping powers of the U.N. are enumerated in Chapters VI (Pacific Settlement of Disputes) and VII (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) of the Charter. See U.N. CHARTER arts. 33-51.

4. In this Comment, the author refers to the global political structure of the post-Cold War era as the "new world order."

the Yugoslav Federation on March 1, 1992, there has been non-stop fighting among the ethnically divided forces.<sup>5</sup> Despite efforts by the U.N. and nations such as the United States, Great Britain, and France to obtain cease-fire and diplomatic settlement of the conflict, the fighting has not only continued, but escalated, resulting in tens of thousands of casualties.<sup>6</sup> There also have been countless incidents of the most egregious human rights violations, such as rape and torture,<sup>7</sup> the worst in Europe since World War II.<sup>8</sup>

The U.N. initially responded to the conflict by repeatedly demanding an unconditional cease-fire<sup>9</sup> and initiating a trade embargo against the remaining Yugoslav Federation, which has been suspected of assisting the Bosnian Serbs carry out their acts of aggression.<sup>10</sup> Additionally, the U.N. passed a resolution to deliver humanitarian aid to the victims of the aggression in Bosnia, authorizing the use of force to carry out this objective.<sup>11</sup> The atrocities did not stop, however, and the Government of Bosnia-Herzegovina repeatedly asked the U.N. for deployment of military force in order to stop the war.<sup>12</sup> The whole world has turned to the U.N. for a solution to this problem; eighteen months into the conflict, however, there is a growing concern that the U.N. is incapable of effectively dealing with the problem. The situation calls for a closer look at the role of the U.N. as the keeper of world peace and order and for an examination of the Organization's effectiveness.

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5. See *infra* notes 33-38 and accompanying text.

6. John F. Burns, *Serbs Are Voting on Peace Plan; Signs of Rejection Are Apparent*, N.Y. TIMES, May 16, 1993, § 1, at 1. "An estimated 150,000 to 200,000 people in Bosnia" are dead or have disappeared as a result of this conflict, and an additional 2 million people have been expelled from their homes. The victims are mostly Muslims. *Id.*

7. John F. Burns, *150 Muslims Say They Raped Them in Bosnia*, N.Y. TIMES, Oct. 3, 1992, § 1, at 5. The War-Crimes Commission reported in October 1992 that as many as 12,000 women and girls have been raped since the war began. The victims are mostly Muslims, and some as young as 14 years old. *Id.*

8. Stephen Engelberg & Chuck Sudetic, *Conflict in the Balkans: In Enemy Hands—A Special Report; Clearer Picture of Bosnia Camps: A Brutal Piece of a Larger Plan*, N.Y. TIMES, Aug. 16, 1992, § 1, at 1; Elaine Sciolino, *Abuses by Serbs the Worst Since Nazi Era, Report Says*, N.Y. TIMES, Jan. 20, 1993, at A8.

9. For a discussion of the cease-fire demands and their impact, see *infra* note 117 and accompanying text.

10. For a discussion of Yugoslav involvement in the conflict, see *infra* notes 39-40 and accompanying text.

11. S.C. Res. 770, U.N. Doc. S/RES/770 (1992), reprinted in 31 I.L.M. 1468. See also *infra* notes 78-80 and accompanying text.

12. Alija Izetbegovic, the President of the newly-recognized State of Bosnia-Herzegovina, first appealed for international intervention in early April 1992. Stephen Engelberg, *Fighting Imperils Efforts To Halt War in Yugoslavia*, N.Y. TIMES, Apr. 11, 1992, § 1, at 1.

This Comment will analyze: (1) the U.N.'s adherence to the non-interventionist policy and the viability of the policy in today's interdependent world; (2) the special considerations due where massive violations of human rights are involved; and (3) the current position of the U.N. in the area of human rights and its effectiveness as the world's "peace-keeping force," discussed in light of the recent events in Bosnia-Herzegovina.

## II. NON-INTERVENTIONIST PRINCIPLE

### A. *General International Law*

International law typically requires states to adhere to non-interventionist policy. This policy is derived from and supports the notion of state sovereignty, which is the crux of our governing Law of Nations.<sup>13</sup> Observation of non-interference with the affairs of an individual state is necessary to protect the sovereignty of that state, which, in turn, is essential for the maintenance of world order:

[I]ntervention implies the violation of sovereignty; and sovereignty is one of the fundamental norms regulating interaction in the system. In addition to sovereignty, and flowing from it, are territorial integrity and the legal equality of states. These make up a triad of cornerstones guiding the external actions of states. Observance of these three primary rules forms the basis for the maintenance of order in the international system, and implicit in each of them is the idea of non-interference in the domestic affairs of one state by another. Intervention, by disregarding these rules, and especially that of sovereign authority, challenges the basic pillars of order in the system.<sup>14</sup>

Non-interventionist policy was originally adopted to limit permissible action by one sovereign state upon another;<sup>15</sup> however, it

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13. For a discussion of various theoretical bases for non-intervention and inviolability of state sovereignty, see CAROLINE THOMAS, *NEW STATES, SOVEREIGNTY AND INTERVENTION* 11-16 (1985).

14. *Id.* at 1-2. See also Jost Delbrück, *Commentary on International Law: A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations*, 67 *IND. L.J.* 887, 889 (1992) (discussing how the principle of non-intervention is an integral part of general international law and, as such, excludes third party intervention).

15. See THOMAS, *supra* note 13, at 16. Widespread opinion among scholars is that non-interventionist policy prohibits individual states from intervening forcibly in the affairs of another state. Even where lives are being threatened, such humanitarian intervention is considered illegal. Delbrück, *supra* note 14, at 890. See also *infra* notes 67-69 and accompanying text.

has also become the generally accepted norm for multinational and international entities.<sup>16</sup> Thus, the U.N. also subscribes to this policy. Article 2(7) of the Charter states: "[N]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are *essentially within the domestic jurisdiction of any state* or shall require the Members to submit such matters to settlement under the present Charter . . . ."<sup>17</sup>

### B. What Is a "Domestic Affair?"

While generally following the non-interventionist policy, the language of Article 2(7) prohibiting intervention in the domestic affairs of a state does not clearly define the outer limitation on international intervention.<sup>18</sup> Characterizing activities as falling within or outside the scope of "domestic affairs" is often a difficult matter. Increasing interdependence among states in today's global community creates many gray areas, compounding the problem. What starts out as a "domestic affair" often escalates to involve neighboring states; often, conflicts that are physically contained within a state nonetheless have a great impact on the rest of the world. Thus, Article 2(7) does provide an exception: "this principle [of non-intervention] shall not prejudice the application of enforcement measures under Chapter VII."<sup>19</sup> Chapter VII, in turn, allows the Security Council to take measures to "maintain or restore international peace and security" where it finds "the existence of any threat to the peace, breach of peace, or act of aggression."<sup>20</sup>

The vague terminology in Article 2(7) and Article 39 has generated a substantial amount of debate over the issue of permissible intervention.<sup>21</sup> If the affair is domestic, the U.N. may not intervene; if it is international, it may. Where a conflict clearly falls into one category or the other, determining the limits of permissible in-

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16. For a discussion of the development and acceptance of non-intervention as a universal norm governing multinational and international entities, see THOMAS, *supra* note 13, at 22-48.

17. U.N. CHARTER art. 2, ¶ 7 (emphasis added).

18. *See id.*

19. *Id.*

20. U.N. CHARTER art. 39. Article 39 provides: "The Security Council shall determine the existence of any threat to the peace, breach of peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security." *Id.*

21. *See infra* part III.C.

tervention under the Charter is an easy matter. Problems arise, however, when the affair has both domestic and international elements. The question becomes: under what circumstances, if any, does a matter essentially within "domestic jurisdiction" nonetheless fall within the scope of permissible intervention because of the threat it poses to "international peace and security?"<sup>22</sup>

In order to reconcile Article 2(7) and Article 39 in these situations, several approaches have been developed. One approach is to read Chapter VII as supplementing the non-interventionist provision set forth in Article 2(7).<sup>23</sup> Professor O'Connell interprets the two provisions as follows: "Under the Charter, the Organization may not interfere in the internal affairs of member states. *Moreover*, the Charter prohibits the Security Council from taking enforcement action except in response to threats to international peace and security."<sup>24</sup> Based on this reading of the Charter, O'Connell suggests that the U.N. is authorized to intervene only where the matter is overtly international in character, in other words, if there is international aggression.<sup>25</sup>

A different approach reads Chapter VII as the *primary* provision determining the permissible scope of international intervention that is narrowly limited by the domestic affairs limitation set forth in Article 2(7).<sup>26</sup> This reading of the Charter provisions gives the Security Council a broader discretion to determine whether an affair is one of international character taking it out of the "domestic jurisdiction of the individual state,"<sup>27</sup> thereby allowing for intervention. Unless exercised with proper discretion, this approach could render Article 2(7) meaningless, because it places the authority to invoke the exception in the hands of the very organization whose powers the provision was designed to limit.<sup>28</sup> Nonetheless, many scholars assert that this approach is workable.<sup>29</sup>

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22. See U.N. CHARTER art. 39, *supra* note 20.

