Humanitarian Intervention: The Invasion of Cambodia

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THE INVASION OF CAMBODIA

"'My people have no food, no medicine, and we are being killed,' he said, getting angrier as he went on. 'What does the United Nations mean? Why don't they do something?'"¹

On April 17, 1975, the bombing finally stopped.² The people of Phnom Penh listened to the silence and rejoiced. They were tired of war's misery and, although they did not support the Khmer Rouge,³ they enthusiastically greeted these victors who brought with them the illusion of peace as they marched into the city. This enthusiasm was short-lived, followed by suffering of such intensity that it shocked the world.

The blueprint of the Khmer Rouge called for the radical remolding of Cambodian society.⁴ The Khmer Rouge had "resolved to annul the past and obliterate the present... [in order] to fashion

a future uncontaminated by the influence of either." The first phase of their program called for emptying the cities of their inhabitants. No exceptions were made. Those who could not march were either shot or left to die on the side of the road.

Without supplies or food, the people were forced to build villages and plant rice. Because there were no animals or farm implements, they had to dig and build with their hands. After a working day that lasted from early morning until dusk, the people had to spend several hours in political indoctrination classes. Additionally, if there was adequate light, they were forced to work till the early morning hours. They ate anything they could find, even the leaves and bark of trees.

Death came often and with terrifying barbarousness. It inexorably pursued those most despised by the Khmer Rouge: the educated; those tainted by association with the Vietnamese, the Lon Nol government, or the United States; prostitutes; and the handicapped. Entire families often were executed for the crimes of a single member. Death awaited those who complained about their living conditions, boys and girls caught holding hands, and others engaged in similar "crimes." Children were taken from their families and brainwashed by the Khmer Rouge before being sent back as spies. It was difficult not to agree that "Cambodia was hell on earth."

It is within the context of these events that the questions addressed by this note are raised: first, what are the obligations of the United Nations, if any, to aid or intervene when faced with a situation where the rulers of a state are, in essence, practicing genocide on that state's citizens; second, under international law, may another nation-state (in this case Vietnam) intervene in such a situation on its own so as to stop such atrocities.

In order adequately to address these questions in the context

5. Id. at 321.
7. Id. at 152.
8. Sideshow, supra note 4, at 321.
9. Id. at 368-69.
10. Barron, supra note 6, at 83, 144.
11. Id. at 27.
12. Id. at 136.
13. Id. at 137.
of the Vietnamese invasion of Cambodia, it is necessary to examine the geography and history of the country as well as the specific events which led to the Vietnamese intervention.

Cambodia is bounded on the north by Laos and Thailand, on the west by Thailand, on the east by Vietnam, and on the south by the Gulf of Thailand. It has an area of 69,898 square miles\(^{15}\) (about the size of Missouri)\(^{16}\) and is divided into seventeen provinces. As of 1976, the country had a population of nearly eight million people\(^{17}\) which included Vietnamese, Chinese, Chams,\(^{18}\) Europeans and various groups of hillmen known as Khmer-Locu.\(^{19}\)

Before 1970, ninety percent of the people lived in villages built around Buddhist temples,\(^{20}\) most of which were within the fertile central plains.\(^{21}\) The population of the capital, Phnom Penh, has fluctuated widely over the last fifteen years. In 1975, it was approximately three million,\(^{22}\) up from four hundred fifty thousand in 1968.\(^{23}\) After the forced flight from the cities, the population dropped to a mere twenty thousand.\(^{24}\) Today, Phnom Penh has a population of about three hundred thousand people.\(^{25}\)

Cambodia was created at the beginning of the Christian era with the civilization of the Angkor.\(^{26}\) In the course of fashioning a sophisticated hydraulic civilization, Angkor developed a strong economic base from which it was able to subjugate vast areas of Southeast Asia.\(^{27}\) During the thirteenth and fourteenth centuries,

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15. Australasia, supra note 3, at 596.
16. Sideshow, supra note 4, at 37.
20. Sideshow, supra note 4, at 36.
21. Id. at 37.
22. Id. at 183.
23. Australasia, supra note 3, at 596.
24. Id.
27. Id.
Cambodia struggled to maintain its diminishing dominance; however, constant attacks by the Thais and the Vietnamese, beginning in the fifteenth century, reduced Cambodia to a "vassal of Siam" (Thailand). Cambodia was saved from oblivion by the establishment of a French protectorate in 1864. France sought to use Cambodia as an aid to the French economy and to counter the British position in Thailand, where the latter had strong trading interests. The Cambodians rebelled against the French misuse of their country, and in 1949 Cambodia was granted independence as an Associate State of the French union. In January, 1955, through the Geneva Agreements on Indochina of 1954, Cambodia became financially and economically independent, both of France and of the other two Associate States of French Indo-China, Vietnam and Laos. Cambodia "pledged itself to a free and open political process to be demonstrated through elections to be conducted under the terms of the 1947 constitution." This severely limited the monarchy's role in Cambodian politics. It was for this reason that King Norodom Sihanouk abdicated his throne in favor of his father Norodom Sumarit.

