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INTRODUCTION

In the aftermath of the Gulf War Iraqi forces, utilizing tanks and helicopter gunships, extinguished Kurdish insurrections in northern Iraq and Shia Muslim uprisings in southern Iraq. Approximately two million Kurds fled the atrocities caused by the Iraqi suppression. The United Nations Security Council, reacting with unparalleled speed and effectiveness, adopted Resolution 688 on April 5, 1991, which created the legal authority for other nations to intervene in Iraq for humanitarian purposes. As a result of Resolution 688 the United States, Great Britain, and France dispatched armed forces to create refugee areas for displaced Kurds in northern Iraq within which humanitarian aid agen-

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2. See William Safire, Duty to Intervene, N.Y. TIMES, Apr. 15, 1991, at A17 (stating that the Kurds risked starvation and exposure to the cold while fleeing from certain slaughter); The Law Learns from the Kurds, N.Y. TIMES, Apr. 14, 1991, at D18 (characterizing Hussein's repression of his own people as bordering on genocide).


5. RIGHT v. MIGHT, supra note 3, at 145.
cies could safely operate. Not surprisingly, Iraq vehemently opposed these actions as an unwarranted violation of state sovereignty.

The Resolution demanded that Iraq immediately end the repression of the Kurds and Shia Muslims and insisted that Iraq permit access by international humanitarian organizations in order to assist those in need. In addition, the Resolution commanded that Iraq honor its hu-

6. See Int’l Law Perspective, supra note 1, at 68, 96 (explaining that after the United States initially warned Iraq regarding military movements in the Kurdish areas north of the 36th parallel, the United States and coalition forces entered and created “safe-havens” for the Kurds); Elaine Sciolino, After the War; U.S. Troops to Build Camps in North Iraq to Aid Kurds; Bush Sees ‘Temporary’ Role, N.Y. TIMES, Apr. 16, 1991, at A1 (quoting President Bush as stating that temporary humanitarian support stations would provide food, clothing and medicine to the Kurds).


Adopted by the Security Council at its 2982nd Meeting on 5 April 1991

The Security Council

Mindful of its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security,

Recalling Article 2, paragraph 7 of the Charter of the United Nations,

Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas which led to a massive flow of refugees towards and across international frontiers and to cross border incursions, which threaten international peace and security in the region,

Deeply disturbed by the magnitude of the human suffering involved, . . .

Reaffirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Iraq and of all States in the area, . . .

1. Condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region;

2. Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression and expresses the hope in the same context that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected;

3. Insists that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations;

4. Requests the Secretary-General to pursue his humanitarian efforts in Iraq and to report forthwith, if appropriate on the basis of a further mission to the region, on the plight of the Iraqi civilian population, and in particular the Kurdish population, suffering from the repression in all its forms inflicted by the Iraqi authorities;

5. Requests further the Secretary-General to use all the resources at his disposal, including those of the relevant United Nations agencies to address urgently the critical needs of the refugees and displaced Iraqi population;

6. Appeals to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts;
The Security Council appealed to all member states and humanitarian organizations to participate in the humanitarian relief operations. More importantly, the Security Council condemned Iraq's repression of its civilian population and characterized the consequences of the Kurdish repression as creating a threat to international peace and security.

This unprecedented Resolution has brought the issue of humanitarian intervention to the forefront of international concern and legal discourse. Never before have armed troops protected the actions of humanitarian aid agencies. Just a few weeks after the adoption of Resolution 688 former United Nations Secretary-General Javier Pérez de Cuéllar remarked on the perpetual conflict between sovereignty and human rights. In questioning the traditionally sacrosanct concept of sovereignty, he underscored the marked shift in world public opinion towards the belief that support of basic human rights should prevail over boundaries arbitrarily drawn upon a map. Thus, an assessment of whether Resolution 688 establishes a mandate for future intervention in situations involving egregious human rights violations requires a fundamental re-evaluation of traditional notions regarding sovereignty.

7. Demands that Iraq cooperate with the Secretary-General to these ends; 8. Decides to remain seized of the matter.

12. See David J. Scheffer, How the United Nations Balances Concerns for Sovereignty and Suffering, Address at the Annual Meeting of the Conference on Washington Representatives on the United Nations 6 (Aug. 6, 1991) [hereinafter U.N.A.] (transcript available at The American University Journal of International Law and Policy) (concluding that Resolution 688 created a significant precedent because until this time aid agencies were required to obtain the consent of the host government before they could operate within a country's borders, whereas the Resolution deprived Iraq of the customary right to deny the efforts of humanitarian aid organizations). See also id. at 6-7 (noting that in practical terms, negotiation with Iraq was necessary in order to settle the logistics of the aid operations).
13. See infra notes 20-21 and accompanying text (defining and explaining humanitarian intervention).
14. See U.N.A., supra note 12, at 9 (suggesting that relief agencies may now enjoy the right to protection).
15. U.N.A., supra note 12, at 4-5. Moreover, the leaders of the largest industrial nations at the July 1991 G-7 summit in London pledged themselves to strengthening the United Nations system in general and specifically, its ability to uphold human rights. Id. at 5.
nonintervention and domestic jurisdiction, especially in view of the increasing internationalization of human rights standards. This Comment demonstrates that principles relating to state sovereignty and domestic jurisdiction have lost their privileged status, particularly when they conflict with the protection of fundamental human rights. The Security Council's swift and successful mobilization in reaction to the mistreatment of the Kurds reflects this trend. Part I of this Comment discusses traditional concepts regarding the customary international law doctrine of humanitarian intervention, both unilateral and multilateral. Part II addresses the argument for unilateral humanitarian intervention in the context of United Nations Charter (Charter) prohibitions on the use of force. Part III considers Security Council powers under Chapter VII of the Charter and assesses Security Council membership and voting procedures vis-a-vis their effectiveness and adherence to the Charter's goals. Part IV analyzes modern notions of sovereignty, domestic jurisdiction, and what constitutes a threat to the peace. In addition, Part IV assesses the ability of the United Nations to intervene for humanitarian reasons as evinced by the Security Council's response to the Kurdish tragedy. Part V recommends a fundamental reassessment of the configuration of the Security Council including issues of membership and voting rights in order to revitalize the United Nations collective security system.

I. HUMANITARIAN INTERVENTION DEFINED AND THE CUSTOMARY INTERNATIONAL LAW DOCTRINE

While varying degrees of intervention exist ranging from diplomatic protests to economic sanctions, to the use of force, this Comment focuses solely on intervention, both multilateral and unilateral, involv-

18. LASSA FRANCIS LAWRENCE OPPENHEIM, INTERNATIONAL LAW; A TREATISE 305 (Hersch Lauterpacht ed., 8th ed. 1955) (defining intervention as the "dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things").
19. See Jean-Pierre L. Fonteyne, The Customary International Law Doctrine of Humanitarian Interventions: Its Current Validity Under the U.N. Charter, 17 COMP. INT'L L. Q. 27, 28 n.2 (1980) [hereinafter Customary Int'l Law Doctrine] (noting the distinction between multilateral and unilateral humanitarian intervention). Multilateral intervention refers to action taken by or authorized under an appropriate international body, such as the United Nations or a regional organization such as the Organization of American States. Id. Unilateral intervention refers to the use of force either by a collective group of states or a single state without the authorization of a relevant international organization. Id.
HUMANITARIAN INTERVENTION

ing the use of force for humanitarian reasons. Humanitarian intervention refers to the "use of armed force by one state against another to protect the nationals of the latter from acts or omissions of their own government which shock the conscience of mankind."20 The doctrine recognizes the right of states to use force in another state's internal activities when the latter violates the laws of humanity.21 A substantial number of contemporary international legal scholars regard humanitarian intervention as an established canon of customary international law.22 Before the establishment of the United Nations, legal scholars and state practice alike substantiated the customary international law doctrine of unilateral humanitarian intervention as a permissible justification for intervention.23 Some contend that the doctrine is so clearly accepted under customary international law that there is no question as to its existence;24 only its boundaries are open to discussion.25 Many

20. Farrokh Jhabvala, Unilateral Humanitarian Intervention and International Law, 21 IND. J. INT'L L. 208, 212 (1981). See also OPPENHEIM, supra note 18, at 312-13 (maintaining that expert opinion and state practice support the view that states do not enjoy unlimited license on how they treat their subjects and that humanitarian intervention is legally valid when a state persecutes its nationals to such a degree as to violate fundamental human rights); FERNANDO R. TÉSON, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 5 (1988) (adding an additional component to the definition of humanitarian intervention by describing it as proportional state assistance to citizens in another nation whose basic human rights are violated and who are themselves willing to rise up against their government).


22. See Myres S. McDougal & W. Michael Reisman, Response by Professors McDougal and Reisman, 3 INT'L LAW. 438, 438 (1969) [hereinafter Response] (observing that humanitarian intervention is a well-established principle of customary international law); INT'L LAW Perspective, supra note 1, at 77 (affirming that the doctrine of humanitarian intervention gained broad approval as a constituent element of customary international law); Richard B. Lillich, Humanitarian Intervention: A Reply to Dr. Brownlie and a Plea for Constructive Alternatives, in LAW & CIVIL WAR IN THE MODERN WORLD 229, 232 (John Norton Moore ed., 1974) [hereinafter Reply] (stating that jurists such as Grotius, Vattel, Wheaton, and others have embraced the doctrine). But cf. Franck & Rodley, supra note 21, at 299 (concluding that neither the United Nations nor state practice support a general right of forceful humanitarian intervention).

23. See TÉSON, supra note 20, at 5 (maintaining that both international treaties and state practice demonstrate humanitarian intervention's validity under international law).

24. See Michael J. Bazyler, Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia, 23 STAN. J. INT'L L. 547,
writers justify the doctrine through analogy, comparing humanitarian
intervention to traditional custom where a country has an absolute
right to intervene in a foreign state when a national's property or life
are endangered.26 The analogy gained force as a result of the paradox
that while customary international law allowed intervention for the pro-
tection of one's own nationals, intervention to rescue large numbers of
people brutally massacred by their own government was not considered
to be legitimate.27 Despite these arguments, other observers assert that
international law does not sanction unilateral humanitarian
intervention.28

Although clearly preferring collective action,29 numerous writers
from the mid-19th century to the present have supported the lawfulness
of unilateral humanitarian intervention.30 According to this view, hu-

582-92 (1987) (recalling such classic cases of humanitarian intervention as the French
intervention in Syria in 1860, the multinational rescue operation in the Congo in 1964,
the Indian intervention in East Pakistan in 1971, and the Tanzanian intervention in
Uganda in 1979). See generally id. (discussing cases); Tesson, supra note 20, at 155-88
(same); Franck & Rodley, supra note 21, at 277-95 (same).
26. See Richard B. Lillich, Forcible Self-Help By States To Protect Human Rights, 53 Iowa L. Rev. 325, 327 (1967) [hereinafter Self-Help] (observing that interna-
tional law offered protection for the human rights of individuals when abroad).
27. U.N.A., supra note 12, at 3. See also Hersch Lauterpacht, International Law And Human Rights 121 (1950) (underscoring the paradox that aliens have
more protection under international law than a citizen residing in his own state). It is
important to note the distinction between humanitarian intervention and the rescue of
nationals, the latter of which rests on principles that are inapplicable to interventions
on behalf of human rights. See Tesson, supra note 20, at 5 (doubting whether rescue of
nationals is in fact humanitarian because it can be subsumed under the rubric of self-
defense principles or the rules regarding the diplomatic protection of nationals);
Jhabvala, supra note 20, at 210-12 (noting the distinction between protection of nation-
als and humanitarian intervention). The Israeli rescue at Entebbe, Uganda is often
cited as a typical example of the protection of nationals. U.N.A., supra note 12, at 3.
28. See Humanitarian Intervention and the United Nations 64 (Richard B.
Lillich ed., 1973) [hereinafter Humanitarian Intervention] (statement of Professor
Franck) (stating that international law does not support unilateral humanitarian inter-
vention; the boundaries are unclear at best); see also infra note 32 and accompanying
text (discussing the arguments of opponents of humanitarian intervention).
29. See Self-Help, supra note 26, at 346 (characterizing individual determinations
of when to use forceful measures as less reliable than a collective determination by an
international organization representing the interests of many nations).
30. Customary Int'l Law Doctrine, supra note 19, at 42. See id. at 43 (quoting Johann Kaspar Bluntschli, Le Droit International Codifié 272, art. 478) (Lardy transl.
1874) (stating that intervention, principally applied to civil strife situations, is permis-
sible to uphold basic human rights when they are violated); Tesson, supra note 20, at 129
(citing scholars who uphold the legal right of humanitarian intervention as including
Stowell, Rougier, Reisman, McDougal, Lillich, D'Amato, Moore, Sornarajah,
manitarian concerns trump the commands of sovereignty and independence. Other legal scholars, however, discarded the notion of humanitarian intervention, finding the doctrine illegal in its violation of the sovereign independence of states. The advent of the United Nations, moreover, reinforced the principle of sovereignty and emphasized multilateral, rather than unilateral, action. At this juncture, therefore, it is useful to examine the development of the doctrine of humanitarian intervention as it was challenged by the formation of the United Nations Charter and the codification of the customary laws prohibiting the use of force.