23. See Mary Ellen O'Connell, *Commentary on International Law: Continuing Limits on UN Intervention in Civil War*, 67 IND. L.J. 903 (1992).

24. *Id.* at 903 (emphasis added) (footnotes omitted).

25. See *id.* at 904.

26. See N.D. WHITE, *THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 50-51 (1990).

27. *Id.*

28. Professor O'Connell has criticized this approach as an "interpretation . . . [that] is at odds with the spirit in which the Charter was written." O'Connell, *supra* note 23, at 911.

29. 1 L. OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* 376-81 (H. Lauterpacht ed., 7th ed. 1952).

Professor Oppenheim argues that the Security Council should be able to intervene in matters of international *concern*, as long as there are procedural safeguards.<sup>30</sup> He observes:

The action of the Security Council can legally extend to intervention, but seeing that, as a rule, that body is competent only with regard to matters which affect or constitute a threat to international peace and security, such matters, having become the subject of direct international concern, are no longer essentially within the domestic jurisdiction of a State and as such excluded from intervention on the part of the Security Council.<sup>31</sup>

The procedural safeguard Oppenheim refers to is the requirement that the determination of the domestic or international character of an affair be made "by an impartial finding either of the competent non-judicial organs of the United Nations or, if these bodies are unable to reach a decision, because of the exigencies of the voting procedure or for other reasons, by the judicial organ of the United Nations, namely, the International Court of Justice."<sup>32</sup>

This broad interpretation of Chapter VII allows for international intervention on a broader range of circumstances. Thus, depending on the approach taken, the scope and application of the U.N.'s peace-keeping power is greatly enhanced or diminished.

### C. *The Conflict in Bosnia-Herzegovina: "Domestic" or "International?"*

The current conflict in Bosnia-Herzegovina is an example of an affair that is particularly difficult to characterize as "domestic" or "international." Bosnia-Herzegovina had been experiencing major ethnic tension for centuries, and the recent violence there erupted in March 1991, when the republic voted in a popular referendum to become independent from the former Yugoslav Federation.<sup>33</sup> The Bosnian Serbs, who comprise approximately thirty-one

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30. *Id.*

31. *Id.* at 380. See also Delbrück, *supra* note 14, at 892.

Oppenheim asserts that "[i]t is probable that the only legally relevant . . . purpose of [Article 2(7)] is to prevent intervention . . . [by] the United Nations in such matters as regulation of tariffs and admission of aliens with regard to which some States have traditionally exhibited particular apprehension of international interference." 1 OPPENHEIM, *supra* note 29, at 381.

32. 1 OPPENHEIM, *supra* note 29, at 377-78 (footnote omitted).

33. E.g., John F. Burns, *Vance Ends Yugoslav Trip Confident That U.N. Plan Will Proceed*, N.Y. TIMES, Mar. 7, 1992, § 1, at 6. Federation of Yugoslavia was comprised of six republics: Serbia, Croatia, Slovenia, Bosnia-Herzegovina, Macedonia, and Montenegro.

percent of the population, boycotted the referendum in an effort to thwart independence.<sup>34</sup> The Serbs wanted to remain part of the Yugoslav Federation where they comprised a majority, instead of becoming a minority in the new independent State of Bosnia-Herzegovina.<sup>35</sup> When their efforts failed, they responded with acts of violence on the Muslim-Slavs and the Croats, who comprise the remainder of the Bosnian population.<sup>36</sup> What began as sporadic violence immediately following the referendum soon escalated into civil war, with reports of detention camps, genocide, rape, and torture.<sup>37</sup> Furthermore, the Serbs are forcing large numbers of Muslim-Slavs to leave Bosnia in an attempt to create an exclusively Serbian region: "a greater Serbia."<sup>38</sup>

The conflict in Bosnia-Herzegovina, when it first erupted, was a classic example of a fight for self-determination in a newly established state; thus, it seemed to fall clearly in the realm of "domestic affairs" within the meaning of Article 2(7) of the U.N. Charter. Like many local conflicts, however, the situation in Bosnia-Herzegovina quickly manifested international dimensions, as other states became involved in the struggle. For example, it soon became apparent that the Yugoslav National Army was assisting the Serbian cause by providing planes, weapons, and even manpower.<sup>39</sup> As the conflict escalated, Belgrade readily conceded its support for

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Of these, Croatia, Slovenia, and Bosnia-Herzegovina gained international recognition of their independence in April 1992. David Binder, *U.S. Recognizes 3 Yugoslav Republics as Independent*, N.Y. TIMES, Apr. 8, 1992, at A10. The U.N. recognized Macedonia's independence in April 1993. Howard Libit, *Macedonian Envoy Pursues Uncertain Career*, L.A. TIMES, June 29, 1993, at A5. Serbia and Montenegro remain in the Federation. Binder, *supra*.

34. David Binder, *U.S. Set To Accept Yugoslav Breakup*, N.Y. TIMES, Mar. 12, 1992, at A7.

35. See Chuck Sudetic, *Bosnia Calls Up Guards and Reserve*, N.Y. TIMES, Apr. 5, 1992, § 1, at 1.

36. *Id.*

37. See Engelberg & Sudetic, *supra* note 8 (describing human rights violations occurring in the region and giving first hand accounts of the atrocities). See also Burns, *supra* note 7.

38. See John F. Burns, *Serb Is Confident of Holding Occupied Lands*, N.Y. TIMES, May 19, 1993, at A10; see also Engelberg & Sudetic, *supra* note 8.

39. Michael T. Kaufman, *Yugoslav Denies Involvement of Belgrade in War in Bosnia*, N.Y. TIMES, June 6, 1992, § 1, at 1. During the initial phase of the conflict, President of Serbia, Slobodan Milosevic, vehemently denied that Yugoslavia was involved in the fighting in Bosnia and insisted that the conflict was strictly a "civil war" within Bosnia. *Id.* Even then, however, U.N. observers and human rights workers reported air strikes by Yugoslav forces and observed that "Bosnian Serbs could not operate at the level that they did without aid and assistance." *Id.*



the Bosnian Serbs.<sup>40</sup> Furthermore, Croatia, whose own war with Serbia had halted in January 1992, has also become deeply involved in the conflict because of the large number of ethnic Croats present in Bosnia.<sup>41</sup> Viewed in this light, the conflict in Bosnia-Herzegovina has both an "international" and a "domestic" character. The fact that Serbs are claiming the right to annex parts of Bosnia to the existing Serbian Republic<sup>42</sup> is further evidence of the international nature of the conflict, as such an act would be an outright invasion of a sovereign state. Under these circumstances, does the U.N. have the authority, pursuant to Chapter VII of the Charter, to forcibly intervene in Bosnia-Herzegovina to put an end to the conflict?

The Security Council apparently did not view the Yugoslav National Army's involvement as a green light to intervene militarily in the affairs of Bosnia-Herzegovina, and, accordingly, its response has been slow and cautious. In an attempt to keep the conflict from escalating, the U.N. demanded that the Yugoslav Government withdraw from the matter and imposed severe economic sanctions against the state until it complies.<sup>43</sup> By passing the resolution prohibiting Yugoslav involvement, the U.N. attempted

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40. President Milosevic declared in December 1992 that, despite all threats, Serbia would not abandon her "great solidarity with Serbian people outside Serbia." John F. Burns, *Conflict in the Balkans; Serbia's Enigma: An Aloof Leader Who Stoked Fires of Nationalist Passion*, N.Y. TIMES, Dec. 22, 1992, at A16.

41. Seven-month-long battle between Croatia and Serbia was halted in January 1992, when both parties signed a U.N. peace plan. The plan allowed for deployment of U.N. peace-keeping troops to oversee the disarmament of the Serbian forces in the area and the return of Serb-occupied territories to Croatia. The Security Council has repeatedly passed resolutions condemning the Croatian offensive and demanding a cease-fire. The Croats, however, have ignored the demand. See Chuck Sudetic, *Clashes Persist on Yugoslav Coast; Croats Report Pushing Back Serbs*, N.Y. TIMES, Jan. 26, 1993, at A8; Chuck Sudetic, *U.N. Says 'Stop Shooting!' but Croats Shoot Anyway*, N.Y. TIMES, Jan. 27, 1993, at A3. The Croatian forces are now deeply involved in the conflict and have secured 20% of Bosnian territory. Carol J. Williams, *Defiant Bosnia Parliament Rejects Foes' Partition Plan*, L.A. TIMES, Sept. 30, 1993, at A1.