Sihanouk formed a political movement, the Sangkum Reastr (Popular Socialist Community), an organization distinguished less

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28. *Id.* at 40-41.
30. *Id.* at 42.
31. *Id.* at 43. *But see* [1979-80] The Statesman's Yearbook 752 (1980), which recorded this event as occurring in 1863.
32. Sideshow, *supra* note 4, at 43. "It was not long before the King [of Cambodia] realized that the interests of the French resident differed little from those of his Siamese predecessor... The French tended to push the Vietnamese borders northward and westward at the expense of Cambodia. Constant minor changes in the frontier took place; maps were always out of date, or ambiguously drawn, or both. Such alterations remain a source of bitterness and warfare." *Id.*
34. *Id.*
36. *Id.* at 599.
37. In 1955 Sihanouk left the throne in order to become Prime Minister. H. Kissinger, *White House Years* 457 (1979) [hereinafter cited as Kissinger].
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for its ideology than for the number of different cliques and strains of political thought it embraced.\(^{38}\) In 1955, 1958, 1962, and 1966, the Sangkum won every seat in the National Assembly,\(^{39}\) and in June, 1960, after his father's death, Sihanouk was elevated to chief of state by a unanimous vote of the Cambodian National Assembly.\(^{40}\)

From his assumption of power until his overthrow, Sihanouk played one group against another in order to maintain Cambodia's neutrality. The policies he followed were predominantly anti-American: in 1956, he spurned American Secretary of State John Foster Dulles' invitation to join the South East Asia Treaty Organization; in 1963, he renounced American military and economic aid that he had been receiving since 1955, and demanded that the United States embassy close down and that its personnel leave the country;\(^{41}\) in 1965, he severed diplomatic relations with the United States.\(^{42}\) A few years later, Sihanouk reestablished diplomatic relations with the United States after noting that the Communists were gaining more popular approval.\(^{43}\) He tacitly allowed assaults on Viet Cong and North Vietnamese Army (VC/NVA) bases on the Cambodian-Vietnamese border as a means of reducing the influence of the left.\(^{44}\)

In early 1970, Sihanouk traveled to the U.S.S.R. and China to seek aid and to vent his anger at North Viet Nam's abuse of

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38. These groups "remained subservient to Sihanouk partly because there was no alternative and partly because he enjoyed real popularity." Sideshow, supra note 4, at 50.

39. Australasia, supra note 3, at 599.

40. Id. See also Kissinger, supra note 40, at 457.

41. "Sihanouk suspected that too many of his more conservative generals and ministers were becoming dependent upon both American aid and American attitudes." Sideshow, supra note 4, at 60.

42. Newsweek had just published an article scorning him and "accus[ing] his family of running the profitable Phnom Penh brothel business," which Sihanouk called an "intolerable intrusion." However, "a more important reason for the break was that the first American combat troops had just splashed ashore at Danang in South Vietnam." Sideshow, supra note 4, at 61-62.

43. F. Ponchaud, Cambodia: Year Zero 164 (1977) [hereinafter cited as Year Zero]. Sihanouk's gestures of friendliness toward the United States included allowing Jacqueline Kennedy to visit the ruins of Angkor. She claimed that this visit was intended "to fulfill a childhood dream." Sideshow, supra note 4, at 68.

44. Charles Meyer, Sihanouk's long-time French aide, declares that Sihanouk meant only to allow isolated small-scale attacks, not a vast B-52 campaign along the length of the border. Sideshow, supra note 4, at 70.
Cambodian territory. Meanwhile, Lon Nol, Cambodia’s Prime Minister, organized demonstrations in front of the North Vietnamese and Viet Cong embassies to show the government’s displeasure at the use of the Cambodian border region as a base for attacks into South Viet Nam. The embassies were sacked after the demonstrators rioted. Sihanouk, fearful that riots would upset the precarious balance between the Americans and the Communists, angrily denounced Lon Nol and his “lackeys,” and announced that he was returning to Phnom Penh.