II. UNILATERAL HUMANITARIAN INTERVENTION AND ARTICLE 2(4)'S PROHIBITION ON THE USE OF FORCE BY STATES

According to article 2(4) of the Charter, all members pledge to abstain from the threat or use of force in two situations: first, when force is used to impact upon the territorial integrity or political independence of a state; and second, when it is used in any other aspect contrary to the goals of the United Nations. The only exceptions en-

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Fonteyne, and Bazyler); id. at 245 (concluding that humanitarian intervention is compatible with the United Nations Charter and is an acknowledged exception to the ban on the use of force). But see Ian Brownlie, Humanitarian Intervention, in LAW & CIVIL WAR IN THE MODERN WORLD 217, 218 (John Norton Moore ed., 1974) [hereinafter Brownlie] (contending that few modern commentators, if knowledgeable about current state practice and legal analysis on the use of force, would embrace forcible humanitarian intervention).

31. See Customary Int'l Law Doctrine, supra note 19, at 43 (quoting Lettre de M. Arntz, in Rolin-Jaquemyns, Note sur la Théorie du Droit d'Intervention, 8 REVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE 675 (1876)) (recognizing the absolute right of intervention against all states irrespective of sovereign rights); see also Bazyler, supra note 24, at 572 (quoting British legal scholar M. Bernard, On the Principle of Non-Intervention 33-34 (1860)) (declaring that while positive law forbade intervention, situations involving gross human rights violations mandated that positive law be ignored).

32. See Franck & Rodley, supra note 21, at 302 (citing Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4 (Merits) (Judgment of Apr. 9)) (noting that the International Court of Justice declared that no legal right of forceful intervention exists regardless of the shortcomings of international organizations); Brownlie, supra note 30, at 226 (proposing that unilateral humanitarian intervention constitutes unlawful activity); Jhabvala, supra note 20, at 230 (finding that international law does not sanction unilateral humanitarian intervention); Jack Donnelly, Human Rights, Humanitarian Intervention and American Foreign Policy, 37 J. INT'L AFFAIRS 311, 319 (1984) (stating that international law does not permit unilateral humanitarian intervention); Franck & Rodley, supra note 21, at 305 (concluding that a practical definition of humanitarian intervention would be hard to establish and nearly impossible to apply strictly).


34. Id. The article states that "[t]he article states that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political
compassed within the Charter to the prohibition on the use of force are self-defense and collective security actions taken pursuant to Chapter VII of the Charter.

Two divergent views of article 2(4) and its impact upon the doctrine of humanitarian intervention developed among international legal scholars. One school of thought interprets article 2(4) as absolute while the second views it as a conditional, qualified ban on the use of force. In regard to the latter interpretation, supporters of humanitarian intervention emphasize that article 2(4) does not prohibit the use of force per se, but only for certain unlawful purposes. Because the doctrine contemplates neither territorial change nor a challenge to the political independence of the state involved, and conforms with fundamental norms of the Charter, article 2(4) does not preclude humanitarian intervention.

The closing words of article 2(4), prohibiting the use of force in any aspect contrary to the purposes of the United Nations Charter, when read in conjunction with the human rights provisions throughout the Charter, lend further credence to this proposi-
tion—they are regarded as supporting a contextual reading of the proscription on the use of force, balancing the latter against the protection of human rights. Thus, if force were used for purposes consistent with the spirit of the United Nations, such as intervention to uphold human rights, no conflict would exist.

On the other hand, strict adherents to the prohibition on the use of force hold a contrary view of the phrases regarding territorial integrity and political independence, contending that they were intentionally included due to smaller nations’ concerns over the sanctity of their territory and political independence. Similarly, strict constructionists read

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Charter art. 1, ¶ 3. Article 13(1)(b) lists the realization of human rights as one of the purposes for which the General Assembly may initiate studies and make recommendations. Id. art. 13, ¶ (1)(b). Article 55(c) states that the United Nations should promote universal regard for and observance of human rights without discrimination as to language, race, sex, or religion. Id. art. 55, ¶ c. Article 62(2) empowers the Economic and Social Council to make recommendations to encourage respect for and attention to human rights standards. Id. art. 62, ¶ 2. Article 68 allows the Economic and Social Council to create commissions to promote human rights. Id. art. 68, ¶ 2.

43. See W.D. Verwey, Humanitarian Intervention under International Law, 32 NETH. INT'L L. REV. 357, 378 (1985) (adding that the preamble to the Charter makes article 2(4)’s prohibitions on the use of armed force qualified due to its exception for force in the collective interest).

44. Jean-Pierre L. Fonteyne, Forcible Self-Help by States to Protect Human Rights: Recent Views from the United Nations, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 197, 200-201 (Richard B. Lillich ed., 1973) [hereinafter Forcible Self-Help]. See also Reisman & McDougal, supra note 17, at 177 (affirming that humanitarian intervention, far from inconsistent with the purposes of the United Nations, conforms to the most fundamental principles of the Charter and constitutes a vindication of international law as well as effective enforcement); Sornarajah, supra note 38, at 60 (finding that the protection of fundamental human rights constitutes a purpose of the United Nations Charter which many United Nations organizations have pursued vigorously and that an unconditional ban on the use of force excepting self-defense or Chapter VII enforcement would be tantamount to disregarding basic human rights); TÉSON, supra note 20, at 153 (concluding that the United Nations’ purpose of supporting and encouraging human rights as stated in article 1(3) and indirectly in article 2(4)’s prohibition on the use of force is superior to the mandates of state sovereignty).

45. See TÉSON, supra note 20, at 153 (finding that force utilized in the enforcement of basic human rights is not incongruous with the purposes of the United Nations as set forth in the Charter); id. at 131 (stating that because the promotion of human rights is a principal purpose of the United Nations, coercive measures to uphold human rights furthers that purpose). See also id. at 134 (noting that a suggestion to exclude the qualifying phrase in article 2(4), which refers to the purposes of the United Nations, was rejected when the Charter was being developed). But see id. at 136 (explaining that the travaux préparatoires of the United Nations Charter can be construed both ways on this issue and no single interpretation is determinative).

46. See Jhabvala, supra note 20, at 215 (finding that the preparatory materials to the United Nations Charter, which under traditional rules of treaty interpretation may be analyzed when the meaning of the language in a document is not clear, show that the impetus for the phrase referring to the use of force directed against the territorial integrity or political independence of a state, resulted from smaller states’ concerns regarding protection from interference by larger powers); Brownlie, supra note 30, at
article 2(4)'s concluding phrase regarding the purposes of the United Nations as explicitly prohibiting the use of force and ruling out any escape clauses.47

Despite these prohibitions on the use of force resulting from the establishment of the United Nations, various international legal scholars continue to recognize the right of states to intervene, absent United Nations authority, when gross violations of human rights occur.48 Publicists customarily employ three distinct arguments when justifying unilateral humanitarian intervention:49 (1) a literal reading of article 2(4); (2) a focus on the failure of the United Nations collective security ap-

47. See Customary Int'l Law Doctrine, supra note 19, at 63 (quoting Wehberg, L'Interdiction du Recours a la Force, 78 Recueil des Cours d'AcaDeMie de Droit International 7, 70 (1951)) (stating that the phrase prohibiting the use of force in any aspect contrary to the purposes in the United Nations Charter was purposely intended to leave no loopholes); see also Roger S. Clark, Humanitarian Intervention: Help To Your Friends and State Practice, 13 GA. J. Int'l & Comp. L. 211, 211 (1983) (finding that the preparatory work of the Charter disproves any theory about such loopholes).

48. See Bazyler, supra note 24, at 576 & n.130 (explaining that Téson, Fonteyne, Lillich, Reisman and McDougal support the unilateral doctrine of humanitarian intervention).

49. Customary Int'l Law Doctrine, supra note 19, at 72. Nearly all legal scholars who have written on the topic of humanitarian intervention have formulated a set of criteria by which to determine whether a particular situation justifies intervention. See Reisman & McDougal, supra note 17, at 187 (arguing that the post-United Nations conditions for humanitarian intervention include a particular limited purpose, a restricted time period for the project, a circumscribed use of forcible means, and the absence of any other options); Reply, supra note 22, at 248 (stating that the tests by which such an intervention should be assessed include the urgency and extent of the human rights violations, the presence of an invitation by proper officials, the amount of coercion utilized, and the relative impartiality of the intervening state); Bazyler, supra note 24, at 598-607 (suggesting that five factors be considered: large-scale atrocities, overriding humanitarian motive, preference for collective action, limited intervention, and exhaustion of peaceful remedies); Customary Int'l Law Doctrine, supra note 19, at 76-83 (explaining that the criteria incorporate the characteristics of the situation, the motivation of the intervening state, the proportionality of the intervention, the exhaustion of peaceful alternatives, the importance of collective action, and the immediate reporting to an international organization); U.N.A., supra note 12, at 11 (stating that criteria for armed humanitarian intervention embraces, among other requirements, immobilization of the Security Council, exhaustion of peaceful remedies, and the diversity of the intervention force); Sornarajah, supra note 38, at 73 (announcing that the doctrine as applied to the Indian intervention in Bangladesh displays sensible rules which limit the exercise of humanitarian intervention); Verwey, supra note 43, at 418 (suggesting that the intervenors submit proof to the United Nations of compliance with seven conditions of legality for humanitarian intervention). To summarize, an intervention, in order to be truly humanitarian, should satisfy the following requirements:
1. The human rights violations must be immediate. Self-Help, supra note 26, at 347.
2. The force must be proportionate to the danger. Id. at 349.
3. The force must be limited to ongoing or imminent large-scale deprivations of the most fundamental human rights. See Bazyler, supra note 24, at 598 (stating that the
paratus; and (3) an emphasis on human rights as one of the primary purposes of the United Nations.\footnote{50} The first proposition relates to the previous discussion of article 2(4) and the United Nations prohibitions on the use of force.\footnote{51}

The second consideration focuses on the ineffectiveness of United Nations enforcement measures.\footnote{52} Multilateral humanitarian intervention under the auspices of the United Nations is clearly preferable to unilateral intervention, whether by one state or a group of states.\footnote{53} International participation in the decision to intervene reduces the probability that the action will be motivated by self-interest.\footnote{54} However, because no enforcement measures were established under the United Nations collective security system to force compliance with the duty to support and promote human rights,\footnote{55} proponents assert that states revert to a pre-Charter customary international legal right of humanitarian intervention.\footnote{56} Inasmuch as United Nations member-states

government must kill, threaten to kill, or act so recklessly as to result in the death of a substantial number of its own people).

4. The intervenor must be relatively disinterested, but other motives will not invalidate the intervention if humanitarian concerns constitute the overriding motive. \textit{Self-Help, supra} note 26, at 350. \textit{See also} Bazyle, \textit{supra} note 24, at 601 (admonishing the intervening power to avoid territorial, political, or economic gain as much as possible).

5. All peaceful means must be exhausted before intervening with force. However, under extreme circumstances where other options would be futile, this requirement may be waived. \textit{Id.} at 606-07.