42. See John F. Burns, *Conflict in the Balkans; Nationalist Says Serbs' Rejection of Pact Means the End of Bosnia*, N.Y. TIMES, May 17, 1993, at A1.

43. S.C. Res. 757, U.N. Doc. S/RES/757 (1992), reprinted in 31 I.L.M. 1453. It provides in pertinent part:

*The Security Council, . . . .*

*Acting under Chapter VII of the Charter of the United Nations, . . . .*

4. *Decides* that all states shall prevent:

(a) The import into their territories of all commodities and products originating in the Federal Republic of Yugoslavia (Serbia and Montenegro) exported therefrom after the date of the present resolution; . . . .

to keep the affair from escalating into a full-scale international conflict. Its position also amounted to an implicit recognition that the conflict was of a domestic nature and one in which other states should not become involved. As it soon became painfully clear, however, in Bosnia-Herzegovina, merely containing the conflict at the national level will not solve the underlying problem of human rights violations. Thus, the question facing the U.N. is whether it has the power to intervene in situations involving egregious human rights violations, even where it has determined that the matter is "essentially domestic."

### III. SPECIAL CONSIDERATIONS SURROUNDING THE PROTECTION OF HUMAN RIGHTS

#### A. *Protection of Human Rights as an Important U.N. Goal*

Despite the general policy of non-intervention in domestic affairs, there are strong arguments that special considerations warrant some form of intervention where a conflict involves massive human rights violations.<sup>44</sup> The proponents base their arguments on the language of the U.N. Charter.<sup>45</sup> In addition to the Preamble of the Charter, which emphasizes the importance of the preservation of "fundamental human rights . . . [and] dignity and worth of the human person,"<sup>46</sup> Article 1(3) of the Charter declares that one of the purposes of the U.N. is to achieve "international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>47</sup> Moreover, as Article 55(c) of the Charter

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(c) The sale or supply by their nationals or from their territories or using their flag vessels or aircraft of any commodities or products, whether or not originating in their territories, but not including supplies intended strictly for medical purposes and foodstuffs . . . to any person or body in the Federal Republic of Yugoslavia. . . .

5. *Decides* that all States shall not make available to the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) or to any commercial, industrial or public utility undertaking in the Federal Republic of Yugoslavia . . . any funds or any other financial or economic resources . . . except payments exclusively for strictly medical or humanitarian purposes and foodstuffs.

*Id.*

44. See Delbrück, *supra* note 14, at 901; MICHAEL WALZER, JUST AND UNJUST WARS 89-90 (1977).

45. See MANOUCHEHR GANJI, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 113-39 (1962).

46. U.N. CHARTER pmb., *supra* note 2.

47. U.N. CHARTER art. 1, ¶ 3.

articulates, the U.N. has the function of promoting "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>48</sup>

In order to carry out its function as the protector of human rights, the U.N. must have the means of ensuring that those rights are in fact protected. Thus, Oppenheim writes: "The Charter of the United Nations, in recognising the promotion of respect for fundamental human rights and freedoms as one of the principal objects of the Organisation, marks a further step in the direction of elevating the principle of humanitarian intervention to a basic rule of organised international society."<sup>49</sup> He notes that this is so despite the fact that "the Charter itself expressly rules out intervention in matters which are essentially within the domestic jurisdiction of the State."<sup>50</sup>

In addition to the Charter, the U.N. has adopted the Declaration of Human Rights<sup>51</sup> and numerous other resolutions<sup>52</sup> to protect human rights. International conventions have also passed declarations urging observance of such fundamental rights.<sup>53</sup> Together, these documents clearly indicate that the U.N. considers the protection of human rights to be a very important agenda. The question is whether these documents empower the U.N. with the authority to intervene in the affairs of a state where those rights are being violated.

### B. *The United Nations' Authority To Intervene*

The U.N.'s repeated emphasis on the importance of basic human rights suggests that the Organization has implicit authority

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48. U.N. CHARTER art. 55, ¶ c.

49. 1 OPPENHEIM, *supra* note 29, at 280 (footnotes omitted).

50. *Id.* (footnote omitted).

51. *Universal Declaration of Human Rights*, *supra* note 1.

52. *E.g.*, *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted Dec. 9, 1975, G.A. Res. 3452, U.N. GAOR, 30th Sess., Supp. No. 34, at 91, U.N. Doc. A/10034 (1976); *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, adopted Nov. 25, 1981, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1982).

53. *E.g.*, International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (1976); Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277; International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1985).

to carry out some form of intervention in order to protect these rights. Those who advocate strict adherence to the non-interventionist policy, however, do not give credence to this argument.<sup>54</sup> According to the traditional non-interventionist concept of international law and its relationship to state sovereignty, laws attain binding force only to the extent that sovereign states either expressly or implicitly consent to those laws.<sup>55</sup> Furthermore, even where a state consents, the rights and obligations created by those laws only govern the state and do not implicate individual rights, which are wholly within the sphere of domestic governance.<sup>56</sup> Accordingly, the U.N.'s declarations regarding human rights are merely guidelines for states to follow, not an authorization for intervention.<sup>57</sup> Thus, under this theory, there simply is no right "to intervene in civil war only to protect human rights and not to affect the outcome of the civil war."<sup>58</sup>

The non-interventionist interpretation of the relationship between international law and state sovereignty is difficult to accept, however, because it fails to recognize that a law or a policy lacks legitimacy if no means of its enforcement exist. Repeated declarations of a principle, purpose, or function are meaningless if the U.N. lacks the authority to implement them. Professor D'Amato writes: "[A] Security Council condemnation that is not followed by any forcible action on the part of the Council is another way of saying to the ostensibly offending state, 'we have to condemn you verbally, but don't worry, we're not going to do anything about it.'"<sup>59</sup> Similarly, Oppenheim notes that reading the U.N.'s declared principles as mere guidelines would have "the effect of nullifying much of the purpose of the Charter and of reducing it . . . to the category of a purely political instrument."<sup>60</sup> The U.N. must not have such severe limitations placed on its enforcement powers if

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54. See, e.g., O'Connell, *supra* note 23.

55. Bartram S. Brown, *International Law: The Protection of Human Rights in Disintegrating States: A New Challenge*, 68 CHI.-KENT. L. REV. 203, 204 (1992).

56. See *id.*

57. See Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 AM. U. L. REV. 1 (1982).

58. O'Connell, *supra* note 23, at 908 n.38. O'Connell writes, for example, that "while the human rights of the Kurds are a matter of international concern, violation of internationally protected human rights does not trigger the Security Council to use force." *Id.* at 904.

59. ANTHONY D'AMATO, *INTERNATIONAL LAW: PROCESS AND PROSPECT* 231 (1986) (footnote omitted).

60. 1 OPPENHEIM, *supra* note 29, at 377.

the Organization is to maintain its function as the world's peace-keeping power. Peace-keeping is, after all, the very reason for the birth and existence of the Organization.<sup>61</sup> Therefore, the U.N. must be given actual authority to carry out its principles, purposes, and functions.

In support of recognizing the enforcement powers of the U.N., many scholars argue that the Charter, U.N. declarations, and international conventions make up "international customary law."<sup>62</sup> As such, the principles they set forth are not mere guidelines. Rather, they are laws, binding all states to abide by those principles.<sup>63</sup> Professor Sohn asserts that "[the Charter is the] constitution of the world, the highest instrument in the intertwined hierarchy of international and domestic documents, [and] prevails expressly over all other treaties, and implicitly over all laws, anywhere in the world."<sup>64</sup> Furthermore, the Declaration of Human Rights, according to Sohn, is equally binding: "[The Declaration] was a continuation of the Charter and shared the dignity of that basic document. It merely expressed more forcefully rules that already were recognized by customary international law."<sup>65</sup> Thus, Sohn concludes that

[t]he Declaration . . . is now considered to be an authoritative interpretation of the U.N. Charter, spelling out in considerable detail the meaning of the phrase "human rights and fundamental freedoms," which Member States agreed in the Charter to promote and observe. The Universal Declaration has joined the Charter of the United Nations as part of the constitutional structure of the world community. The Declaration, as an authorita-

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61. Asbjorn Eide, *Outlawing the Use of Force: The Efforts by the United Nations, in THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 99, 99 (1987).