Fearing retaliation from Sihanouk, Lon Nol, with Sirik Matak, Sihanouk’s cousin, overthrew the former king in a bloodless coup. Sihanouk, with China’s backing, allied with the North Vietnamese and with his enemies, the Khmer Rouge. The Khmer Rouge had only a few thousand followers before this union, but eventually were able to use Sihanouk to gain international recognition as well as support from the rural population of Cambodia. Faced with such opposition and backed by a “pitifully weak and ill-equipped army,” Lon Nol tried to maintain neutrality by making an accommodation with the VC/NVA regarding their use of Cambodian sanctuaries as well as Sihanoukville, a port on the Gulf of Thailand through which the VC/NVA shipped supplies for use in the Vietnam War. The American invasion of the Cambodian sanctuaries made

45. Kissinger, supra note 37, at 461-62.
46. Sideshow, supra note 4, at 115-16.
47. Id. at 117-18. It is unclear whether Sihanouk approved of these rallies. Id. at 116; Kissinger, supra note 37, at 461.
48. Sideshow, supra note 4, at 118.
49. Id. at 119; Kissinger, supra note 40, at 461-62.
50. Kissinger, supra note 37, at 468; Year Zero, supra note 46, at 166.
51. Year Zero, supra note 43, at 164. The Cambodian Communist Party was founded in 1951. It grew out of the guerrilla forces which were formed to fight the Japanese and the French. When the North Vietnamese accepted the terms of the Geneva Agreement, the Cambodian Communist Party split politically over the issues of neutrality and integration with Sihanouk’s political structure. Members of the party who remained in Cambodia formed a new political party, the Praecheachon Group. Sideshow, supra note 4, at 237-38. In 1966, Sihanouk invited three members of the Praecheacon Group to join his government, but they were eventually expelled for what Sihanouk believed to be plots against him. Id. at 244. As a result, the leaders of the Khmer Rouge were condemned to death in absentia. Kissinger, supra note 37, at 458.
52. Australasia, supra note 3, at 599.
53. Year Zero, supra note 43, at 164; Sideshow, supra note 4, at 123.
any compromise impossible.\textsuperscript{54}

Lon Nol was unable to maintain his precarious hold on the
government,\textsuperscript{55} eventually losing control of the army and the govern-
ment bureaucracy.\textsuperscript{56} Under Lon Nol’s government, millions of
Cambodians were driven into abject poverty as rubber production
stopped, rice production slowed, and prices skyrocketed.\textsuperscript{57} By
the end of his rule, the people of Phnom Penh were slowly starv-
ing. The city’s population had been swelled to an unhealthy level
by refugees fleeing areas that were controlled by the Khmer Rouge\textsuperscript{58}
and had been targeted for strategic bombing by the United States.
His regime finally collapsed after American aid was cut off in 1975.

The government of Democratic Kampuchea (the Khmer Rouge)
replaced the Lon Nol government: Khieu Samphan was Head of
State\textsuperscript{59} and Pol Pot was Prime Minister. The latter attempted
to implement the agrarian revolution formulated by Khieu Samphan
by executing a social policy that erased the concepts of the indi-
vidual, religion, family, love, and ownership at the expense of service
to the Angka.\textsuperscript{60} In addition, Pol Pot rejected all foreign aid and
influence with the exception of that from China.\textsuperscript{61}

Relations with Vietnam, which were cool after the Khmer
Rouge triumph in 1975, were quickly freezing. Vietnam had angered
the Khmers by refusing to remove Vietnamese troops from the
now notorious sanctuaries; by refusing to surrender the island
of Phu Quoc; by refusing to withdraw from several of the Wai
islands, previously controlled by Cambodia; and by refusing to