50. \textit{See Customary Int'l Law Doctrine, supra} note 19, at 72 (indicating that the combination of these three arguments constitutes the most common justification for intervention).

51. \textit{See supra} notes 39-41 and accompanying text (explaining that as long as the force is not directed at the territorial integrity or political independence of a state, it does not fall within article 2(4)'s ban).

52. \textit{See Customary Int'l Law Doctrine, supra} note 19, at 58 (explaining that the United Nations did not act to quell the violence in Biafra, Indonesia, the Sudan, Burundi, Bangladesh, and Uganda, for example).

53. \textit{See Customary Int'l Law Doctrine, supra} note 19, at 83 (supporting collective operations as preferable to individual action); \textit{Self-Help, supra} note 26, at 345 n.116 (stating that international participation is favored over self-help); James A.R. Nafziger, \textit{Self-Determination and Humanitarian Intervention in a Community of Power}, 20 DENV. J. INT'L L. & POL'Y 9, 26 (1991) (indicating that the majority of scholars favor multilateral over unilateral intervention).

54. \textit{Intervention, supra} note 25, at 210.


56. \textit{Self-Help, supra} note 26, at 344; Tõson, \textit{supra} note 20, at 137-38, \textit{Customary Int'l Law Doctrine, supra} note 19, at 75. \textit{See also} Jhabvala, \textit{supra} note 20, at 215 (noting and critiquing the argument that article 2(4) prohibits United Nations mem-
demanded the establishment of enforcement provisions in exchange for surrendering their customary right to use force, the failure of the United Nations collective security apparatus relieves them of their duty of restraint under the Charter. Judge Jessup, a noted international legal commentator and supporter of collective over unilateral intervention, concluded that the incapacity of an international organization to quickly mobilize in order to protect the victims of human rights transgressions serves as the only conceivable argument against substitution of Security Council collective action in place of unilateral action by single states.

According to the third argument for humanitarian intervention, proponents contend that the very principles and purposes upon which the United Nations was founded, particularly the support and promotion of human rights throughout the world, justify the defense of humanitarian intervention. Some supporters of the doctrine point to the fact that while article 2(4) is an important provision of the Charter, it is a single principle competing with other significant Charter goals, such as the advancement of human rights. The preamble and first article of the Charter make clear that the framers intended to link international peace and security with fundamental human rights. The Charter's preamble expresses the determination of the members to uphold essential human rights and to make certain that armed force is only utilized for the collective good.

Through this reasoning, the use of force in support of the common interest, such as for humanitarian purposes,
may be lawful.\(^6\) Other provisions in the Charter support this conclusion. Article 1(3) states that one of the purposes of the United Nations is the achievement of international cooperation in furthering respect for human rights.\(^6\) Furthermore, article 55 reaffirms that the United Nations shall promote comprehensive support and observance of fundamental human rights,\(^6\) and article 56\(^6\) contains a pledge by member states to act individually and collectively with the United Nations to accomplish the purposes set out in article 55.\(^7\) Against this setting, the establishment of the Charter neither extinguished nor disabled the customary international legal right of humanitarian intervention.\(^8\)

Notwithstanding these three arguments in support of humanitarian intervention, one of the recurring criticisms of unilateral intervention is the concern that if international law sanctioned the right to intervene, it would remain the tool of a handful of powerful states.\(^9\) Regardless of whether humanitarian intervention is used as a pretext,\(^7\) intervention by powerful nations will inevitably occur; the operative difference is that without the doctrine of humanitarian intervention states will merely cloak their self-interested actions in other politically-correct just-

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63. *See Reisman & McDougal*, *supra* note 17, at 172 (stating that the use of force to protect human rights is as valid as other types of self-help, as demonstrated by the numerous references to the common interest in human rights in the preamble).


65. U.N. *Charter* art. 55, ¶ c.

66. U.N. *Charter* art. 56.

67. *Id.* Article 56 states that "[a]ll members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." *Id.* *See* Oppenheim, *supra* note 18, at 739-40 (postulating that it is inconceivable that members of the United Nations have no obligation to uphold and observe human rights and fundamental freedoms, one of the main purposes of the organization, particularly in light of the dictates of article 56); Thomas Burgenthal, *Domestic Jurisdiction, Intervention, and Human Rights, in Human Rights and U.S. Foreign Policy* 111, 115 (Peter G. Brown & Douglas MacLean eds., 1979) (concluding that member states have a legal duty to act individually and collectively in conjunction with the United Nations to encourage fundamental human rights).

68. *See Reisman & McDougal*, *supra* note 17, at 171 (maintaining that the Charter bolstered and expanded the boundaries of humanitarian intervention).

69. *See Franck & Rodley*, *supra* note 21, at 290 (finding that powerful states would use the doctrine as an excuse for invading weaker nations). *But cf.* *Self-Help,* *supra* note 26, at 347 (emphasizing that intervention does not occur in a vacuum but is subject to evaluation and criticism by the community of nations).

70. *See* Nafziger, *supra* note 53, at 25 (noting that humanitarian intervention can easily disguise the unlawful use of force); Lee H. Hamilton, *When It's Our Duty to Intervene; In Cases Like Bosnia, the U.N. Must Alter Its Presumption Against Warfare*, *Wash. Post*, Aug. 9, 1992, at C2 (observing that several nations have expressed concern that the weakening of the proscriptions against intervention will cause increased interference, obscured as humanitarian intervention).
In addition, while some scholars doubt the value of precedent of previous interventions justified by humanitarian concerns, the United Nations has never clearly condemned any of the applications of the doctrine. Moreover, even opponents of the doctrine concede that in certain circumstances humanitarian intervention in outrageous cases of human rights violations could be justified as an exception to the broad prohibitions on the use of force.

Thus, the disagreement among legal scholars today is between those who embrace a codified, affirmative right to humanitarian intervention and those who uphold the absolute prohibition on the use of force but condone humanitarian intervention only as an exceptional remedy for extreme cases of violence and deprivation. It is unclear whether there would be a significant difference between a positive codified right subject to well-defined criteria and a clearly conscripted exception to the prohibition on the use of force. While the use of force should not be brazenly invoked against the sovereign independence of states, neither should states passively observe the massacre of thousands or


72. See Franck & Rodley, supra note 21, at 282 & n.32 (stating that Brownlie cites the 1860 French intervention in Syria as the only genuine case of humanitarian intervention, and contending further that even the Syrian example does not satisfy close scrutiny).

73. Customary Int'l Law Doctrine, supra note 19, at 65 n.185.

74. See Franck & Rodley, supra note 21, at 304 (conceding that humanitarian intervention could comprise a suitable response to some situations, but noting that this choice is a moral, rather than a legal, issue); Brownlie, supra note 30, at 227 (supporting an exception with carefully scripted requirements to the prohibitions on the use of force where the operation's results are not disproportionate to the original objective).

75. See Customary Int'l Law Doctrine, supra note 19, at 68 (advocating a clearly delineated rule which would restrict intervention to specified cases).

76. See Brownlie, supra note 30, at 227 (advocating an exception rather than an affirmative legal right to intervene); HUMANITARIAN INTERVENTION, supra note 28, at 64 (statement of Professor Franck) (stating that maintaining the doctrine as an unwritten exception to the Charter prohibition on the use of force is better than spelling out criteria); Customary Int'l Law Doctrine, supra note 19, at 41 (asserting that while many writers refuse to allow the doctrine to attain the status of a formal legal justification they acknowledge that intervention, technically a breach of the law, could be laudable in certain cases).

77. Customary Int'l Law Doctrine, supra note 19, at 68.
millions of innocent people. Nevertheless, multilateral action under United Nations authorization is overwhelmingly preferable to unilateral intervention even if the situation ostensibly meets specified criteria for unilateral action. The remainder of this Comment focuses on strengthening the prospects for multilateral humanitarian intervention within the confines and restrictions of the United Nations Charter.

III. THE SECURITY COUNCIL: CHAPTER VII ENFORCEMENT PROVISIONS, MEMBERSHIP, AND THE VETO

While article 2(4) precludes the threat or use of force by states directed at the territorial integrity or political independence of other states, article 2(7) regulates interference by the United Nations in a state’s domestic affairs. Article 2(7) prohibits the United Nations from interfering in the domestic jurisdiction of any state except when the Security Council undertakes Chapter VII enforcement measures. This latter part of article 2(7) exempts from the domestic jurisdiction limitation situations where the Security Council deems that a

78. See Self-Help, supra note 26, at 344 (concluding that to demand that states idly stand by while innocent people are brutalized simply in order to comply with the ban against the use of force would elevate blackletter law at the cost of far more significant principles).
79. See Humanitarian Intervention, supra note 28, at 88 (statement of Professor Weston) (stating that the more multilateral characteristics an operation has, the less politicized it becomes).
80. See Humanitarian Intervention, supra note 28, at 107 (statement of Professor Frey-Wouters) (maintaining that while unilateral intervention by force may occur in certain rare and genocidal cases, international law need not embrace or further unilateral action).
83. Id.; Customary Int’l Law Doctrine, supra note 19, at 59.
86. U.N. Charter art. 2, ¶ 7. Article 2(7) 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 . . . but this principle shall not prejudice the application of enforcement measures under Chapter VII.” Id. See infra notes 88-96 and accompanying text (describing Chapter VII enforcement provisions).
state's human rights violations constitute a threat to the peace under Chapter VII enforcement powers. The Charter grants the Security Council primary responsibility for the maintenance of international peace and security. Chapter VII enforcement powers establish that the Security Council has the authority to make the threshold determination of whether a threat to the peace, breach of the peace, or act of aggression exists. The Security Council must then take appropriate action with regard to articles 41 and 42. Article 41 authorizes the use of measures short of armed force including the disruption of diplomatic relations and the imposition of economic sanctions. Article 41 also gives the Security Council the power to demand that United Nations members effectuate such actions. Article 42 enables the Security Council to use armed force to preserve or restore international peace and security if the measures enumerated in article 41 are or would be ineffective.

Whereas the General Assembly possesses only the power to recommend, the Security Council is empowered to make binding decisions under Chapter VII. The finding of a threat to the peace, breach of

87. U.N. Charter art. 2, ¶ 7. See Myers, supra note 55, at 69 n.345 (explaining that under article 2(7), the United Nations may apply enforcement measures against a state irrespective of whether the issue triggering the need for such measures is encompassed within the state's domestic jurisdiction); Paul C. Szasz, Role of the United Nations in Internal Conflicts, 13 GA. J. INT'L & COMP. L. 345, 351 (1983) (noting that article 2(7)'s prohibition on United Nations interference in the domestic jurisdiction of states, when linked to internal conflicts, is based upon nebulous notions of what constitutes a threat to peace and security, the degree of human rights deprivations involved, and the dimensions of the conflict).


89. U.N. Charter art. 39. See generally Sydney D. Bailey, The Procedure of the UN Security Council 295 (2d. ed. 1988) (observing that there is no definition in the United Nations Charter of what is considered a threat to the peace, breach of the peace, or act of aggression); Goodrich, supra note 64, at 295.


91. U.N. Charter art. 41.

92. Id.

93. U.N. Charter art. 42. Cf. Self-Help, supra note 26, at 338 (finding that under article 2(7), the United Nations possesses the legal right to utilize force when it determines that the state violating human rights standards actually causes a threat to the peace).

94. See Bailey, supra note 89, at 241-42 (stating that Security Council action taken under Chapter VII is binding on all members); Christopher J. Sabec, The Security Council Comes of Age: An Analysis of the International Legal Response to the Iraqi Invasion of Kuwait, 21 GA. J. INT'L & COMP. L. 63, 83 (1991) (concluding that Security Council decisions under Chapter VII are binding); U.N. Charter art. 25 (requiring that member states abide by and execute decisions of the Security Council in accordance with the Charter); Richard Hiscoccks, The Security Council: A Study in Adolescence 291 (1973) (contrasting the General Assembly's power to recommend with the Security Council's power to make binding decisions).
the peace, or act of aggression is a precondition to the exercise of Chapter VII enforcement powers.\textsuperscript{65} Consequently, when human rights violations are found to constitute a threat to the peace, the Security Council has jurisdiction and is entrusted with the power to take action.\textsuperscript{66} One significant obstacle is that unanimity of the five permanent members is required to identify a threat to the peace and one veto can prevent such a determination.\textsuperscript{67} Because the composition of the Security Council and the existence of the veto power are inherently related to the Council's effectiveness in carrying out the purposes of the Charter, some background on Council membership and voting procedures will prove helpful.