62. D'AMATO, *supra* note 59, at 124. See also Sohn, *supra* note 57, at 12. Professor Sohn writes: "The pyramid of documents, with the Charter at its apex, has become a veritable internationalization and codification of human rights law. . . ." *Id.* For a discussion of what constitutes "customary international law," see D'AMATO, *supra* note 59, at 124-31.

63. Professor D'Amato argues that "the multilateral conventions containing prohibitions against genocide, torture, and slavery constitute evidence of customary law binding upon *all states* and not just the parties thereto." D'AMATO, *supra* note 59, at 124 (emphasis added). Similarly, Professor Bartram Brown notes: "It is beyond dispute that a customary international law of human rights does now exist, and thus even states which are not parties to any of the [human rights] treaties . . . have human rights obligations under customary international law." Brown, *supra* note 55, at 210. See also Sohn, *supra* note 57, at 12, 16-17.

64. Sohn, *supra* note 57, at 13 (footnote omitted).

65. *Id.* at 15.

tive listing of human rights, has become a basic component of international customary law, binding on all states, not only on Members of the United Nations.<sup>66</sup>

Furthermore, concerns that originally gave rise to the non-interventionist policy do not apply to international organizations in the same way they do to individual states. The non-interventionist policy was necessary in order to limit the scope of permissible interference *by one sovereign state upon another*.<sup>67</sup> Granting broad powers of intervention to individual states would allow a state, especially a powerful one, to further its own selfish interest by using a conflict of a domestic nature, such as violation of human rights, as a justification to intervene.<sup>68</sup> Professor Delbrück writes:

Countermeasures [by an individual state] even against grave and massive human rights violations are, for good reason, considered to be restricted to economic and diplomatic sanctions below the threshold of the use of force: Allowing military enforcement measures based on the "isolated" decisions of individual states would lead to an erosion of the general prohibition against the use of force and against "dictatorial interference[s]." Since the assessment of the factual situation, the determination of the appropriate means to be applied, and the execution of the intervention would all be administered by the intervening state, the door to purely arbitrary intervention, that is, acts of aggression in disguise, would be wide open.<sup>69</sup>

Although this is a legitimate concern, it is unfounded where the intervening actor is an international organization such as the U.N. Because the U.N. is comprised of many states, it is unlikely that all the states would have the same "selfish" motives to intervene in affairs of any particular state. The multinational structure of the Organization functions as a check on individual states. Thus, the Organization would not intervene in domestic affairs of a state for any illegitimate purposes, but rather to achieve goals common to all participating states—maintenance of international peace and protection of the fundamental rights of humanity.<sup>70</sup>

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66. *Id.* at 16-17.

67. See THOMAS, *supra* note 13, at 16.

68. See CHARLES R. BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* 85 (1979). Beitz notes that experience supports the assumption that "governments are seldom impartial and hence would be unlikely to make correct judgments about the interests of people on whose behalf they claim to be intervening." *Id.*

69. Delbrück, *supra* note 14, at 890-91 (footnote omitted).

70. Asbjorn Eide, Director of the Norwegian Institute of Human Rights, argues:

Additionally, special considerations are due where the "domestic" affair involves a violation of human rights because the rights of individuals who make up the state are more fundamental than the rights of a state as a sovereign entity.<sup>71</sup> "The end of states and governments is to benefit, serve and protect their components, human beings; and the end of international law must also be to benefit, serve and protect human beings, and not its components, states and governments."<sup>72</sup> Thus, where a violation of human rights is at issue, the U.N. possesses the authority to intervene because such an intervention is legitimized by a "legal restriction" on state sovereignty.<sup>73</sup> Even Michael Walzer, generally a strong proponent of strict adherence to the non-interventionist policy, regards massive violation of human rights as one of the very limited instances where intervention is legitimized.<sup>74</sup> Walzer argues that the claim of state sovereignty loses its force when "the bare survival or the minimal liberty" of a substantial number of its members is at stake: "Against the enslavement or massacre of political opponents, national minorities, and religious sects, there may well be no help unless help comes from outside."<sup>75</sup> Thus, there are forceful arguments for allowing international intervention.

In light of these arguments, it seems unquestionable that the egregious human rights violations taking place in Bosnia-Herzegovina

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As a rule, [humanitarian] intervention through the use of armed force should not be accepted, since it tends to be coupled with illegitimate political purposes, seeking to make the state into which the humanitarian intervention takes place submit to the will of the intervening state. *If the United Nations . . . expressly endorses the call for humanitarian intervention, and if the principle of proportionality is maintained in the pursuit of such intervention, it would probably be in conformity with the emerging international legal order.*

Eide, *supra* note 61, at 118-19 (emphasis added) (footnote omitted).

Professor Beitz supports this idea as well, although he does not allege that the U.N. will maintain impartiality under all circumstances. BEITZ, *supra* note 68, at 85.

71. Fernando R. Teson, *The Kantian Theory of International Law*, 92 COLUM. L. REV. 53, 54 (1992).

72. *Id.*

73. 1 OPPENHEIM, *supra* note 29, at 274. Oppenheim lists seven circumstances where even a state may have a right to intervene, one of them being "[where] a State in time of peace or war violates such rules of the Law of Nations as are universally recognized by custom." *Id.* at 276. Especially in light of the fact that an international organization is more objective and more likely to serve the best interests of the state at war, the U.N. would certainly have the right to intervene in this kind of situation as well.

74. WALZER, *supra* note 44, at 90. Walzer writes: "[T]he ban on boundary crossing is subject to unilateral suspension . . . when the violation of human rights within a set of boundaries is so terrible that it makes talk of community or self-determination or 'arduous struggle' seem cynical and irrelevant, that is, in cases of enslavement or massacre." *Id.*

75. *Id.* at 101.

vina require some form of intervention. The aggressors in the conflict there have clearly violated the rights of the individual citizens of Bosnia-Herzegovina as set forth in the U.N. Charter and the Declarations. Moreover, such an intervention should not spark a concern about "selfish" motives. No individual nation (except for Serbia and Croatia, who are parties to this conflict) is attempting to assert control over the sovereignty of the state or to influence it politically, economically, or ideologically. Rather, the interest is strictly a collective one that aims to halt the atrocities being committed against the people of Bosnia-Herzegovina. The question then becomes: what forms of intervention are permissible?

### C. *Permissible Forms of International Intervention*

#### 1. Humanitarian Aid

The International Court of Justice has declared that delivery of humanitarian aid is a legitimate form of intervention.<sup>76</sup> It thus appears that delivery of humanitarian aid is recognized as a legitimate use of the U.N.'s peace-keeping powers.<sup>77</sup> Where, as in the case in Bosnia-Herzegovina, the Government itself asks for such aid, its legitimacy cannot be questioned.

The situation in Bosnia-Herzegovina makes it apparent, however, that sending humanitarian aid into a state in the midst of a violent conflict is not as simple as it may seem. The U.N. has been delivering aid to the victims of aggression in Bosnia-Herzegovina pursuant to the resolution of May 15, 1992.<sup>78</sup> Yet, delivery of food and medical supplies has been very difficult.<sup>79</sup> To ensure safe delivery of aid, the Security Council passed another resolution dispatching peace-keeping troops in order to reopen the airport near Sarajevo. Resolution 761, passed on June 29, 1992, states in pertinent part:

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76. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, para. 242 (June 27). In discussing the legitimacy of the activities against Nicaragua, the Court stated: "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." *Id.*

77. Even Professor O'Connell concedes that intervention strictly limited to delivery of humanitarian aid is permissible. See O'Connell, *supra* note 23, at 906.

78. S.C. Res. 752, U.N. Doc. S/RES/752 (1992), reprinted in 31 I.L.M. 1451.

79. See *U.N. Convoy Is Attacked on Edge of Sarajevo as More Units Arrive*, N.Y. TIMES, June 11, 1992, at A6; *Serbs Still Shelling, Threatening Airlift, U.N. Says*, N.Y. TIMES, July 5, 1992, § 1, at 6.



Noting the considerable progress reported by the Secretary General towards securing the evacuation of Sarajevo airport . . . [and u]nderlying the urgency of a quick delivery of humanitarian assistance to Sarajevo and its environs,

1. *Authorizes* the Secretary General to deploy immediately additional elements of the United Nations Protection Force (UNPROFOR) to ensure the security and functioning of Sarajevo airport and the delivery of humanitarian assistance. . . .