\textsuperscript{54} Sideshow, \textit{supra} note 4, at 126, 130.
\textsuperscript{55} \textit{Id.} at 187.
\textsuperscript{56} \textit{Id.} at 228-29.
\textsuperscript{57} \textit{Id.} at 220-21.
\textsuperscript{58} \textit{Id.} at 318-19. There were reports of Khmer Rouge perniciousness
in 1974. Allegedly, in a village near Siem Reap, the Khmer Rouge, after burning
down the village, nailed old women to the walls of their houses before they
were burned alive and tore children apart by hand. \textit{Id.} at 353.
\textsuperscript{59} Australasia, \textit{supra} note 3, at 600. Khieu Samphan was the architect
of the economic plans adopted by the Khmer Rouge. He stressed the need for
Cambodia to develop its agriculture fully before it industrialized. Sideshow,
\textit{supra} note 4, at 240.
\textsuperscript{60} Sideshow, \textit{supra} note 4, at 378. “The individual must find complete
joy in working for the Angka, must foreswear personal property, family relation-
ships and such attitudes as pride, contempt, envy.” \textit{Id.}
\textsuperscript{61} China was above suspicion because it had supported the Pol Pot
faction of the Khmer Rouge over the Hanoi faction. \textit{Id.} at 257, 382; Austral-
asia, \textit{supra} note 3, at 600.
agree to a proposed boundary change that would benefit Cambodia. The boundary disputes led to skirmishes between the two countries in 1976 and 1977 in which Vietnamese and Khmer troops began raiding each other's positions along the Cambodian border. In April of 1977, the Vietnamese backed a coup against Pol Pot only to see it crushed, and the Pol Pot government massacred one thousand Vietnamese villagers in an attack. Following this escalation of fighting, Cambodia denounced Vietnam publicly and broke off diplomatic relations. In January of 1978, the Vietnamese launched a massive attack with 100,000 troops. The Khmers, outgunned and outmanned, fought a somewhat successful guerilla war. In January of 1979, the Vietnamese captured Phnom Penh and installed the Heng Samrin government, which presently controls most of Cambodia.

Undoubtedly, Vietnam's decision to invade Cambodia was based on the belief—gauging economic and military data—that Vietnam could not lose the war. Vietnam's military strength easily surpassed Cambodia's:

Vietnam . . . is the preeminent military power in Southeast Asia, with a large, experienced army equipped with the most sophisticated weapons. . . . Cambodia's army, on the other hand, is estimated at only 60,000 to 80,000 soldiers, many of them teenagers, and as a former guerilla force it has limited experience in large-scale conventional warfare. The Cam-

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62. Sideshow, supra note 4, at 384.
63. Id.; Australasia, supra note 3, at 600. By the end of 1977, Phnom Penh was denouncing Hanoi publicly. Sideshow, supra note 4, at 385; Australasia, supra note 3, at 600.
64. Sideshow, supra note 4, at 384.
65. Id.
67. Sideshow, supra note 4, at 384.
68. Id. at 385.
69. U.S. News & World Report, December 18, 1978, at 33. The attack was supported by heavy bombing. Id.
70. Sideshow, supra note 4, at 385; U.S. News & World Report, December 18, 1978, at 34. The Khmers tried to match the Vietnamese power at Snoul; half of the Cambodian division was lost. Id.
72. Australasia, supra note 3, at 600.
bodians have virtually no air force, . . . [a] limited number of artillery guns, . . . and [no] tanks.  

Economically, Vietnam had a slightly higher output of goods, but both countries are so poor that they belong to the "fourth world." Vietnam had embarked upon a five-year economic program designed to transform its predominantly agrarian society, initially, to one based on light industry and, finally, to one of heavy industry.  

Currently, ninety percent of the population is engaged in agriculture. The country has large deposits of coal and large fish resources, and there have been recent discoveries of natural gas and oil. Cambodia has instituted an economic plan similar to Vietnam's; however, it stresses agricultural self-sufficiency and does not foresee a heavy industry stage until the distant future. It has the greatest fresh water fish resources in Southeast Asia, and, of its total area of forty-four million acres, some of which is the most fertile in the tropics, about twenty million are cultivable. Therefore, in view of its economic and military predicament, Cambodia acted unwisely when it launched raids in 1977 against Vietnam and Thailand, and again when it rejected Vietnam's offer of reconciliation in December of 1977.

73. See Szulc, The War We Left Behind, New York, January 16, 1978, at 32 [hereinafter cited as New York]. However, in Southeast Asia the Cambodians are known to be valiant fighters, and during the first Indochinese war, French officers preferred them to the Vietnamese: "In man to man fighting, the Khmer are considered to have no masters." Year Zero, supra note 43, at 140.

74. U.S. News & World Report, June 25, 1979, at 53. Cambodia was listed by the Overseas Development Council as the poorest nation in the world, with a per-capita national output of seventy dollars. Id.


76. Id.

77. Id.

78. Sideshow, supra note 4, at 240-41.

79. Id. at 38.


81. New York, supra note 73, at 30. "A broad political assessment of this war is extremely difficult, partly because independent reporting by Western diplomats and reporters is impossible. . . . However, the first conclusion of Western government specialists is that Cambodia was the aggressor in these attacks." Id.