The Security Council is composed of five permanent members: China, France, the Soviet Union\textsuperscript{68} (whose seat has been assumed by the Russian Federation), the United Kingdom, and the United States.\textsuperscript{69} These permanent members have continuous membership on the Security Council and are vested with the right to veto substantive decisions of the Council and amendments to the United Nations Charter.\textsuperscript{100} Ten non-permanent members are elected\textsuperscript{101} by the General Assembly for two-year terms\textsuperscript{102} and such members are not accorded the veto power. Decisions relating to substantive, non-procedural issues require nine affirmative votes,\textsuperscript{103} including the concurrence\textsuperscript{104} of all five permanent members.

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\textsuperscript{65} GOODRICH, supra note 64, at 293.
\textsuperscript{66} Reisman & McDougal, supra note 17, at 175; Brownlie, supra note 30, at 226.
\textsuperscript{68} While the Soviet Union no longer exists, this article occasionally refers to the term in order to provide historical accuracy. For instance, article 23 of the Charter refers to the U.S.S.R. as a permanent member of the Security Council. U.N. CHARTER art. 23, ¶ 1. However, the Russian Federation asserted its claim to the Soviet Union's seat on December 27, 1991. See Russia's Flag Makes its Debut at United Nations, L.A. TIMES, Dec. 28, 1991, at A8 (stating that the Soviet Union's seat on the Security Council was transferred to the Russian Federation).
\textsuperscript{69} U.N. CHARTER art. 23, ¶ 1.
\textsuperscript{70} BAILEY, supra note 89, at 101.
\textsuperscript{101} See generally U.N. CHARTER art. 23, ¶ 1 (indicating that a state's contribution to the support of international peace and security along with equitable geographical distribution are primary factors to consider in the election of non-permanent members). See also W. Michael Reisman, The Case of the Nonpermanent Vacancy, 74 AM. J. INT'L L. 907, 907 n.2 (1980) [hereinafter Vacancy] (declaring that geographical distribution comprises the most politically significant factor for the General Assembly to consider in electing non-permanent members).
\textsuperscript{102} U.N. CHARTER art. 23, ¶ 2. See also id. (stating that the non-permanent members cannot be immediately re-elected).
\textsuperscript{103} U.N. CHARTER art. 27, ¶ 3. The Charter provisions relating to voting in the Security Council, commonly known as the Yalta formula, were established by the United States, the Soviet Union and Great Britain. BAILEY, supra note 89, at 198.
\textsuperscript{104} Abstention by a permanent member is not considered to be equivalent to a veto. BAILEY, supra note 89, at 225; Vacancy, supra note 101, at 908; see Burns H.
members. Decisions on procedural matters require an affirmative vote of any nine members. Enlargement of the Security Council requires amendment of the Charter. In order for an amendment to become binding, the General Assembly must adopt it by a two-thirds vote. In addition, two-thirds of the United Nations member states, including all five permanent members of the Security Council, must ratify the amendment. The Charter was amended in 1963 after the General Assembly passed a resolution to increase the size of the Council from ten to fifteen seats, allowing for five additional non-permanent members.

While one of the fundamentals of the Charter is that all members are deemed equal, this theoretical principle does not reflect the practical reality that only five members of the Security Council possess the potent veto power. During the formation of the United Nations numerous states initially hoped to eliminate the veto but quickly understood that it was a precondition to ensuring the very existence of the United Nations. The veto power was the cost that less influential states were willing to pay for the organization's survival.

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105. U.N. Charter art. 27, ¶ 3; Bailey, supra note 89, at 199.
107. Bailey, supra note 89, at 118.
109. Id.; see generally U.N. Charter art. 109, ¶ 1 (providing that a Charter review conference may be held when two-thirds of the General Assembly and any nine members of the Security Council so desire).
110. See Hiscoccs, supra note 94, at 98 (explaining that the changes became effective in 1965).
111. See generally Bailey, supra note 89, at 119 (stating that the General Assembly distributed the ten elective seats among four geographic regions: five for African and Asian states; two for Latin Americans; two for West Europeans and others; and one for Eastern Europeans). Jaskaran S. Teja, Expansion of the Security Council and its Consensus Procedure, 16 Neth. Int'l L. Rev. 349, 350-51 (1969) (declaring that the Resolution established for the first time a clear distribution of non-permanent seats among four geographic areas). China voted in favor of the resolution, the Soviet Union and France against it, and the United States and Britain abstained. Id. at 351. The Soviets later decided to support the amendment. Id.
114. Bailey, supra note 89, at 200. See also Sydney D. Bailey, Voting in the Security Council 101-02 (1969) [hereinafter Voting] (concluding that the United Nations might never come into existence or continued to exist without the assignment of veto rights to the major powers). Many states who originally accepted the veto
nations paid for the inclusion of the five major powers in the new collective security system.\footnote{115} The veto privilege guaranteed that no major action could be undertaken without the consent of all five permanent members and that this power could never be changed unless all five agreed to amend it.\footnote{116} It is important to recall, however, that the Charter was drafted under conditions drastically different from the present;\footnote{117} the founders assumed the wartime alliance would endure and that the five permanent members would serve as global policemen.\footnote{118}

The veto power remains one of the most significant obstacles to the effective workings of the Security Council.\footnote{119} As a result of their special privilege, the five permanent members, with their disproportionate power and singular interests, have precluded the Security Council from acting according to the purposes of the United Nations.\footnote{120} One veto by a permanent member negates affirmative votes by all the other members of the Council.\footnote{121} Not surprisingly, when a breach or threat to the peace affects a permanent member or one of its allies, the veto power

\footnote{115} FRANCIS O. WILCOX & CARL M. MARCY, PROPOSALS FOR CHANGES IN THE UNITED NATIONS 311 (1955).

\footnote{116} Id. See also Norman J. Padelford, The Use of the Veto, 2 INT'L ORG. 227, 228 (1948) (maintaining that each wanted to preclude the United Nations from authorizing action adverse to their national interests).

\footnote{117} See LALL, supra note 113, at 3 (observing that if an international conference took place at present the San Francisco membership and voting formula would most likely not be accepted).

\footnote{118} See Sir Crispen Tickell, The Role of the Security Council in World Affairs, 18 GA. J. INT'L & COMP. L. 307, 307-08 (1988) (noting that the Charter was based upon the continued cooperation of the major victorious powers of World War II); Padelford, supra note 116, at 228 (stating that the founders assumed the great powers would continue working together in the preservation of peace and security); Sabec, supra note 94, at 96 (recognizing that the collective security system intended by the drafters relied on the continued agreement of the five permanent members, but reality did not reflect this vision and Chapter VII became ineffectual).

\footnote{119} See Arend, supra note 34, at 7 (finding that the veto has impeded almost all possible Security Council actions against aggression); Padelford, supra note 116, at 246 (noting that criticism of the veto power's effect on Security Council performance was evident just three years after the establishment of the Charter). The veto gave rise to pressures to amend the Charter or find alternative ways of limiting its use. Id.

\footnote{120} BAILEY, supra note 89, at 160. See also id. (suggesting that the purpose of the veto is to prevent action from occurring, not to encourage cooperation among the permanent members). But see VOTING, supra note 114, at 62 (contending that the veto has not hampered the United Nations as much as critics have asserted).

\footnote{121} Tarlok S. Batra, Research Notes, Veto Power of the Security Council, 18 INDIAN J. INT'L L. 76, 78 (1978). From 1966 to 1986 the five permanent members exercised 119 vetoes. See BAILEY, supra note 89, at 209 (stating that this included 57 by the United States, 23 by the United Kingdom, 21 by China, 18 by the Soviet Union, and 12 by France).
forestalls any action.\textsuperscript{122} Examples of this type of occurrence include the 1980 Soviet veto of a draft resolution criticizing the invasion of Afghanistan;\textsuperscript{123} the United States veto of a similar resolution regarding the mining of Nicaraguan ports;\textsuperscript{124} the United States veto of an endeavor to condemn the invasion of Panama;\textsuperscript{125} and the triple veto with regard to Rhodesia in 1977.\textsuperscript{126} At the same time, when an act of aggression has no impact upon a permanent member's own interest, no action is taken and collective security becomes a casualty of state indifference.\textsuperscript{127}

During most of the major crises since 1945 the Security Council has been deadlocked\textsuperscript{128} and impotent.\textsuperscript{129} The Uniting for Peace Resolut-
tion,130 adopted by the General Assembly in 1950, is further evidence of the Security Council’s unresponsiveness,131 largely due to the veto power. The United States designed the Resolution in order to bypass the Soviet veto of United Nations intervention in Korea.132 The United States realized that the unforeseen absence of the Soviet representative presented the only opportunity for the Security Council to take action

review conference). The proposal to call such a conference, however, was not successful at the next Assembly session. Id.

129. Thomas M. Franck, United Nations Based Prospects for a New Global Order, 22 N.Y.U. J. Int’l L. & Pol. 601, 614 (1990); see also Kelsen, supra note 128, at 277 (noting that this disabling effect of the veto power has created a movement to revise article 27(3), which requires the concurrence of the permanent members on substantive matters, but observing that it is unlikely they will allow the Charter to be amended); Tickell, supra note 118, at 311 (determining that the actual record of the Council is inconsistent with the intent of the drafters who envisioned five permanent members working together to uphold international peace and security under Chapter VII). But see id. at 312 (maintaining that the veto power has been a vital component of the system since the beginning and that without it countless resolutions would have been passed, resulting in disregard of the Council altogether).


The General Assembly.

Conscious that failure of the Security Council to discharge its responsibilities on behalf of all the Member States . . . does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security . . .

1. Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations.

Id. at 10. See Vacancy, supra note 101, at 911 (noting that the Resolution authorizes the recommendation of armed force only for a breach of the peace or act of aggression, not a threat to the peace).

131. See Hiscocks, supra note 94, at 292 (declaring that the Resolution was an explicit statement of disappointment and disenchantment with the Security Council); Wilcox & Marcy, supra note 115, at 142 (observing that while some view the Resolution as eliminating the veto for collective security, others view it as a misleading suggestion that the permanent members are not essential for effective collective security measures and that General Assembly recommendations enjoy the same authority as binding Security Council decisions). But cf. Lall, supra note 113, at 28 (contending that the Resolution resulted from the Cold War, not from more fundamental criticisms of Security Council structure and process).

132. Voting, supra note 114, at 50.
in Korea. Under the Resolution, in the event that the Security Council cannot exercise its Chapter VII powers due to lack of agreement among the permanent members, the General Assembly becomes operative and is granted the power to execute the duties and powers of the Security Council, including, if necessary, the recommendation of armed force. The Uniting for Peace Resolution established a standard procedure whereby the General Assembly could meet in emergency session when the veto created a stalemate. Historically, stalemate among the five permanent members was more the rule than the exception; in addition to the Iraqi invasion of Kuwait the only other case where the permanent members agreed to use military force under United Nations authorization was Korea, which was only possible because the Soviet representative was absent and unable to exercise the veto power.