2. *Calls upon* all parties and others concerned to comply fully . . . in particular to maintain an absolute and unconditional cease-fire; . . . .

4. *Demands* that all parties and others concerned cooperate fully with UNPROFOR and international humanitarian agencies and organizations and take all necessary steps to ensure the safety of their personnel; *in the absence of such cooperation, the Security Council does not exclude other measures to deliver humanitarian assistance to Sarajevo and its environs.* . . .<sup>80</sup>

Despite the resolution, Serbian forces did not comply with the cease-fire demand, and delivery of aid has remained difficult, leaving tens of thousands of Bosnians without food or medication.<sup>81</sup>

Furthermore, sending humanitarian aid into a state is ineffective because it often does not extinguish the underlying problem. Human rights violations are hardly mitigated if the aggressors still have the means and the drive to continue killing, torturing, and driving people from their homes. Although the Security Council passed another resolution on August 13, 1992, authorizing use of "*all necessary measures*" to ensure that relief supplies reach their destinations,<sup>82</sup> such measures may be undertaken only for the purpose of assuring safe delivery of supplies and not for the general purpose of ending the civil war.<sup>83</sup> This limitation unfortunately prevents the U.N. from protecting the human rights of the Muslim-

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80. S.C. Res. 761, U.N. Doc. S/RES/761 (1992), *reprinted* in 31 I.L.M. 1462 (emphasis added).

81. The State Department has concluded that the relief effort in Bosnia is "largely a failure, with the Serbian forces in Bosnia and Herzegovina skimming nearly one-quarter of all the aid brought in by air." Michael R. Gordon, *U.S. Finds Serbs Skimming 23% of Bosnian Aid*, N.Y. TIMES, Jan. 13, 1993, at A1.

82. S.C. Res. 770, *supra* note 11 (emphasis added). The resolution specified that such military action may be carried out either "nationally or through regional agencies or arrangements." *Id.*

83. *Id.*

Slavs in Bosnia. Although the resolution may encourage the Serbs to allow humanitarian supplies to get through so that they can avoid a military attack by the peace-keeping troops,<sup>84</sup> the problem in Bosnia is not limited to starving people and the shortage of medical supplies. The problem encompasses countless incidents of murder, torture, rape, and displacement of people from their homes. Merely assuring the safe delivery of food and medical supplies will not eliminate these problems. Although sending humanitarian aid may help the victims of aggression to survive a little longer and may placate our sense of morality, it does not stop the atrocities committed in violation of basic human rights.<sup>85</sup> Some other form or forms of intervention becomes necessary under these circumstances.

## 2. Negotiation

Article 33 of the U.N. Charter authorizes the U.N. to initiate and oversee peace settlement negotiations. The provision states:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by *negotiation*, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. *The Security Council shall, when it deems necessary, call upon the parties to settle their disputes by such means.*<sup>86</sup>

Thus, the U.N. clearly has the authority to call upon parties to the conflict to participate in a negotiation process.<sup>87</sup> In fact, overseeing

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84. See John F. Burns, *U.N. Envoys Resume Effort To Get Food into Sarajevo*, N.Y. TIMES, June 12, 1992, at A6.

85. The Government of Bosnia-Herzegovina has criticized the U.N.'s position, accusing it of being "'a dirty game by the international community,' in which the United States and other nations, unwilling to risk intervening militarily, were trying to create the impression of helpfulness when their officials knew that the Serbian forces had powerful reasons not to comply with the Security Council plan, or to delay it long enough for many in the city to starve." Burns, *supra* note 84.

86. U.N. CHARTER art. 33 (emphasis added).

87. See *id.* Article 33 has been interpreted to mean that the Security Council's involvement is discretionary. "[T]his means that the Security Council has a duty to remind the parties to a dispute of their option to solve a dispute by resort to such peaceful means as have been indicated in Article 33, paragraph 1." Bengt Broms, *The Role of the United Nations in the Peaceful Settlement of Disputes*, in THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY, *supra* note 61, at 73, 75. However, the

negotiation and mediation is considered to be the U.N.'s primary means of maintaining international peace and order.<sup>88</sup>

The peace plan being negotiated among the ethnic foes in Bosnia-Herzegovina, however, increasingly appears to be ineffective in ending the bloody conflict. The peace talks, originally coordinated by Cyrus R. Vance and Lord David Owen, began in January 1993 in Geneva and called upon the leaders of the Bosnian Serbs, Croats, and Muslims to come to an agreement to end the war.<sup>89</sup> The initial plan, centered on a map dividing the state into ten largely-autonomous provinces that are loosely tied together by a central government, faltered after months of unsuccessful negotiations.<sup>90</sup> It appears that the U.N.'s attempt to create "safe havens" in parts of Bosnia to protect the Muslims led to the collapse of the plan.<sup>91</sup>

The current plan under negotiation no longer attempts to maintain Bosnia-Herzegovina as a single, unified state. Instead, the plan divides the embattled state into three ethnic provinces<sup>92</sup> and contains a provision allowing for the eventual annexation of

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Security Council's power in this context is limited to making recommendations; the Council does not have the power to bind parties to its decisions. *Id.* at 76.

88. Broms, *supra* note 87, at 75-76.

89. See David Binder, *Balkan Factions Begin New Talks*, N.Y. TIMES, Jan. 3, 1993, § 1, at 1.

90. *Id.* The map envisioned three provinces predominantly Muslim, one predominantly Serbian, and five in which the Muslims would share power with either the Croats or the Serbs. None of the provinces were to be "ethnically pure," and Sarajevo was to be demilitarized and declared as an "open city." *Id.* See also David Binder, *Bosnia's Bitter Enemies Sit Down and Talk in Geneva*, N.Y. TIMES, Jan. 4, 1993, at A3. Although the Bosnian Croat leader, Mate Boban, and the Bosnian Serb leader, Rodovan Karadzic, agreed to the plan, Alija Izetbegovic, the Bosnian Muslim leader and President of the Republic, refused to sign the plan. David Binder, *Some Progress Reported in Bosnia Talks*, N.Y. TIMES, Jan. 5, 1993, at A3. Even though Izetbegovic accepted the general principle of the plan to divide the country into decentralized, largely autonomous provinces, he refused to accept the plan in its entirety and particularly opposed the boundaries of the provinces as drawn up by Mr. Vance and Lord Owen. Izetbegovic also demanded that Karadzic and Boban agree to make Bosnia a "sovereign, independent and democratic" republic which would remain multi-ethnic. *Id.*

91. See Carol J. Williams, *Shaky Bosnia Pact Ready for Tuesday Signing*, L.A. TIMES, Sept. 18, 1993, at A1. Even though the U.N. attempted to create six "safe havens" in various parts of Bosnia, it did not deploy any of the 7,600 troops it had planned to send to protect these areas. As a result, all six designated havens are now surrounded by Serbian forces. *Id.*

92. Under this plan, the Bosnian Serbs will maintain control over 52% of the territory, and the Croats will control 17% of the land. The remaining 31% will be Muslim territory. Carol J. Williams, *Mediators Scramble To Save Pact Bosnian President Dislikes*, L.A. TIMES, Sept. 20, 1993, at A4.

Serbian and Croatian controlled provinces to Serbia and Croatia.<sup>93</sup> Although the Serbian and the Croatian leaders are willing to sign the current plan, which grants the two forces virtually everything they want, the Muslim leader, Alija Izetbegovic is not willing to accept it. Izetbegovic opposes the plan, which leaves the Muslims with thirty-one percent of the territory,<sup>94</sup> because it rewards the aggressors by granting them territory that they had taken by force.<sup>95</sup> Although Izetbegovic seems to concede that there remains no hope of reestablishing a unified Bosnian State in the land torn by eighteen months of bloodshed, he is demanding more territory and access to the Adriatic Sea.<sup>96</sup> He has also declared that he will not sign the peace agreement unless the United States and other NATO countries will guarantee commitment of troops to enforce the plan.<sup>97</sup> Without acceptance by all three parties, a peace agreement cannot be reached.

If the negotiations fail, then what is the U.N. to do? What alternative measures are left for the Organization to protect international peace? As the United States has been considering since before the negotiation talks began, military intervention may be the only way to end the conflict in Bosnia-Herzegovina.<sup>98</sup> Thus, the fundamental debate on the role of the United Nations' peace-keeping powers is whether military intervention can be justified as a means to end the war itself.

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93. Williams, *supra* note 91.