82. Id. "According to diplomats, the Cambodians rejected this overture, as they rejected a direct Vietnamese negotiating proposal ten days later." Id.
Vietnam's decision to invade Cambodia, based as it was on admittedly military motives, can also be described as an attempt to alleviate the violations of human rights which were occurring in the latter country. The situation is not one of first impression: there were similar developments as a result of the Indian invasion of East Pakistan during the Bangladesh civil war. The parallels between the India-Pakistan and the Vietnam-Cambodia conflicts are close enough to warrant an examination of the factors which led to the Indian invasion.

Pakistan was composed of two units: the west, dominated by the Punjab; and the east, Bengal, separated by a thousand miles of Indian territory, with no common language, held together by Islam and a fear of domination by India's Hindu culture. Elections were to be held on December 7, 1970, in East and West Pakistan as a transitional step from the military government of Yahya Khan to a civilian government. However, a devastating cyclone ravaged East Pakistan, and the elections became a referendum on Yahya's handling of the emergency. As a result, the Awami League, dedicated to East Pakistan's autonomy, won 167 out of the 169 seats contested in the East, giving it a majority of 313 seats in the National Assembly. Sheikh Mujibur Rahman (Mujib), leader of the Awami League, demanded an end to martial law and a return to popular rule. Urged by the military and Zulfikar Ali Bhutto, leader of the Pakistan People's Party, to prevent East Pakistani independence, Yahya Khan, with less than forty thousand troops, re-enforced military rule over the seventy-five million people

84. Kissinger, supra note 37, at 845.
85. Id. at 850.
86. Id.
87. Id.
88. Id.
89. Id. at 852.
of East Pakistan. The order imposed by the military government was extremely harsh—Mujib was arrested and sentenced to death—and caused millions of refugees to flee to India to escape the army’s atrocities.

Admittedly overwhelmed by the eight million refugees within her borders, and undoubtedly concerned by suffering inflicted on the Bengalis, India invaded East Pakistan on October 30, 1971. Full scale war broke out a short time later. On December 3, 1971, Pakistan attacked India on the latter’s western border. This battle was short-lived as India offered an unconditional cease-fire in the West on December 16, 1971, a day after a Pakistani cease-fire offer was accepted by India in the East.

The Indian invasion can be viewed as a legitimate invocation of the doctrine of humanitarian intervention. Yet, what lay beneath India’s humanitarian facade was the desire to destroy Pakistan. India did not want a peaceful settlement with Pakistan. Pakistan later made overtures for peace: it would accept a U.N. supervision of the resettlement of the refugees and a proposal to have U.N. observers stationed on Pakistan’s borders and it would replace a martial-law administrator with an appointed civilian governor. Meanwhile, India trained forty thousand Bengali guerillas poised to strike Pakistan, and moved its many strong troops to the Pakistani border. Therefore, despite the impure political pressure from the U.S.S.R., which had recently signed a military treaty with India and which feared a cancellation of the scheduled summit with President Nixon in 1972, that caused India to offer a cease-fire.

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90. Id.
91. Id. at 833.
92. Id. at 873.
93. Id. at 877.
94. Id. at 882.
95. Id. at 913. It is Dr. Kissinger’s firm conviction that it was only political pressure from the U.S.S.R., which had recently signed a military treaty with India and which feared a cancellation of the scheduled summit with President Nixon in 1972, that caused India to offer a cease-fire. Id. at 913-14.
96. Id. at 913.
97. See note 83 supra.
99. Id. at 863.
100. Id. at 894.
101. Id. at 870.
102. Id. at 875.
103. Id. at 898.
104. Id. at 856.
motive for India’s intervention, the factors were present that revived the dormant doctrine of humanitarian intervention: the unspeakable nature and number of human rights violations and the withdrawal of troops after the Bengalis had achieved independence.

Stripped to its bare essentials, the historical factors that remain from which to judge the validity of Vietnam’s intervention on humanitarian grounds are substantially similar to those that existed during the Indian-Pakistani conflict: the invasion by a stronger nation having tainted motives into one that is committing outrages upon its own citizens. A most important factor, the withdrawal of the intervenor after completion of the invasion, has not occurred in the Cambodian-Vietnamese conflict. Whether Vietnam remains because the Pol Pot forces are still active or because the Vietnamese plan to exercise control over Cambodia is as yet unclear. That the intervention has been positive in some respects cannot be doubted: Pol Pot’s complete control has been removed; there has been a return

105. “[T]he hardest problem is whether humanitarian intervention should be permissible in a situation where the interventions, to succeed, must alter the authority structure of the State itself.