The Gulf Crisis provided an opportunity for unprecedented unity among the permanent members of the Security Council. Neverthe-

133. *VOTING*, supra note 114, at 50.
134. *Uniting for Peace*, supra note 130. Illustrations include the 1971 India-Pakistan war that led to the creation of Bangladesh, where the Soviet veto resulted in deadlock of the Security Council and the issue was transferred to the General Assembly under the Uniting for Peace Resolution. *BAILEY*, supra note 89, at 245. In addition, the Resolution was relied upon during the Suez crisis in 1956, during the Hungarian emergency that same year, and during the Congo crisis in 1960. *HISCOCKS*, supra note 94, at 292. In two other cases while the Resolution's procedures were not formally followed the outcome was essentially the same: first, during the Korean War the Security Council removed the issue from the agenda, knowing that the permanent members would not come to a consensus; the General Assembly considered the issue and condemned China for the aggression. *Id.* at 292-93. The second instance involved a dispute between Lebanon, Jordan, and the United Arab Republic in 1958 where the United States and Soviet Union could not come to agreement and the Council called an emergency session of the General Assembly to consider the matter. *Id.* at 293.
135. *VOTING*, supra note 114, at 50.
136. After North Korea invaded South Korea in June 1950, the Security Council passed a resolution recommending that members provide assistance to South Korea in order to repel the invasion and restore the peace. See *Arend*, supra note 34, at 7 & n.30 (quoting U.N. SCOR, 5th Sess., 474th mtg. at 4, 17, U.N. Doc. S/PV.474 (1950)). See *id.* at 7 (recognizing that while the Resolution was non-binding, it came the closest to Security Council enforcement action until the United Nations authorized armed force against Iraq).
137. *Pyrich*, supra note 97, at 270 n.37; *O'Connell*, supra note 34, at 455. See also *Arend*, supra note 34, at 7 (observing that aside from Iraq the only time the Security Council utilized force against an offending state occurred when the Soviet Union was absent from the vote); *Tickell*, supra note 118, at 308 (declaring that the Cold War paralyzed the Security Council; the only exception involved the authorization of the intervention force for South Korea, which was only possible because the Soviet Union boycotted the Council).
less, United States action in the Gulf War is illustrative of the compromises that are often necessary to make in order to avoid the devastating effects of the veto power. Numerous concessions which contradicted fundamental United Nations principles were made to the Soviet Union and China in return for non-opposition to Resolution 678, which authorized the use of force against Iraq.\(^\text{139}\) In order to avoid a Soviet veto, the United States agreed to exclude Estonia, Latvia, and Lithuania from the 1990 Paris summit conference.\(^\text{140}\) Moreover, the United States ignored human rights violations in China and agreed to withdraw trade sanctions imposed after the slaughter at Tienanmen Square in order to obtain an abstention, instead of a threatened veto, from China.\(^\text{141}\) In terms of determining the potency of Resolution 688 as a precedent, however, it is necessary to reexamine the level at which human rights violations rise to a threat to the peace and to correspondingly reevaluate the evolving norms of sovereignty and nonintervention\(^\text{142}\) in internal affairs.

IV. ANALYSIS OF SOVEREIGNTY, DOMESTIC JURISDICTION, THREATS TO THE PEACE, AND THE SECURITY COUNCIL'S ABILITY TO INTERVENE

Resolution 688 was adopted under a unique set of circumstances,\(^\text{143}\) and no future case is likely to be wholly analogous.\(^\text{144}\) Nevertheless, the


140. Weston, supra note 104, at 523.


142. See Buergenthal, supra note 67, at 113 (finding that the principle of nonintervention is based upon the fundamental international legal doctrine of sovereign equality and independence of states).

143. See U.N.A., supra note 12, at 9 (recognizing that the Resolution was preceded by a war authorized by the United Nations, world opinion was united in condemnation of Saddam Hussein, and Turkey refused to accept Kurdish refugees); Oscar Schachter, United Nations Law in the Gulf Conflict, 85 AM. J. INT'L L. 452, 468-69 (1991) (explaining that additional factors in the Iraqi case included the mass exodus of Kurds and Shiites into Turkey and Iran, detracting from the purely internal character of the situation, and the fact that the predicament of the minorities was partly a result of the military action against Iraq itself, giving the coalition more of an interest in protecting the victims).

144. See James H. Anderson, 16 FLETCHER F. WORLD AFF. 127, 129 (1992) (finding that not all future situations of serious human rights violations will be preceded by such unmitigated interstate belligerency). See also U.N.A., supra note 12, at 7 (noting that the record of the Security Council debates, the particular wording of the Resolution, and the fact that the Resolution was explicitly not adopted under Chapter VII, all point away from any blueprint for intervention by force). But see infra notes 166-67
precedential value of the Resolution should not be understated. Resolution 688 marked the first time the Security Council authorized a right to interfere for humanitarian reasons in a state's domestic jurisdiction. With the cessation of the Cold War, the growing internationalization of human rights standards, and economic challenges transcending national borders, the dictates of sovereignty no longer reign supreme. In many contexts, severe violations of human rights may constitute a threat to the peace, particularly in light of the expanding

and accompanying text (suggesting that the Resolution was created under Chapter VII enforcement).

145. See U.N.A., supra note 12, at 9 (asserting that the allied deployment established a strong precedent in protecting relief workers); Nafziger, supra note 53, at 31 (contending that Resolution 688 forecasted a greater role for humanitarian intervention under international law); Int'l Law Perspective, supra note 1, at 83 (concluding that humanitarian intervention persists as an acceptable option as evidenced by the action undertaken by allied forces to quell the Kurdish crisis); Sharon Waxman, Defender of the Downtrodden; France's Humanitarian Action Secretary, Helping Victims as Well as Himself, Wash. Post, June 10, 1991, at Cl, C10 (stating that for Bernard Kouchner, French Secretary for Health and Humanitarian Action, the intervention set an important precedent and the right of humanitarian intervention should be added to the Universal Declaration of Human Rights); Douglas Hurd, A Year the World Lived Dangerously, The Times (London), Aug. 2, 1991, at 14 (finding that Resolution 688 created a significant precedent for mobilization if comparable conditions arise in the future); Right v. Might, supra note 3, at 129 (stating that the precedents created by the Security Council during the Gulf War should reinforce the credibility of and confidence in collective security procedures). But cf. Weston, supra note 104, at 517 (asserting that the resolutions undertaken in the Gulf War are of questionable precedential value because the United States unilaterally controlled the military force); Schachter, supra note 143, at 469 (stating that most states would not condone a broad right of United Nations forceful humanitarian intervention, unless it was authorized under Chapter VII).

146. Mario Bettati, The Right to Interfere, Wash. Post, Apr. 14, 1991, at A25. See also UNHCR Ogata Urges More Aid to Iraqi Refugees, Japan Economic News-Wire, Apr. 22, 1991, available in LEXIS, Nexis Library, JEN File (quoting United Nations High Commissioner for Refugees Sadako Ogata as stating that Resolution 688, which permitted humanitarian intervention by United Nations agencies in Iraq, marked the first time the Security Council recognized large population displacement as a threat to international peace and security); Nafziger, supra note 53, at 29 (maintaining that Resolution 688 was the first time the Council found that a huge exodus of refugees or displaced people in their own nation threatened international peace and security).

147. See Myers, supra note 55, at 97 (declaring that in the situation of strife between Greek and Turkish Cypriots which caused severe human rights deprivations, the Security Council considered the situation to be a likely threat to the peace and dispatched a peacekeeping force to Cyprus) (emphasis added).

148. See Nafziger, supra note 53, at 31 (finding that widespread human rights transgressions undeniably threaten international peace and security and trigger Chapter VII authority); Reisman & McDougal, supra note 17, at 172 (concluding that in an increasingly interdependent world egregious human rights violations may constitute a threat to the peace); Dennis T. Fenwick, Note, A Proposed Resolution Providing for the Authorization of Intervention by the United Nations, a Regional Organization, or a Group of States in a State Committing Gross Violations of Human Rights, 13 Va.
globalization of human rights norms. The Security Council recognized the internal deprivations of human rights in Rhodesia and South Africa, for example, as constituting a threat to international peace and security. In the 1966 case of Southern Rhodesia, the Security Council Resolution reaffirmed that the human rights violations created a threat to the peace. Accordingly, the Council imposed economic sanctions and called upon member states to help in the implementation of the actions called for by the Resolution. In the 1977 South Africa Resolution, the Security Council considered government violence against black citizens to endanger international peace and security, and thus, imposed a mandatory arms embargo. These cases demonstrate

149. See Lori F. Damrosch, Commentary on Collective Military Intervention to Enforce Human Rights, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 215, 217 (Lori F. Damrosch & David J. Scheffer eds., 1991) (affirming that when human rights violations rise to the level of a threat to international peace and security, according to Charter articles 2(7) and 39, that threat supersedes state sovereignty); Vladimir Kartashkin, Human Rights and Humanitarian Intervention, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 202, 207-08 (Lori F. Damrosch & David J. Scheffer eds., 1991) (explaining that because several international documents define international crimes as encompassing egregious violations of human rights which jeopardize international peace and security, Chapter VII becomes activated). Contra Tom J. Farer, An Inquiry into the Legitimacy of Humanitarian Intervention, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 185, 190 (Lori F. Damrosch & David J. Scheffer eds., 1991) (arguing that there is no indication in the preparatory works to the United Nations Charter that the parties viewed a state's behavior towards its own citizens as creating a threat to or breach of the peace).

150. Damrosch, supra note 149, at 217. See id. at 217-18 (observing that while both resolutions imposed binding economic sanctions rather than military force, the resolutions provided the foundation for the use of force by the Security Council).

151. Fenwick, supra note 148, at 343; Myers, supra note 55, at 80-81. See Fenwick, supra note 148, at 355-56 (quoting Myres S. McDougal & W. Michael Reisman, Rhodesia and the United Nations: The Lawfulness of International Concern, 62 AM. J. INT'L L. 15, 18 (1968)) (contending that because the Security Council deemed that the situation had risen to the level of a threat to international peace, the domestic jurisdiction limitation became irrelevant).

152. Myers, supra note 55, at 80-81.

153. Myers, supra note 55, at 81. Cf. Szasz, supra note 87, at 346 (stating that apartheid has been found to be not only an egregious violation of human rights standards but that systematic repression which outrages the world community may transform an essentially domestic issue into a threat to international peace).
a clear link between inherent human rights in the United Nations Charter and fundamental levels of international security. Even an essentially domestic conflict, such as civil strife, may threaten the stability of the international community and constitute a threat to the peace. Certainly, conflict may be internationalized if the consequences overflow the borders, as in the case of the Kurdish refugees. The victims of human rights violations, however, do not need to cross a geographical boundary in order to be of international concern. The violation of human rights standards is a matter of international import even where persons are internally displaced within their own countries. Because extreme violations of human rights run contrary to the norms of the Charter, they become internationally significant by their very nature.

Furthermore, despite not finding a threat to international security which would authorize forceful intervention under Chapter VII, the Security Council or the General Assembly can sanction military force to uphold human rights standards. There is growing recognition that

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154. Reisman & McDougal, supra note 17, at 189. See Szasz, supra note 87, at 350 (noting that in the South African case the United Nations held that apartheid is offensive to the United Nations Charter and is thus by its nature a matter of international concern).

155. Szasz, supra note 87, at 346-47. See Myers, supra note 55, at 95-98 (citing civil war and internal conflicts short of war as threats to the peace, which would permit United Nations intervention); id. at 97 (listing factors enumerated by the Office of the United Nations Legal Counsel, which can push an internal conflict into the international arena and constitute a threat to the peace, one of which includes severe human rights violations). But cf. Damrosch, supra note 149, at 219 (finding no authority in the United Nations Charter for the use of force against transgressions that do not result in an interstate threat to peace and security).

156. Szasz, supra note 87, at 348.

157. See Resolution Debates, supra note 9, at 58 (observing that the cross-border impact of the Iraqi repression against its civilians threatens regional stability).

158. See generally Myers, supra note 55, at 77 (reasoning that while the structure of the United Nations was originally based on the view that threats to international peace and security would be caused by interstate disputes, the distinction between wholly internal affairs and those of international concern remains unclear). But cf. Edward C. Luck & Toby T. Gati, Whose Collective Security, WASH. Q., Spring, 1992, available in LEXIS, Nexis Library, WASHQR File (observing the reluctance of the Security Council to characterize massive human rights transgressions within a sovereign nation as a threat to the peace authorizing action under Chapter VII, at least over and above economic or arms sanctions).

159. Szasz, supra note 87, at 350.

160. See Fenwick, supra note 148, at 356 (suggesting that regardless of whether there is a threat to the peace permitting intervention under Chapter VII, the violation, if sufficiently severe and persistent, impacts international peace and security, allowing for intervention).