94. Williams, *supra* note 92.

95. Williams, *supra* note 41. Izetbegovic has described the proposed settlement as "a choice between 'just war' and 'unjust peace.'" *Id.*

96. Williams, *supra* note 92. In response to Izetbegovic's demand for access to the Sea, the Croatian leader replied, "We will never concede any Croatian territory." *Id.*

97. Stanley Meisler, *Bosnian President Renews Plea To Lift Arms Embargo*, L.A. TIMES, Oct. 8, 1993, at A10. Thus far, NATO has offered to send 50,000 peace-keepers to monitor enforcement if all parties sign the agreement. *Id.* There are no details as to their participation, however, due to the disputes among the parties. Williams, *supra* note 41.

The current position of the United States is that it will not send in substantial forces until after "limited advance NATO deployments" determine that the agreement is holding. Doyle McManus, *U.S. Conditions for Bosnia Troops Include Escape Clauses*, L.A. TIMES, Oct. 6, 1993, at A4.

98. John F. Burns, *War's Pendulum: A Special Report; Bosnia 1992: New Puzzles in the Jigsaw of Violence*, N.Y. TIMES, Dec. 31, 1992, at A1. Western governments, especially the United States, have been leaning toward a tougher policy involving military intervention, which would initially take the form of air patrols to enforce the Security Council's flight-ban order passed in October 1992. *Id.*

### 3. Military Intervention

Arguments against the use of military force in order to end human rights violations are derived from the general policy of non-intervention.<sup>99</sup> This position holds that because civil war is a power struggle within a state, the nature of the affair is essentially domestic.<sup>100</sup> Military intervention in domestic affairs violates the sovereignty of the state by depriving the state of its right to self-determination. As important as human rights are to international peace and security, they do not override the fundamental interest in state sovereignty, as long as the violation does not directly affect affairs in other states. Professor O'Connell writes: "[T]he Security Council may take action only to 'maintain international peace and security.' . . . [It] must avoid interfering in internal affairs of member states by altering a state's political arrangements."<sup>101</sup> She thus concludes that the only time the U.N. has a legitimate authority to deploy military force in a state in the midst of a civil war is "after receiving the consent of *all the parties to the conflict*."<sup>102</sup>

A growing number of scholars, however, do not agree with the non-interventionist view. One argument against such a limitation on the U.N.'s peace-keeping powers is that international law is the paramount law governing international relations and thus implicitly preempts any contrary state law.<sup>103</sup> As members of the international community, states have an obligation to abide by the terms of international law.<sup>104</sup> Therefore, "there is no matter which *by its very nature* is essentially within the domestic jurisdiction of states or which cannot be regulated by a general or individual norm of international law. . . . [A] matter is within the domestic jurisdiction of a state *as long as there exists no general or individual rule of international law which governs it*."<sup>105</sup> Thus, human rights matters

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99. See *supra* notes 13-15 and accompanying text.

100. Professor O'Connell asserts that civil wars "have *always* been viewed as . . . internal matter[s]." O'Connell, *supra* note 23, at 911 (emphasis added).

101. *Id.* at 904-05 (footnotes omitted).

102. *Id.* at 909 (emphasis added) (footnote omitted).

103. See *supra* notes 62-66 and accompanying text.

104. Professor Sohn writes:

The Covenants and national constitutions or laws are meant to coexist. . . . Where the Covenants go beyond a domestic law in protecting a particular right, the state concerned has the duty to adopt any additional legislative or other measures that may be necessary to give effect to the right recognized in the Covenants.

Sohn, *supra* note 57, at 21.

105. See GANJI, *supra* note 45, at 134 (emphasis added) (footnotes omitted). As to the notion that protection of human rights is a state's obligation toward its own citizens, Pro-

do not fall within the exclusive jurisdiction of a state, as there are rules of international law that govern the area, and would therefore be subject to international regulation.

Others have found justification for military intervention in the text of U.N. documents and through actual conduct of the U.N.<sup>106</sup> First, as to the Members of the Organization, the General Assembly and the Security Council have held that human rights violations committed by sovereign states are not "matters . . . essentially within the domestic jurisdiction . . .,"<sup>107</sup> as they are violating the Charter provisions protecting human rights to which they are bound.<sup>108</sup> Furthermore, Professor Delbrück argues that Article 2(7) does not prohibit the Security Council from invoking Chapter VII of the Charter when the affair involves acts of aggression on a large scale, for such "military threats to the peace *by their very nature* are not internal matters of the member states. Measures taken against such acts or threats, therefore, could *never* constitute an illegal intervention under international law and would, therefore, not need to be expressly excepted from the nonintervention principle of Article 2(7)."<sup>109</sup> Moreover, Delbrück observes that it is often only a matter of time before an aggression involving gross violation of human rights does become an overt threat to international peace and security: "It is only realistic to assume that massive human rights violations of genocidal dimensions will sooner or later escalate into international military conflicts in a world highly sensitized by such events."<sup>110</sup>

Many have expressed such a concern in regards to the events taking place in Bosnia-Herzegovina.<sup>111</sup> This fear is particularly justified because the main goal of the Serbs in this conflict is to create an ethnically homogeneous Serbian State. Hence, they are un-

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fessor Ganji asserts that the existence of such an obligation does not make an affair exclusively domestic; rather, "a state may be held responsible if it fails to fulfill these obligations which are 'primarily' its concern." *Id.* n.67 (footnotes omitted).

106. See Delbrück, *supra* note 14, at 893.

107. U.N. CHARTER art. 2, ¶ 7, *supra* note 17.

108. Delbrück, *supra* note 14, at 893.

109. *Id.* at 897 (emphasis added) (footnote omitted).

110. *Id.* at 900.

111. See Carol J. Williams, *Regional Outlook; Buried Balkan Tension Rumbling to Surface*, L.A. TIMES, Aug. 3, 1993, World Report, at 1. As early as August 1992, then Secretary of State, Lawrence S. Eagleberger, expressed concern that fighting in Bosnia-Herzegovina could spread southward. David Binder, *U.S. Worries Balkan War Could Spread*, N.Y. TIMES, Aug. 22, 1992, § 1, at 3.

likely to stop the aggression once Bosnia has been "cleansed."<sup>112</sup> In fact, in the Serbian Province of Kosovo, nearly two million ethnic Albanians are being terrorized by "60,000 Serbian police, soldiers and paramilitary gang members."<sup>113</sup> The situation in Kosovo is particularly dangerous because the area contains "a high concentration of troops and weapons."<sup>114</sup> Furthermore, any Serbian attack in Kosovo is likely to draw Albania, Macedonia, and Montenegro into the conflict, leading to a region-wide war.<sup>115</sup>

Moreover, reports indicate that Serb nationalist forces have been "harrassing" the Muslim Slavs and the Hungarian minority in neighboring regions.<sup>116</sup> Eastern Europe is a very volatile area because of its many ethnic divisions, and the U.N.'s failure to halt the conflict in Bosnia-Herzegovina is encouraging other states and ethnic groups to follow suit in attempts to gain independence and control. When such possible dangers are considered, it is indeed difficult to dismiss the civil war in Bosnia-Herzegovina as a mere "domestic concern."

#### IV. EFFECTIVENESS OF THE UNITED NATIONS' PEACE-KEEPING EFFORTS

##### A. *The Current Situation in Bosnia*

The current complex situation in Bosnia-Herzegovina illuminates the ineffectiveness of the U.N.'s peace-keeping powers. In response to the conflict, the U.N. has repeatedly demanded permanent and unconditional cease-fire and peaceful settlement. More than a dozen cease-fire agreements have been signed and immediately ignored.<sup>117</sup> The U.N. has also been delivering humanitarian

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112. George Kenney, a former State Department official in charge of Yugoslavia, believes that the Serbs' territorial gain in Bosnia through aggression will encourage them, as well as other national extremist forces, to engage in similar acts of aggression in the future. He predicts that "there is about a 100% chance of the conflict spreading if we just wash our hands of Bosnia," and that "'ethnic cleansing' will be the way of the future." Williams, *supra* note 111.