“The Indian-Pakistan case raises this issue squarely, and for that reason it is particularly troubling. . . . The problems are harder than they appear. It is difficult to tell the damsel from the dragon in a context in which one side engages in widespread murder of civilians and the other side—for various political as well as humanitarian reasons—intervenes and in so doing dismembers a historical rival.” Conference Proceedings Part II: The Present, Humanitarian Intervention and the United Nations 50 (R. Lillich ed. 1973) (remarks of Prof. John Moore) (emphasis supplied).

106. But see Franck, supra note 83, at 276 citing UN Doc. S/PV 1606, Dec. 4, 1971, at 86. The Indian ambassador, in his address to the United Nations after the East Pakistan invasion declared: “we have on this particular occasion absolutely nothing but the purest of motives and the purest of intentions: to rescue the people of East Bengal from what they are suffering.” Professor Richard Lillich believes that the months of world and United Nations inactivity “in the face of obvious gross human rights deprivations . . . manifestly calls for a fundamental re-evaluation of the protection of human rights by general international law. The doctrine of humanitarian intervention . . . deserves the most searching reassessment given the failure of the United Nations to . . . alleviate the mass suffering which took place in . . . Bangladesh.” Franck, supra note 83, at 277 citing The International Protection of Human Rights by General International Law, Second Interim Report of the Sub-Committee (Richard Lillich, Rapporteur), in Report of the International Committee on Human Rights of the International Law Assn. 58 at 54 (1972).
to the cities; and Cambodians have been allowed to organize their villages. 107

Thus, the factors were present in both actions which allowed the doctrine of humanitarian intervention to be used as a justification. Humanitarian intervention "should be seen as a ... gratuitous act to prevent the continuation of genocidal activities or policies of foreign governments against minorities which are their own (and not the intervening States') nationals." 108 It is "based on the kinship and minimum reciprocal responsibility of all humanity, the inability of geographical boundaries to stem the categorical moral imperatives, and ultimately, the confirmation of the sanctity of human life, without reference to place or transient circumstances." 109 Most important, it is the only international mechanism which offers prospective victims of atrocities hope that their lives, let alone their human rights, will be protected.

The concept of humanitarian intervention has been recognized since the times of Grotius and Vattel. 110 However, the first invocation of the concept did not come until the Greek intervention of 1829. 111 Many times during the 1820's, the Porte massacred the Greeks, and these atrocities led France, Great Britain, and Russia to conclude the Treaty of London of July 6, 1827, 112 in which they agreed to put an end to the bloodshed in Greece and to propose a limited local autonomy for the region. After the Turkish government rejected the proposal, these major powers, by military means, forced the Porte to accept the proposal. 113 It has been stated that

107. U.S. News and World Report, August 27, 1979, at 34. See Year Zero, supra note 43 at 105. Additional support was suggested by the comments of Representative Elizabeth Holtzman during her visit to Cambodia in November 1979: it was "noted ... that she gained a sense of revival, with people returning, students in school and children being tenderly and lovingly cared for in the orphanage [she] visited." N.Y. Times, November 13, 1979, at A3, col. 2.


110. Fonteyne, supra note 83, at 214.

111. Id. at 207.

112. The Turkish government.

113. Reisman, supra note 109, at 179.

114. Fonteyne, supra note 83, at 207.
the vast majority of scholars have appraised this intervention as a lawful action, based as it was on exigent humanitarian considerations.\textsuperscript{115}

Apart from its history as a method of ending bloodshed, the doctrine is also important as an analogue for other invasions of the nineteenth and early twentieth centuries—the Syrian invasion,\textsuperscript{116} the invasion of Bosnia, Herzegovina, and Bulgaria,\textsuperscript{117} the Macedonian invasion,\textsuperscript{118} and the American invasion of Cuba\textsuperscript{119}—in terms of who intervened where, why, and for how long. The essential pattern was that a major Western power invaded a nation substantially weaker militarily and economically in order to prevent gross violations of human rights of a relatively helpless group by that nation's government, and remained until it was reasonably satisfied that the atrocities would not recur. Such action was then legal because it was in conformity with international law.\textsuperscript{120}

With the passage of the U.N. Charter, major assaults have been launched against the doctrine of humanitarian intervention. Opponents of the doctrine contend that its spirit has been supplanted by the passage of Article 2(4) of the U.N. Charter, which, with the exception of self-defense, forbids the use of force by one state against another. Article 2(4) reads:

\begin{quote}
All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.\textsuperscript{121}
\end{quote}