161. See Reisman & McDougal, supra note 17, at 189 (explaining that if the situation does not constitute a threat to the peace, the United Nations' prerogative to uphold fundamental human rights may induce movement by the Security Council or an-
the protection of human rights in circumstances of gross and consistent violations are no longer encompassed within the exclusive domestic jurisdiction\textsuperscript{162} of states.\textsuperscript{163} The recent Security Council debate over Resolution 688 plainly illustrated this point. During the debate, the British Representative declared that article 2(7) does not apply to matters which are not fundamentally domestic, such as human rights protection, and cited South Africa as an illustration.\textsuperscript{164} Thus, severe violations of human rights, regardless of whether they are deemed a threat to the peace, are no longer considered to be solely within a state's domestic jurisdiction and are therefore excluded from article 2(7)'s ban on intervention.\textsuperscript{165} 

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\textsuperscript{162} See other organ of the United Nations); Damrosch, \textit{supra} note 149, at 219 (reasoning that the General Assembly, under articles 10-14 of the United Nations Charter, has the power to make recommendations to the United Nations or to member states sanctioning military force to preserve human rights standards). This force could either be authorized by the United Nations or through the armed forces of national states acting individually or jointly. \textit{Id.}

\textsuperscript{163} The Permanent Court of International Justice established that "the question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations." Myers, \textit{supra} note 51, at 74 (quoting \textit{Nationality Decrees Issued in Tunisia and Morocco (Tunis. v. Morocco), 1923 P.C.I.J. (ser. B) No. 4, at 145 (Feb. 7)}). According to Professor Buergenthal, the phrase "the development of international relations" refers to the legal duties, including international human rights treaties, undertaken by states. Buergenthal, \textit{supra} note 67, at 113-14.


\textsuperscript{165} Resolution Debates, \textit{supra} note 9, at 64-65. In addition, President Bush, referring to the intervention in northern Iraq, declared that while some may criticize the action as interference in Iraq's internal affairs, the world community will understand the compelling need to ensure the administration of humanitarian aid. Winter, \textit{supra} note 71, at 7.

\textsuperscript{166} See \textit{Customary Int'l Law Doctrine, supra} note 19, at 62 (asserting that even in situations not rising to the level of a threat to the peace, article 2(7)'s ban on the use of force excludes human rights violations); Myers, \textit{supra} note 55, at 81 (concluding that regardless of whether the situation is determined to be a threat to international peace, any nation who is a party to international human rights agreements cannot say the deprivation of human rights is within their domestic jurisdiction); \textit{Tragedies, supra} note 7, at 306 (finding that even where Chapter VII is not utilized, the doctrine of humanitarian intervention remains viable); \textit{Self-Help, supra} note 26, at 338 (observing
In concluding that the Iraqi repression of the civilian population threatened international peace and security, the Security Council appeared to be invoking Chapter VII enforcement action. Whether or not this is the case, the excessive human rights violations undertaken by the Iraqi government transcended the protections implicit in the norms of sovereignty, nonintervention, and exclusive domestic jurisdiction. Sovereign jurisdiction is conditional upon adherence to minimal standards of human rights. The policies of the Iraqi government vio-

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166. See S/RES/688, supra note 8, at pmbl. (stating in paragraph one that the repression of the Iraqi civilian population threatens international peace and security in the region, and in the preamble that the refugee flow across international borders as a result of the subjugation of the Kurdish population threatens international peace and security).

167. See Int'l Law Perspective, supra note 1, at 74 (maintaining that the intervention in Iraq occurred under Security Council Resolutions 687 and 688 which were approved under Chapter VII enforcement provisions permitting action once the Security Council identifies a threat to or breach of international peace); Tragedies, supra note 7, at 306 (stating that the humanitarian intervention in Iraq occurred under Chapter VII enforcement powers); Schachter, supra note 143, at 468-69 (finding that the legal justification for the protective measures was based partly upon the Security Council's determination that Iraq's brutal treatment of the minority Kurds and Shiites created a threat to international peace and security); Resolution Debates, supra note 9, at 36 (asserting that the Kurdish situation has a bearing on international peace and security, and thus the Security Council is authorized to exercise its powers to take action to eradicate the human rights violations); id. at 61 (concluding that while the territorial integrity and political independence of Iraq must not be undermined, the Security Council has the duty to take action to cease the barbaric treatment of the civilian population which is setting the stage for a new international conflict). On the other hand, others observe that the Resolution was explicitly not adopted under Chapter VII authorization. See Right v. Might, supra note 3, at 146 (stating that although the Security Council found a threat to international peace as a result of the refugees crossing international borders, the Resolution was intentionally not adopted under Chapter VII); No-Fly in Iraq: Why?, N.Y. Times, Aug. 28, 1992, at A24 (stating that Resolution 688, contrary to the other resolutions passed during the Gulf War, did not invoke Chapter VII).

168. See Sornarajah, supra note 38, at 76 (noting that the international movement for the protection of human rights has significantly eroded the concept of state sovereignty).

169. See generally W. Michael Reisman, Sovereignty and Human Rights in Contemporary International Law, 84 Am. J. Int'l L. 866, 869 (1990) (maintaining that no serious scholar believes in the domestic jurisdiction limitation for internal human rights); Sornarajah, supra note 38, at 56 (determining that certain humanitarian principles surpass the dictates of sovereignty and that when transgressions of human rights principles occur, the safeguards against intervention upheld by the doctrine of sovereignty are inapplicable); Self-Help, supra note 26, at 333 (finding that notwithstanding the prevailing doctrine of state sovereignty, which protects a nation against intrusion by other states in the treatment of its own people, consideration for humanitarian principles allows some restrictions upon this absolutist doctrine).

170. Reisman & McDougal, supra note 17, at 170.
lated these standards, and, therefore, Iraq may not retreat behind the principle of state sovereignty.\footnote{171}{See Resolution Debates, supra note 9, at 53 (concluding that human rights violations that rise to the level of a crime against humanity become a matter of international concern, as demonstrated by the Kurdish situation in Iraq).}

Human rights have become increasingly internationalized as states have undertaken international commitments to human rights,\footnote{172}{It is important to note that while the Charter does not explicitly define what the term "human rights" entails, it is widely accepted that the Universal Declaration of Human Rights and other significant human rights documents are subsumed within the Charter's definition of human rights and basic freedoms. Buergenthal, supra note 67, at 115. The Universal Declaration of Human Rights includes the "right to life, liberty and security of person" (article 3) and freedom from torture or cruel and inhuman punishment (article 5). G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948). See Myers, supra note 55, at 86-87 & nn. 454-55 (observing that the United Nations has reaffirmed the Universal Declaration without opposition innumerable times and therefore the Declaration has acquired the force of binding customary international law); Filartiga v. Pena-Irala, 630 F.2d 876, 883 (2d Cir. 1980) (finding that several scholars have determined that the Universal Declaration is part of customary international law). But see Jhabvala, supra note 20, at 220 (claiming that it is debatable whether the Universal Declaration has been recognized as binding law). For a complete discussion of human rights instruments, see generally IAN BROWNLIE, BASIC DOCUMENTS ON HUMAN RIGHTS (2d ed. 1981) (including basic tools such as the Universal Declaration of Human Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights). The Genocide Convention deserves special mention because in the event that enforcement is mandated, article VIII of the Convention provides that any party may request United Nations action to prevent and suppress acts of genocide. Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1951). See generally Reisman & McDougall, supra note 17, at 175 (indicating that the parties are obligated to enforce the Genocide Convention both separately as well as jointly with the United Nations); Response, supra note 22, at 443 (finding that the Genocide Convention covers violations which under traditional international law would have warranted humanitarian intervention). But see Franck & Rodley, supra note 21, at 300 n.110 (contending that the provisions do not leave room for unilateral self-help).} either by treaty or under customary\footnote{173}{See Myers, supra note 55, at 109 (recognizing that the United Nations Sub-committee on Human Rights declared that consistent and gross human rights violations transgress customary international law).} international law.\footnote{174}{Buergenthal, supra note 67, at 113-16.} Consequently, article 2(7)'s ban on intervention in the domestic jurisdiction of a state only applies where human rights are not subsumed under international obligations.\footnote{175}{Buergenthal, supra note 67, at 113-16; see also LAUTERPACHT, supra note 27, at 178 (contending that because human rights are contained in binding international agreements and are enumerated as one of the basic purposes of the United Nations Charter, they no longer constitute a matter within the domestic jurisdiction of states).} For example, as a signatory to the United Nations Charter, Iraq has a duty to support human rights and may not claim that...
the maltreatment of citizens is purely an internal matter. Conformity with essential human rights obligations is no longer encompassed within exclusive domestic jurisdiction but has developed into an issue justifying concern by the international community. As prominent international legal scholar Louis Henkin has aptly observed, "[t]hat which is governed by international law or agreement is *ipso facto* and by definition not a matter of domestic jurisdiction."

Thus, as gross human rights violations by governments against their own people are no longer encompassed within the internal affairs of states, the domestic jurisdiction limitation is inapposite in two ways: first, by the Security Council determination that the deprivation of rights constitutes a threat to the peace; and second, by virtue of the state's violations of its international legal obligations. In either case, Iraq's brutal treatment of the Kurdish population could no longer be considered a purely internal matter insulated within the confines of sovereign inviolability. Because such flagrant transgressions are no longer considered to be within the ambit of the domestic jurisdiction

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176. See generally Myers, *supra* note 55, at 88 (quoting Cyrus Vance before the University of Georgia Law School, U.S. Dep't. of Public Affairs Office of Media Services, Press Release No. 194 (Apr. 30, 1977) at 2 (quoting President Carter's March 1977 speech before the United Nations)) (declaring that because all the parties to the United Nations Charter have obligated themselves to comply with and uphold elementary human rights, no member may be permitted to allege that abuse of its people is solely its own business); *Filartiga, supra* note 172, at 881 (asserting that according to the dictates of the Charter, a state's treatment of its own people is a subject of international concern).

177. *Oppenheim, supra* note 18, at 740; see *Customary Int'l Law Doctrine, supra* note 19, at 60 (finding the rise in attention to human rights and the whole collection of declarations and covenants indicative of the dwindling scope of domestic jurisdiction); Damrosch, *supra* note 149, at 219 (concluding that the international community has a legitimate interest in human rights violations regardless of whether they are purely internal in character, and noting that a state's human rights practice towards its own nationals is no longer included under claims of domestic jurisdiction beyond the authority of the United Nations).


180. See generally *Sornarajah, supra* note 38, at 77 (recommending that states who continually repress their minorities should not be permitted to hide behind the impenetrability of the international order of states); Reisman & McDougal, *supra* note 17, at 169 (asserting that the exclusive jurisdiction of any state is conditional, not absolute); Hurd, *supra* note 145, at 14 (finding that with regard to Resolution 688, the United Nations confirmed that there are limits on the level of abuse that governments may impose on people without triggering interference with their sovereign prerogatives for humanitarian reasons).
limitation, the principle of nonintervention in internal affairs is inapplicable. 181

V. RECOMMENDATIONS AND CONCLUSIONS

A. RECOMMENDATIONS

A balance must be struck between the competing norms of nonintervention and international human rights standards. 182 Sovereignty should not be viewed as absolute but rather as a flexible concept capable of restrictions and exceptions. 183 Similarly, nonintervention must function as a relative precept that can be overridden by humanitarian concerns when atrocities rise to an intolerable level. While articles 2(4) and 2(7) express strong limitations on state intervention and United Nations intervention respectively, an increasing number of legal authorities have raised serious challenges to these prohibitions in view of the alarming rise in repression throughout the world and the ineffectiveness of enforcement mechanisms contemplated by the founders of the United Nations. 184 The United Nations response to the Kurdish situation suggests that states will no longer tolerate blatant and excessive human rights violations by a sovereign nation against its own citizens.