113. *Id.* Kosovo is a formerly autonomous province where Albanians comprise 90% of the population. David Binder, *Bush Warns Serbs Not To Widen War*, N.Y. TIMES, Dec. 28, 1992, at A6. Tension between ethnic Serbs and ethnic Albanians there has been increasing since late 1992. *Id.*

114. Binder, *supra* note 113.

115. *Id.*

116. *Id.*

117. "[C]ease-fire . . . came and went like its predecessors . . . . There was not so much as a pause for the 6 p.m. cease-fire deadline." John F. Burns, *Sarajevo Sees Likeness in*

aid to the victims of the aggression in Bosnia-Herzegovina. The delivery of food and medical supplies, however, has been largely unsuccessful.<sup>118</sup> Although the Security Council passed a resolution instituting a flight-ban over parts of Bosnia on October 9, 1992,<sup>119</sup> its reluctance to enforce the ban<sup>120</sup> has been obvious to the Serbs, who have repeatedly violated the mandate with impunity.<sup>121</sup> Finally, peace talks, which are probably the last chance for a peaceful settlement of this conflict, seem to be faltering.<sup>122</sup> Even if all three parties to the conflict signed the agreement, there is no guarantee nor serious likelihood that the parties will observe its terms. Serbia and Croatia have repeatedly reneged on their promises. Moreover, the people of the three ethnic groups, especially the Muslims, who have suffered eighty percent of the total number of casualties in this conflict,<sup>123</sup> will not be satisfied with a peace agreement that merely establishes the status quo. While their leaders sit around a table in Geneva and try to work out an agreement, people continue to kill and beat one another at home.<sup>124</sup> The parties may have been able to resolve their problems through negotiation if it had been initiated much earlier in the conflict, when the physical and psychological wounds of the war were not so deep. It appears, however, that the attempts to negotiate a settlement came too late. Whether the peace talks fail or manage to halt the aggression temporarily, some kind of military intervention seems inevitable.

In the meantime, the people of Bosnia are losing faith in the U.N. Many have given up hope and are now hostile towards the

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*Beirut War*, N.Y. TIMES, June 1, 1992, at A3. See also Frank J. Prial, *U.N. Council Acts on Bosnia Airport*, N.Y. TIMES, June 9, 1992, at A11; Williams, *supra* note 91.

118. See *supra* notes 79-81 and accompanying text.

119. S.C. Res. 781, U.N. Doc. S/RES/781 (1992), reprinted in 31 I.L.M. 1477. See also Paul Lewis, *U.N. Bans Flights in Bosnia but Is Silent on Enforcement*, N.Y. TIMES, Oct. 10, 1992, § 1, at 3.

120. In passing the resolution, the Security Council refused to authorize enforcement of the ban because of its fear that such authorization could exacerbate the problem by turning the Serbs against the U.N. peace-keeping forces stationed there. Lewis, *supra* note 119. Instead, it promised to "consider urgently the further measures necessary to enforce [the] ban" in the event that Serbs violate it. *Id.*

121. Chuck Sudetic, *Serbian Planes Said To Kill 19 After U.N. Ban*, N.Y. TIMES, Oct. 11, 1992, § 1, at 10. Less than 24 hours after the ban went into effect, Serbian air attacks killed at least 19 people and wounded 34. *Id.*

122. See *supra* notes 89-97 and accompanying text.

123. Burns, *supra* note 98.

124. See Binder, *supra* note 89; Williams, *supra* note 91.



U.N.<sup>125</sup> Many are blaming the U.N. for the continued violence in their country.<sup>126</sup> The U.N. Secretary-General was jeered in the streets of Sarajevo on his visit to the Bosnian capital in January 1993.<sup>127</sup> Those who still cling to hopes that the U.N. will come to their aid are protesting its inaction by refusing to accept the aid sent to them. Their protests may seem ungrateful, yet they show how benign this form of intervention really is. What will the United Nations do? What *can* the United Nations do?

*B. Need for a Reassessment of the United Nations' Peace-keeping Powers*

The situation in Bosnia-Herzegovina clearly illustrates the need for the U.N. to reassess and redefine its role as the peace-keeping agent of the world. Additionally, its Member States must rethink their role as Members of the Organization and redevelop their responsibilities as such. The Organization and its Members must come to terms with the fact that the world is no longer bipolar. The issue today is one of *global* world order.

A major flaw in the U.N. Charter, as it is applied today, is that it has not developed a standard that is applicable to situations that are arguably both domestic and international in character. Lack of development of the law in this area is understandable. The Organization was formed at the end of World War II, when the main concern of all nations was to avoid the recurrence of another world war—clearly an international conflict. This may explain why the Charter assumes that conflicts fall neatly into either the “domestic” or the “international” category. The lack of express intent, however, does not necessarily mean that the Charter intended to prohibit intervention in circumstances involving massive violation of human rights, such as the situation in Bosnia-Herzegovina. Plausibly, the drafters did not feel compelled to develop a standard of action because they did not foresee the likelihood of such occurrences. Certainly, the world was not nearly as interdependent in 1945 as it is today.

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125. John F. Burns, *Sarajevans Jeer as U.N. Leader Urges Restraint*, N.Y. TIMES, Jan. 1, 1993, at A1.

126. *Id.* One severely wounded commander said to the Secretary-General upon his visit: “We want you to stop the shelling. We believe you are responsible for the continuation of the suffering.” *Id.*

127. *Id.*

The end of the Cold War has had a tremendous effect on the international political climate and, indeed, has substantially altered the basic concepts underlying the relationships among states in the post-war era. The world is no longer defined in terms of "East versus West," or "Communism versus Democracy." The focus of international relations is no longer the nuclear threat and the arms race between the superpowers. The threat of a World War III between the East and the West has, for the time being, largely subsided. At the same time, the end of the Cold War—and the fall of Communism and the Soviet Union—has caused a massive reorganization of Eastern European states. Bosnia-Herzegovina is only one of many states struggling to establish its sovereignty.

The occurrence of civil war is certainly not a new phenomenon. The Western world's reaction to civil war, however, is considerably different today because there is no longer a fear that the Soviet Union will take over and establish yet another communist state. The fear of communism certainly made many civil wars an immediate international concern to the Western states. Because of the East-West paradigm, there was never a need, until now, to consider whether human rights violation was *in itself* a sufficient threat to international peace to warrant intervention. In fact, there have been many instances where intervention, although in a large sense humanitarian, was justified on other, more self-serving, grounds.<sup>128</sup> While the threat of communism is no longer prevalent, the violation of human rights remains ubiquitous. It is time for the U.N. to reassess its policy on intervention based solely on human rights grounds.<sup>129</sup> "International law must be capable of changing and

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128. See Tom J. Farer, *Human Rights in Law's Empire: The Jurisprudence War*, 85 A.J.I.L. 117, 122 (1991). Examples are the Vietnam War, U.S. intervention in Panama following authoritative denunciations by Organization of American States ("OAS"), and U.S. intervention in Grenada following authoritative denunciations by the U.N. General Assembly. *Id.*

Farer uses these examples to argue for the general consensus, held throughout this period, that intervention based solely on human rights claims is not permitted under the Charter as originally written. See *id.* The author goes on to conclude, however, that "claims of human rights are becoming more clamorous and more effective. The carapace of national sovereignty begins to dissolve. The law, even as traditionally perceived and proved, is changing." *Id.* at 127.

129. Brian Urquhart, former U.N. Under Secretary General for Special Political Affairs, advocates the recognition of a third category of international military operation. He writes:

At the moment, the U.N. has basically two military options. The first is traditional peacekeeping—that is, forces that can only be deployed after a cease-fire is in place, that are accepted by the parties to the conflict and that may only use

adapting to the realities of the international system, just as it has adapted to such changes in the past."<sup>130</sup>

As many scholars observe, there are ample justifications for humanitarian intervention.<sup>131</sup> To be a legitimate part of the international community, there are certain obligations that each state must undertake. A state is bound by international law because compliance with its obligations is essential to world peace and order. This argument is particularly convincing when inviolability of state sovereignty is analogized to self-autonomy of the individual.<sup>132</sup> A citizen of a state is bound by the laws of that state because his or her compliance with the law is necessary to maintain peace and order. If an individual's right to self-autonomy is contingent upon his or her compliance with the laws of the state, it follows that the rights of a state as a sovereign entity are also contingent upon its compliance with international law. And, if a state may legally deprive an individual of self-autonomy for violating the law, international law must also allow for ways to compel a state to comply with its fundamental laws, by force if necessary.

Furthermore, intervention can be justified without frustrating the purpose of Article 2(7). The express exception to the "domestic jurisdiction" rule of Article 2(7)<sup>133</sup> suggests that its drafters acknowledged the existence of situations where an affair has sufficient international consequences to allow for collective intervention under Chapter VII, even though it may also fall within the scope of domestic jurisdiction. This interpretation is consistent with the original purpose behind the non-interventionist policy—to limit permissible interference *by one sovereign state upon another*.<sup>134</sup> Because similar concerns do not exist with regards to in-

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force in self-defense. The second option is a large-scale collective enforcement action like that in Korea in 1950 or, under Chapter VII of the Charter, in Kuwait in 1991—both under the leadership of the United States.