Even though such an interpretation is reasonable, other arguments can be offered. The objections to humanitarian intervention can be overcome by an examination of the language of Article 2(4). The article does not bar force per se, but instead bars the use of force

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\item[115.\textsuperscript{]} Reisman, \textit{supra} note 109, at 180.
\item[116.\textsuperscript{]} \textit{See generally} Fonteyne, \textit{supra} note 83, at 208-09; Reisman, \textit{supra} note 109, at 180-81.
\item[117.\textsuperscript{]} \textit{See} Fonteyne, \textit{supra} note 83, at 212; \textit{Note, The Law of Unilateral Humanitarian Intervention by Armed Force: A Legal Survey}, 79 Mil. L. Rev. 158, 162 (1978) [hereinafter cited as \textit{Armed Force}].
\item[118.\textsuperscript{]} \textit{See} Fonteyne, \textit{supra} note 83, at 219.
\item[119.\textsuperscript{]} \textit{See} Franck, \textit{supra} note 83, at 285.
\item[120.\textsuperscript{]} The \textit{Paquete Habana}, 175 U.S. 677, 700-01 (1900); \textit{Armed Force, supra} note 117, at 169-71.
\item[121.\textsuperscript{]} U.N. Charter, Art. 2, para. 4.
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“against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.”

The concern of humanitarian intervention, however, is not with violating the “territorial integrity” of a nation but with gross violations of human rights, a purpose that is high among “the expectations and demands of the peoples of the world.”

“The preamble and the critical first Article of the Charter, framed in the awful shadow of the atrocities of war, left no doubt [about the existence] of the intimate nexus that the framers perceived to link international peace and security and the most fundamental rights of all individuals.”

The U.N.’s concern with human rights is further evidenced by the formation of the Commission on Human Rights by the Economic and Social Council, the adoption of the Universal Declaration of Human Rights, the Genocide Convention and the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights.

122. Id.
123. Reisman, supra note 109, at 170.
124. Id. at 171.
126. G.A. Res. 217 (III); U.N. Doc. A/810, at 71. “Many governments have taken the position that the Declaration of Human Rights defines human rights and fundamental freedoms which members of the U.N. are legally obligated to respect; and some Assembly resolutions clearly accept this point of view.” L. Goodrich, E. Hambro & A. Simons, Charter of the United Nations 378 (1969) [hereinafter cited as Goodrich]. “See, for example, G.A. Res. 1663 (XVI), Nov. 28, 1961, on the question of race conflict in South Africa in which the Assembly reaffirms ‘that the racial policies being pursued by the Government of South Africa are a flagrant violation of the U.N. Charter and the Universal Declaration of Human Rights and are totally inconsistent with South Africa’s obligations as a Member State.’” Id. at 378 n. 42.
127. 78 U.N.T.S. 277. Under Article VIII, “[a] ny Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.” Consistent with this is the language in Article IV, which states that “[p]ersons committing genocide or any of the other acts enumerated in Article III shall be punished. . . .” Id. Thus, the clear purpose of Article III, prescribing retribution for those who commit genocide, is complemented by an implied right of intervention to prevent acts of genocide, as suggested in Article VIII.
In addition to the Article 2(4) bar of humanitarian intervention, it is suggested that Article 2(7) of the Charter forbids even U.N.-authorized military forces to "intervene in matters which are essentially within the domestic jurisdiction of any state."\textsuperscript{130} Therefore, they would be proscribed from interfering in order to prevent genocide.

Yet Article 2(7) is not an absolute bar to the use of force by the U.N. in matters which are essentially within the domestic jurisdiction of a state, since the article is qualified by the phrase "essentially within the domestic jurisdiction" and the clause "but this principle shall not prejudice the application of enforcement measures under Chapter VII."\textsuperscript{131} Moreover, "it can no longer be argued that violations of human rights 'which shock the conscience of mankind' are essentially within the domestic jurisdiction of states."\textsuperscript{132} Governments which are responsible through their own acts or omissions for mass murders within their borders are unlikely to keep such killings a domestic affair.\textsuperscript{133} Further, to argue that genocidal acts of a government within its borders are within its domestic jurisdiction is to legitimize such acts and deem them worthy of protection by the international community. This is inconsistent with the Charter and the subsequent international conventions and General Assembly resolutions that declare that protection of human rights is a necessary element of peace.\textsuperscript{134} For this reason, genocide is not a protected act.\textsuperscript{135} Genocide is not an "internal affair" of a state but an illegitimate act under the Genocide Convention and customary international law.\textsuperscript{136}