Governments that violate fundamental human rights can no longer withdraw behind the faithful facade of sovereignty and domestic jurisdiction. States should independently, as well as under United Nations

181. Ermacora, supra note 163, at 436. See also Schachter, supra note 143, at 468 (maintaining that Iraq's barbaric suppression of minorities significantly strained the principle of nonintervention in domestic affairs); Stanley Meisler and Norman Kempster, World Leaders Urge U.N. to Safeguard Rights Everywhere; Summit: Chiefs of State Declare it is Time to Abandon the Tradition of Non-Interference in Nations' Affairs. Global Interdependence Cited by Boutros-Ghali, L.A. TIMES, Feb. 1, 1992, at A1 (stating that the leaders of the Security Council member nations announced that the international community cannot permit the protection of human rights to stop at national frontiers and that the United Nations should discard the outdated principle of nonintervention in states' domestic affairs).

182. See Int'l Law Perspective, supra note 1, at 69 (claiming that the principle of nonintervention must be balanced against the correspondingly powerful and complementary imperative of international human rights standards); Téson, supra note 20, at 3 (outlining the tension between the protection of human rights and the principle of state sovereignty).

183. Customary Int'l Law Doctrine, supra note 19, at 44-45; see Myers, supra note 55, at 73 (quoting Friedman, Human Rights Internationalism: A Tentative Critique, in INTERNATIONAL HUMAN RIGHTS: CONTEMPORARY ISSUES 29, 37 (J. Nelson & V. Green eds. 1980)) (noting that the domestic jurisdiction doctrine has fallen from an unyielding, absolute norm to a conditional, relative standing); Brownlie, supra note 30, at 224 (conceding that as compared with the early part of this century, domestic jurisdiction in the context of human rights currently constitutes much less of a shelter against intervention).

Auspicies, utilize a host of coercive measures to ensure compliance with human rights law. Article 41, authorizing measures short of military power including economic sanctions and severance of diplomatic relations, should be employed in all cases of grave human rights abuse regardless of whether a threat to the peace is established. If these non-forceful means prove ineffective, the support of the Security Council should be engaged. Resolution 688 demonstrates the Security Council's capability to take timely and effective action to remedy severe human rights abuses. However, while the collective security system was successfully implemented in Iraq, history dictates that not all future cases will be comparable. In view of the increasing globalized human rights standards, dwindling notions of state sovereignty, and a changing world order, the primary focus should be on reevalu-

185. See Damrosch, supra note 149, at 219 (advocating economic sanctions and other non-military means of enforcing international human rights agreements, regardless of whether the violations threaten international security).
186. U.N. Charter art. 41.
187. Id.
188. See Nafziger, supra note 53, at 27 (suggesting that it is unlikely that the collective factors that precipitated multilateral action in Iraq will be duplicated).
189. In the past, Cold War tensions impeded the effective implementation of various United Nations enforcement provisions, such as the development of United Nations armed forces. See David J. Scheffer, Prospects for Collective Security in the New World Order, Remarks at the Beijing Symposium on the Establishment of a New International Order 2-3 (Sept. 2, 1991) (transcript on file with The American University Journal of International Law and Policy) (stating that the Cold War precluded the United Nations collective security apparatus from developing); id. at 6 (noting that as provided under article 43, member nations never negotiated special arrangements to place their troops on-call to the Security Council for enforcement measures against aggressor states); Kartashkin, supra note 149, at 209 (explaining that the envisioned United Nations military forces available for enforcement measures were never established as a result of the Cold War). Now, however, a multinational military force should be established, ready for rapid deployment to pressing cases of violence and human rights abuse throughout the world. See id. (declaring that existing United Nations Charter provisions requiring member states to supply military forces must be revitalized); B. De Schutter, Humanitarian Intervention: A United Nations Task, 3 CAL. W. INT'L L.J. 21, 35 (1972) (citing several states that have expressed their willingness and commitment to keep military forces and logistic units available to the United Nations on a continuing basis); A Fresh Start for the U.N., FIN. TIMES, Mar. 25, 1991, at 20 (suggesting that an international rapid deployment force be formed, which would take direction from the Security Council); Damrosch, supra note 149, at 216 (speculating that the diversity reflected among members of the Security Council would limit the use of a United Nations military force to situations where the global community criticizes the human rights deprivations). In addition, article 45 of the Charter calls for members to make national air force corps available for collective international enforcement action. U.N. Charter art. 45. See also Reply, supra note 22, at 251 n.137 (citing General Gavin's 1971 proposal for a multinational sky cavalry force available to the United Nations); De Schutter, supra, at 35 (suggesting that national contingents could be located in their home nations while remaining on stand-by for emergencies). Alternatively, if the Security Council possesses no forces under its auspices, it could sanction the use of force by other states. See Damrosch, supra note 149, at 216 (ad-
ating the Security Council in order to consolidate and eventually institutionalize these actions on behalf of human rights.

The configuration of the Security Council itself presents a formidable obstacle to effective United Nations action in cases that warrant humanitarian intervention. As long as the five permanent members retain veto power, political alliances will clash with humanitarian concerns and quash any attempt at applying the doctrine of humanitarian intervention broadly to all cases involving severe human rights abuse. The demise of the Cold War and dissolution of the Soviet Union provide a welcome opportunity to reconfigure the Security Council's voting requirements and composition in order to reflect modern global power relations.

The justifications for amending the Charter in 1963 are more compelling today: to provide for more equitable geographic representation and to improve the Council's efficacy in undertaking its international responsibilities. First, the United Nations should increase the

190. See generally Nafziger, supra note 53, at 33 (concluding that the adoption of Resolution 688 demonstrates the need to reassess the present structure of the Security Council, noting that the Resolution passed only because China abstained, rather than vetoing the Resolution); Lall, supra note 113, at 1 (finding that the Security Council has functioned less effectively than expected and emphasizing the need to evaluate its configuration and decision-making procedures).

191. See Damrosch, supra note 149, at 217 (observing that during the Cold War the Security Council rarely used enforcement action notwithstanding numerous cases of gross human rights deprivations which were closely connected to violations of international peace and security).

192. See Nafziger, supra note 53, at 33 (suggesting that enlargement of the permanent membership of the Security Council or abolition of the veto power may be necessary to consider); Helena Cobban, Let's Rethink the Security Council, CHRISTIAN SCI. MONITOR, July 9, 1991, at 18 (stating that the current Security Council configuration was established nearly 50 years ago and due to major world changes since 1945, modifications in the make-up of the Council should be considered); Amos Perlmutter, How Should U.N. Reflect Power Shift?, WASH. TIMES, Dec. 29, 1991, at B1 (finding that the Security Council does not reflect the current shift in the global power distribution and advocating a change in its composition). But cf. Rochelle L. Stanfield, Worldly Visions, 22 NAT'L J., Oct. 27, 1990, at 2597, 2600 (noting that many experts believe that proposals to give greater representation to developing nations in an expanded Security Council would prove unwieldy).

193. See Bailey, supra note 89, at 157 (stating that ever since the number of non-permanent members was enlarged in the 1960s, various proposals have advocated increasing the number of permanent members).

194. See Leo Gross, In the Post-1965 Amendment Phase and its Impact on Article 25 of the Charter, 62 AM. J. INT'L L. 315, 315-16 (1968) (explaining that the purpose of the 1963 amendment was to allow for better representation of non-permanent members and to increase the Security Council's effectiveness under the Charter); Luck & Gati, supra note 158 (finding that current 'corridor talk' on the topic of Security Council membership is more pointed and pressing than before, and that Charter amendment
number of permanent members to represent the diversity of the world community.\textsuperscript{195} Germany and Japan,\textsuperscript{196} which have resurfaced as global

has occurred in the past in order to increase representation without draconian consequences). On the other hand, Hiscocks has noted that the Soviet Union has opposed Charter amendment and reassessment of the veto power, adding that a revision conference would be more harmful than beneficial. Hiscocks, \textit{ supra} note 94, at 316. But Hiscocks referred to delaying amendment until the international climate improved, \textit{id.} at 316-17, which arguably has occurred with the end of the Cold War and disintegration of the Soviet Union.

195. \textit{See} Franck, \textit{ supra} note 129, at 614-15 (calling for systematic reform of the make-up of the Security Council in order to give other equally significant nations permanent membership); Bailey, \textit{ supra} note 89, at 158-59 (noting the 1971 proposal by Arthur Lall, former Indian ambassador to the United Nations, who did not believe that a state's ability to play a role in major international decisions should be determined by the level of its military or economic power). Lall advocated an increase in the size of the Council to 19 members, including eight permanent seats and 11 non-permanent seats, chosen according to ability to maintain peace and security. \textit{id.} at 159. In accordance with this plan, the United States, Soviet Union, and China would remain as permanent members, the British and French seat would merge into one permanent European Community seat, and permanent membership would be given to Japan, India, Brazil (or a Latin American rotating seat), and a rotating seat would be given to the Middle East and Africa. \textit{id. See also} Lall, \textit{ supra} note 113, at 35 (suggesting that under such an arrangement, the permanent members would represent different areas of the globe, giving all regions a vested interest in international security); Hiscocks, \textit{ supra} note 94, at 315-17 (observing that the current composition of the Security Council is inadequate, where the five permanent members have special voting privileges yet India, Japan, and Brazil do not). One proposal for modifying the composition of the Council would be based upon regional representation, with one permanent seat for Western Europe, along with the Organization of African Unity, the Organization of American States, and South-East Asia when their organizations become as developed as the European Community). \textit{id. See also} Commission to Study the Organization of Peace, \textit{Strengthening the United Nations} 245 (1957) [hereinafter \textit{Strengthening the UN}] (contending that the five permanent members do not realistically reflect actual power configurations, citing India, Germany and Japan as future contenders for seats, and mentioning a proposal that eliminates the distinction between permanent and non-permanent members and recommends that all members be elected by the General Assembly with the assumption that the predominant powers will continually be selected); \textit{Commission to Study the Organization of Peace, the United Nations: The Next Twenty-Five Years} 56-57 (1969) [hereinafter \textit{Next Twenty-Five Years}] (discussing a proposal for additional permanent membership that would focus on factors including population, industrial and commercial significance, and contribution to the United Nations budget, which would allow India, Japan, Germany, Italy, and Brazil to join the Council). The Commission, however, ultimately decided against recommending any modifications in the composition of the Security Council at the time. \textit{id.}

196. \textit{See} 1990 \textit{Proceedings of the Eighty-Fourth Annual Meeting of the American Society of Int'l Law} 109-10 [hereinafter \textit{Proceedings}] (affirming that Japan's contributions to the United Nations justify a permanent seat on the Council). While supporting this idea, the United States had not pursued it because amendment of the Charter would not have been feasible in the past; new opportunities, however, may facilitate such developments. \textit{Id. See also} Marc Fisher, \textit{Permanent Security Council Seat Appeals to Bonn}, \textit{Wash. Post}, Aug. 14, 1992, at A25 (quoting Chancellor Helmut Kohl as stating that international discourse over increasing Security Council membership is advancing more quickly than most would assume). Japanese and U.S. officials have been discussing the issue due to Japan's announcement of its desire to
economic powers, should acquire permanent member status along with Brazil, Nigeria, India, and Egypt. This restructuring would provide developing nations with more balanced influence in world affairs. The Italian Foreign Minister recently proposed such an increase in the number of permanent Council members in order to reflect

obtain a permanent seat within three years. *Id.* See also Miyazawa Calls for Revising U.N. Security Council, *Agence France Presse*, Nov. 11, 1991, available in LEXIS, Nexis Library, AFP File (noting that Japan will replace the Soviet Union next year as the second largest contributor to the United Nations, after the United States).

197. See Stanfield, *supra* note 192, at 2600 (stating that a Security Council without Germany and Japan represents the post-World War II world order, not the post-Cold War world order); *Candidate Urges Permanent UNSC Seats for Japan, Germany*, *Japan Economic Newswire*, Dec. 13, 1991, available in LEXIS, Nexis Library, JEN File (citing then Democratic presidential candidate Bill Clinton as calling for United States leadership in increasing Security Council membership and adding Japan and Germany as permanent members with the veto power); *Proceedings, supra* note 196, at 112 (declaring that the United Nations Charter, particularly article 107 references to Japan and Germany as enemy states, should be amended to accord proper respect to Japan and Germany and to ensure the viability of the United Nations). Article 107 states that “[n]othing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.” *U.N. Charter* art. 107.