*A third category of international military operation is needed, somewhere between peacekeeping and large-scale enforcement.* It would be intended to put an end to random violence and to provide a reasonable degree of peace and order so that humanitarian relief work could go forward and a conciliation process could commence. . . . [S]uch troops would be required to take, initially at least, certain combat risks in bringing the violence under control.

Bryan Urquhart, *Who Can Stop Civil Wars?*, N.Y. TIMES, Dec. 29, 1991, § 4, at 9 (emphasis added).

130. Brown, *supra* note 55, at 204.

131. See *supra* notes 62-75 and accompanying text.

132. THOMAS, *supra* note 13, at 12.

133. U.N. CHARTER art. 2, ¶ 7, *supra* note 17.

134. See *supra* notes 67-69 and accompanying text.

tervention by the U.N., Article 2(7) should not be read so strictly as to prohibit entirely intervention in circumstances not involving overt acts of international aggression. The fear that the U.N. might abuse such authority is justified; however, there are proper safeguards.<sup>135</sup> The Security Council must follow proper procedures to ensure that the necessity of intervention is objectively determined.<sup>136</sup>

Corollary to the theoretical reassessment of the U.N.'s peace-keeping powers is the need for individual states to rethink their role as Members of the Organization. During the Cold War, many states were willing to spend money, send troops, and fight wars in the name of international peace because civil war, they felt, was a threat to their own security as individual states.<sup>137</sup> Today, however, states do not feel directly threatened by civil war, and Members of the U.N. are therefore less willing to send in troops.<sup>138</sup> Although the reluctance of states to risk the lives of their people and spend their money is understandable,<sup>139</sup> and the U.N. should certainly attempt to resolve a conflict without the use of military force, Member States must also recognize that they have a duty to provide such forces when necessary. Article 43 of the U.N. Charter provides: "All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council . . . forces, assistance and facilities . . . necessary for the purpose of maintaining international peace and security."<sup>140</sup> Member States, particularly those on the Security Council, have veto powers enabling them to avoid invoking Article 43. These nations must put aside their own self-interests, however, and assume their responsibilities as the keepers of a global world order.

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135. See *supra* notes 30-32 and accompanying text.

136. *Id.*

137. See *supra* note 128 and accompanying text.

138. Michael Walzer remarks: "States don't send their soldiers into other States, it seems, only in order to save lives." WALZER, *supra* note 44, at 101.

139. The Clinton Administration recently stated that deep human suffering in Bosnia-Herzegovina "does not justify the extreme costs [of military action]." Doyle McManus, *Military Downplayed in U.S. Role Overseas*, L.A. TIMES, Sept. 22, 1993, at A4. An Austrian Foreign Ministry Official has noted, however, that "[t]he cost of stopping the war does not go away simply because the international community wants it to. . . . The cost only goes up with time, like any bill that is not paid." Williams, *supra* note 111.

140. U.N. CHARTER art. 43, ¶ 1.

## V. CONCLUSION

The non-interventionist policy of international law is sound as a general policy and should be adhered to whenever possible. Moreover, when intervention does become necessary, the U.N. must first seek resolution to the conflict through peaceful means such as negotiation, coupled, perhaps, with humanitarian aid. Military intervention must be a last resort. When all peaceful means fail, however, the Organization must be capable of intervening militarily to end a civil war where innocent people are being killed, raped, and otherwise deprived of their basic rights.<sup>141</sup> Such capabilities are essential to effective international peace-keeping, for the U.N.'s failure to resolve violent conflicts of this nature is fatal to the legitimacy of the Organization. Future aggressors will ignore U.N. mandates with impunity. The situation in Bosnia is indicative of a loss of the U.N.'s legitimacy.<sup>142</sup> The conflict in Bosnia-Herzegovina has escalated beyond imagination. The U.N. must now concede that this matter is not a "domestic" one calling for observance of the non-interventionist policy. The war in Bosnia-Herzegovina is a *regional* conflict directly involving several neighboring states, and is a matter of great *international concern*. Failure to resolve this matter will cause even greater damage to the legitimacy of the Organization.

Furthermore, failure to end conflicts involving massive violations of human rights is contrary to U.N. policies and objectives.<sup>143</sup> One of the primary objectives of the Organization is to protect fundamental rights of individuals.<sup>144</sup> Therefore, the U.N. has a duty to ensure that such rights are in fact protected. Where individual states can work out their own conflict, the U.N. can and should

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141. Professor Broms states that "[p]eaceful activity is to be chosen in the first place and in all those cases where Chapter VI [of the Charter] suffices. The Organization should refrain from resorting to the means mentioned in Chapter VII. These are not resorted to unless the situation makes it absolutely necessary." Broms, *supra* note 87, at 75 (emphasis added). It is the author's position that the conflict in Bosnia and the egregious violations of human rights committed there have escalated to the extent that invoking Chapter VII has become absolutely necessary.

142. Many experts have expressed a concern that the U.N. is losing its legitimacy as a result of its inability to resolve the conflict in the Balkans and elsewhere. See Stanley Meisler, *News Analysis: Heady Prospects for Global Role Turning into a U.N. Migrane*, L.A. TIMES, Aug. 18, 1993, at A8. Brian Urquhart notes: "There is a real danger that the Security Council will become irrelevant. . . . There is a danger that you're pulling all the wheels and pushing out smoke but not doing anything." *Id.*

143. See *supra* notes 46-48 and accompanying text.

144. *Id.*

adhere to its traditional role as a mediator and a peace-keeper. As the conflict in Bosnia-Herzegovina clearly illustrates, however, this will not always be possible. Bryan Urquhart writes:

There is one large argument in favor of [a new type of international force]. The unraveling of national sovereignty seems to be a feature of the post-cold war period. *In more and more situations, only firm and evenhanded intervention from the outside is likely to put an end to self-perpetuating bloodshed and the progressive ruin of once peaceful human societies.*<sup>145</sup>

Bosnia is one such situation, and it will not be the last. Therefore, the U.N. must be prepared to deal effectively with such violations of peace.

First, the Security Council must take it upon itself to initiate negotiations and oversee their process at a much earlier phase in the conflict, as soon as it becomes clear that the conflict is of *international concern*—Controlling the crisis during an earlier phase will increase the possibility of peaceful reconciliation because there would have been less bloodshed; the less damage done, the more willing the parties would be to end the conflict peacefully.

Second, the U.N. must be capable of enforcing its military threats against the aggressors. It must convey to the aggressors a willingness to carry out its threats by having equipment ready and forces on call. A showing of actual readiness to use force, and not mere verbal condemnation, would increase the likelihood that U.N. mandates will be observed.

Finally, the U.N. must be willing to and actually carry out military intervention where its necessity is objectively apparent. This, in turn, means that the Member States must contribute troops, equipment, and funds to enable the Organization to carry out such a mission. It must be emphasized, of course, that such military intervention is a last resort.<sup>146</sup>

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145. Urquhart, *supra* note 129 (emphasis added).

146. Speaking at the annual meeting of the London-based International Institute for Strategic Studies, NATO Secretary-General, Manfred Woerner, noted that there are some "bitter lessons" to be learned from our "passivity" in dealing with the conflict in Bosnia-Herzegovina. He observed:

Political solutions and diplomatic efforts will only work if backed by the necessary military power and the credible resolve to use it against an aggressor.

If you cannot or do not want to help the victim of aggression, enable him to help himself.

Threaten only if you are determined to implement the threat.

It may be true that the U.N. is essentially a peace-keeping, not a war-fighting force.<sup>147</sup> However, how is the U.N. to keep peace, if it is not also authorized to make it? If a state is peaceful, the U.N. may act to maintain that peace; however, once that state of peace is destroyed, the U.N. cannot act because it is not the Organization's job to make peace. The inherent problem with this approach is that it cannot *maintain* peace, if peace does not exist. Mr. Urquhart comments: "the problem is that without a cease-fire there can be no peacekeeping force, but without a peacekeeping force a cease-fire is unlikely."<sup>148</sup> If this is the way the U.N. is to carry out its peace-keeping missions, there will be no international peace nor security of fundamental human rights in the near future.

Yoshiko Inoue\*

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Crisis prevention, like deterrence, will work only if your resolve to prevent conflict is credible and accompanied by firm action.

William Tuohy, *Alliance Has No 'Will' for Military Effort in Bosnia*, NATO Chief Says, L.A. TIMES, Sept. 11, 1993, at A15.

147. See O'Connell, *supra* note 23, at 904-05.

148. Urquhart, *supra* note 129.

\* I dedicate this Comment to my parents, Motomichi and Michiko, for their enduring love and support.