198. See Weston, *supra* note 104, at 527 (noting that the current composition of the Security Council does not fairly represent the Third World, and raising the issue of permanent representation for Brazil, Egypt, India, Indonesia, or Nigeria, and Germany and Japan in order to ensure effective peace and security operations); Franck, *supra* note 125, at 615 (stating that one reform currently under consideration would offer permanent membership with no veto power to Japan, Germany, India, Egypt, Nigeria, Mexico, and Brazil); *Lall, supra* note 113, at 30-32 (advocating establishment of a broader base of decision-makers in the Security Council by offering permanent membership to representatives of all the significant areas of the globe); Douglas Roche, *A U.N. Agenda for Barbara McDougall*, *Toronto Star*, Sept. 9, 1991, available in LEXIS, Nexis Library, TSTAR File (urging the Canadian Secretary of State for External Affairs to support Japan, India, Brazil, and Nigeria in their bids for permanent seats on the Security Council in order to ensure more diverse representation); Luck & Gati, *supra* note 158 (recommending that Germany and Japan become permanent members without the veto power and that rotating seats without the veto be given to Africa, Asia, and Latin America); Stanley Meisler, *The Security Council: Is Bigger Better?; There is a Move to Add Japan and Germany to the U.N.'s Top Body. But Old Realities May Deny the Two Economic Giants a Larger Role in the World Organization*, *L.A. Times*, May 14, 1991, at H2 (citing several proposals for change in the number of permanent members of the Security Council). The first would add Japan and Germany to the five current permanent members, with all seven exercising veto power; the second would include the United States, the Soviet Union, China, the European Community, and Japan as permanent members with veto power; the third would incorporate the five current permanent members with Japan, Germany, Brazil, and Nigeria, all with veto power; and the fourth would encompass the current five permanent members with veto power and Japan, Germany, Brazil, India, and Nigeria as permanent members without veto power. *Id.* But *cf.* *id.* (noting that the addition of more permanent members with veto power may impair the Security Council's ability to work effectively).
recent changes in the world balance of power. Such changes would not be easily accomplished and are not likely to occur in the near future, given the likelihood that the five permanent members would veto an amendment to reorganize the Security Council. Nevertheless, the United Nations must contemplate change sooner or later in order to more adequately represent the changing distribution of world power and to ensure effective and consistent Security Council enforcement action.

199. See Brian Urquhart, Coming in from the Cold: The UN’s Role in the Emerging Era, HARV. INT’L R., Summer 1991, at 21, 24 (concluding that the current composition of the Security Council is anachronistic and does not accurately reflect the balance of global power). Due to the tremendous shift in economic, political, and military power since 1945, it is impossible to include Britain as a world power, while excluding Japan, Germany, Brazil, India, or Nigeria. Id.

200. See Gerry Gray, Italy Urges Sweeping Structural Changes at U.N., N.Y. TIMES, Sept. 28, 1991, at 3 (quoting the Foreign Minister, Gianni de Michelis, as stating that the criteria for additional permanent membership should include wealth, population, and influence in global matters). See id. (noting that membership in the United Nations has increased by 50 percent since the current number of Security Council seats was established in 1963 and that many nations, primarily developing countries, have advocated a restructuring of the Security Council). See also Fisher, supra note 196 (stating that United Nations Secretary-General Boutros-Ghali supports permanent membership for Germany, Japan, India, Brazil, and Nigeria); Hamilton, supra note 70 (advocating an expansion of Security Council seats, which would broaden the legitimacy of Council decisions on intervention, and suggesting discussion of one proposal which would add permanent membership for Japan, Germany, and the European Community, and expand Third World representation).

201. See COMMISSION TO STUDY THE ORGANIZATION OF PEACE, MODERNIZING THE SECURITY COUNCIL 12 (1974) (contending that efforts to reconsider the status quo could result in greater international strain). None of the big-five have displayed any willingness to relinquish their privileged status and a veto from any of them would negate any opportunity for change. Id.

202. See Gray, supra note 200 (quoting the Italian Foreign Minister as supporting implementation of the proposal over the span of several years); Meisler, supra note 198 (quoting former Undersecretary-General of the United Nations, Ronald Spiers, as stating that changes may be inevitable within five to ten years).

203. See Wilcox & Marcy, supra note 115, at 305-06 & n.16 (noting that one proposal to amend the United Nations Charter would allow a reevaluation of the number of permanent members each decade, allowing the composition of the Council to be altered without necessitating repeated amendment of the Charter).

204. See Gray, supra note 200, at 3 (noting that the permanent members have not supported any amendments to the Charter which might impact upon their own power and status); Fisher, supra note 196 (stating that Security Council reform is a long-shot); Paul Lewis, End of the Soviet Union; 3 Western Powers Favor Russian Takeover of Soviet U.N. Seat, N.Y. TIMES, Dec. 24, 1991, at A8 (observing that while several nations want to amend the Charter to redistribute the permanent members’ power, the United States, Britain and France are determined to avoid any reform that would affect Security Council membership and veto power).

205. See Wilcox & Marcy, supra note 115, at 299 (maintaining that the recurrent Soviet veto and inadequate representation of member nations has continually hampered the Security Council’s ability to carry out its intended functions); Bailey, supra
Second, in addition to altering the size and composition of the Security Council, proposals for limiting the veto power should be evaluated, particularly in view of the overwhelming dominance of politics in the Council. It is unlikely that the permanent members of the Security Council would be granted the veto power if the Charter were drafted anew. The veto privilege constitutes a fundamental cause of the

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206. See Myers, supra note 55, at 114 (characterizing Security Council determinations as primarily political decisions affected by different alliances); Reply, supra note 22, at 239 (quoting W. Michael Reisman, Nulility and Revision 850 (1971)) (asserting that in most cases clashing interests of divergent political systems will preclude action). A case in point is the deplorable situation in Bosnia-Hercegovina and the former Yugoslavia. Cf. Hamilton, supra note 70 (finding that the state of affairs threatens international peace and security). Serbian forces are using brutal force against Bosnia which may extend throughout the former Yugoslavia and beyond, millions of citizens have been displaced, and human rights violations are rampant. Id. Yet, for political reasons, the Bush Administration and the European nations have been slow to respond. Id.

207. See Bailey, supra note 89, at 159-60 (contending that proposals which recommend an increase in the permanent membership but do not address the veto power would be unlikely to improve the effectiveness of the Security Council); Marco A. Sibaja, United Nations: Members Insist on Changes in Security Council, INTER PRESS SERVICE, Oct. 14, 1991, available in LEXIS, Nexis Library, INPRES File (quoting Venezuelan President Perez as stating that the only way the United Nations will become stronger is by abolishing the veto power); Stanley Foundation, Decision-Making Processes of the United Nations: Ninth Conference on the United Nations of the Next Decade 17 (1974) (explaining that numerous representatives at the conference suggested that the veto be gradually limited until it eventually becomes obsolete); Wilcox & Marcy, supra note 115, at 309 (observing that numerous Americans have pressured the United States government to modify the veto power, abolish it, or restrain its use); Margaret Weiers, Time for U.N. to Revamp Security Council, TORONTO STAR, Sept. 17, 1991, available in LEXIS, Nexis Library, TSTAR File (asserting that the end of the Cold War presents the United Nations with an opportunity to acknowledge the advent of the new world order by amending the Charter to abandon permanent membership and the veto power, thus forcing the Security Council to function more democratically); Strengthening the UN, supra note 195, at 248 (suggesting that the veto be retained for mandatory enforcement action but not for recommendations that authorize enforcement action); Next Twenty-Five Years, supra note 195, at 60-61 (recommending abolition of the veto power in enforcement decisions under Chapter VII that do not authorize United Nations military force, and advocating new voting rules in Chapter VI and eventually Chapter VII that would permit decisions by a concurrence of a majority of permanent members and a majority of non-permanent members as long as no member state is compelled to use military force against its wishes). But cf. Voting, supra note 114, at 101-02 (recognizing the absurdity in believing that the veto power could be defeated merely by an amendment to the Charter, because the veto power was and is a precondition to the participation of the permanent members in the United Nations); Lall, supra note 113, at 29 (noting that given the composition of the Council at that time, explicit limitations on the veto power would not have been feasible); id. at 36 (asserting that the primary obstacle to effective Council action comes from the Security Council’s reluctance to initiate meetings when threats to international peace and security arise, not from the veto power).

United Nations' inability to consistently enforce international law and human rights standards. For example, it would not be surprising if China vetoed a resolution similar to Resolution 688 that sanctioned intervention to contain human rights violations in Tibet. Now, however, the demise of the Cold War and corresponding disintegration of the bipolar world provide an unparalleled opportunity to reconsider the veto privilege. Challenges and obstacles to this fundamental reassessment should not detract from the crucial need to place the issue on the agenda for international discussion and commentary.

Regardless of whether the Security Council is augmented to include additional permanent members or whether the veto power is reappraised, the definition of the level of human rights deprivations which constitute a threat to the peace must be expanded to ensure competent and consistent Security Council response. As previously discussed, Security Council jurisdiction should be extended to include situations of gross violations of human rights that may not precipitate interstate consequences and would not ordinarily be deemed a threat to the peace.

209. Reply, supra note 22, at 245 (quoting Wolfgang Friedmann, General Course in Public International Law, 127 Recueil des Cours d'Academie de Droit International 39, 68-69 (1969-II)). See also Bailey, supra note 89, at 213 (pointing out the difficulty in determining the number of proposals that were never introduced because of the expectation of a veto); Tickell, supra note 118, at 311-12 (conceding that the veto power removed disputes, particularly during the Cold War, from the United Nations system); Wilcox & Marcy, supra note 115, at 140-41 (claiming that while enforcement action is contingent upon the unanimity of the permanent members, this requisite unanimity has not occurred since the establishment of the United Nations, and noting that many proposals to eliminate the veto power in enforcement action have been put forth); Strengthening the UN, supra note 195, at 33 (recommending gradual restriction of the veto power because of its impact on the Security Council's ability to carry out its functions). The 1948 Vanderberg Resolution advocated eliminating the veto power for admission of new members and peaceful settlements of disputes under Chapter VI, and extending the restrictions on the veto into Chapter VII. Id. These changes would allow the Security Council to make recommendations regarding the presence of threats to the peace, breaches of the peace, or acts of aggression, and to authorize sanctions if the provisional actions were not followed. Id.

210. Cf. Bruce Fein, Kurdish Enclaves More Curio Than Paradigm, N.J.L.J., May 23, 1991, available in LEXIS, Nexis Library, NJLAWJ File (concluding that either the Soviet Union or China could have vetoed Resolution 688 given that both have experienced internal upheavals similar to those in Iraq, and noting that neither exercised the veto power in this particular instance because of self-interest in United States monetary and trade benefits).

211. See supra notes 147-65 and accompanying text (discussing expanding notions of what constitutes a threat to the peace). Furthermore, in order to avoid political obstacles, some experts recommend an automatic triggering mechanism to ensure Se-
Regardless of whether humanitarian intervention becomes the rule or the exception, Resolution 688 suggests that states can no longer retreat behind claims of sovereignty in order to defeat humanitarian assistance. The Resolution evinces a dramatic departure from the view that severe human rights violations are matters of internal concern, shielded from Security Council jurisdiction. The recent election of United Nations Secretary-General Boutros-Ghali bolsters hope that these issues will rise to the forefront of international dialogue. Furthermore, the collapse of the Cold War provides a unique opportunity to institute lasting and significant changes to the international legal system. The current configuration of the Security Council must be reassessed in light of changing political realities to better secure a collectivized effort in protecting international human rights throughout the world. See generally Jeanne Kirkpatrick, Human Rights, 'Territorial Integrity', WASH. POST, Apr. 15, 1991, at A9 (observing that prior to Resolution 688 brutality by a government against its own citizens was deemed an internal matter outside of Security Council jurisdiction).

215. See 10-member Security Council Sought, Report Says, OTTAWA CITIZEN, Feb. 9, 1992, at B8 (stating that United Nations Secretary-General Boutros-Ghali advocates increasing the number of permanent members to ten, adding India, Brazil, Japan, Germany, and Nigeria).
world. Only then can the international community ensure that travesties, such as occurred in Iraq, are avoided in the future.