\begin{footnotes}
\item {\textsuperscript{130}} U.N. Charter, Art. 2, para. 7.
\item {\textsuperscript{131}} Id.
\item {\textsuperscript{132}} Humanitarian Intervention and the United Nations vii (R. Lillich ed. 1973).
\item {\textsuperscript{133}} McDougal and Reisman, Rhodesia and the U.N.: The Lawfulness of International Concern, 62 Am. J. Int'l L. 1, 13 (1968) [hereinafter cited as McDougal and Reisman]. "It has been too often confirmed that practices of indignity and strife which begin as internal in physical manifestation in a single community quickly and easily spread to the other communities and become international." \textit{Id.}
\item {\textsuperscript{135}} See note 127 supra.
\item {\textsuperscript{136}} "It is important to note that the Nuremburg Tribunal applied both
Similarly, no one would argue that an armed attack against another state is protected as an external affair of a state, as the word "affairs" refers only to acts that are in conformity with international law. In addition, the seemingly absolute proscription of the use of force by one state against another is qualified in the same article and paragraph.\(^{137}\)

A less severe situation arose in this context with respect to the recent declaration of independence of Rhodesia. The U.N. dealt with the situation under Article 39 of the U.N. Charter, which provides that the Security Council "shall determine the existence of any threat to the peace . . . and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42."\(^{138}\) Even though such a determination has been rare, the Security Council found both the unilateral declaration of independence by Rhodesia and its policies of apartheid to constitute a "threat to the peace," and verbally condemned them.

The promulgation and application of policies of racism in a context as volatile as that of Rhodesia and South Africa must give rise to expectations of violence and constitute, if not aggression of the classical type, at least the creation of circumstances under which states have been customarily regarded as justified in unilaterally resorting to coercive strategies of humanitarian intervention.\(^{139}\)

By the same reasoning it follows that if apartheid policies are a threat to the peace, genocide in Cambodia must also be, thereby creating an opportunity for the use of humanitarian intervention.

If the Security Council is unable to act, then the "secondary powers" of the General Assembly come into operation. Failure by the General Assembly to act gives regional organizations jurisdiction to maintain the peace so long as "their activities are con-

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the London Charter and customary international law to the defendants before it. (citations omitted). Hence the explicit language of Art. I of the Genocide Convention: 'The Contracting Parties confirm that genocide . . . is a crime under international law. . .'" Reisman, supra note 109, at 174.


139. McDougal and Reisman, supra note 133, at 13.
sistent with the Purposes and Principles of the United Nations."\textsuperscript{140}

The U.N. Charter creates a separate form of state action for human rights deprivations when the Security Council, the General Assembly, and regional organizations fail to act to halt egregious human rights deprivations. "Article 55 of the Charter reaffirms that the U.N. shall promote universal respect for, and observance of human rights and fundamental freedoms for all. . . . Article 56 transforms that commitment into an active obligation for joint and separate action in defense of human rights."\textsuperscript{141} The recognition of such a right is essential, since the U.N. cannot be expected to intervene actively through the use of force except in the most limited circumstances.\textsuperscript{142}

Opponents of humanitarian intervention assert that strong policy arguments militate against the resurrection of the doctrine, in that humanitarian intervention will be used as a legal smokescreen for naked aggression. This argument is not persuasive. If a nation desires to appear to comply with the rule, or if it wants to put forth an unreasonable interpretation of the rule, it will do so. If a state wishes to present a legal justification for an invasion, Article 51 of the U.N. Charter, the self-defense provision, is available.\textsuperscript{143}

\textsuperscript{140} Reisman, \textit{supra} note 109, at 192.

\textsuperscript{141} McDougal and Reisman, \textit{Response by McDougal and Reisman}, 3 \textit{Int'l L.} 438, 444 (1968-69). Franck and Rodley reply to McDougal and Reisman by stating that "individual action" referred to in Articles 55 and 56 "clearly means self-enforcement by those who adhere to the instrument, not enforcement by states against one another." Franck, \textit{supra} note 83, at 277. Moreover, they write that "in only one instrument is the door to humanitarian intervention left ajar. The Proclamation of Teheran states regarding the crime of apartheid that it 'is imperative for the international community to use every possible means to eradicate this evil.'" \textit{Id.} at 299 n. 110. It is beyond cavil that if the door is open for the eradication of apartheid, it is open for the prevention of genocide.

\textsuperscript{142} See Reisman, \textit{supra} note 109 at 195.

\textsuperscript{143} U.N. Charter, Art. 51. The Soviet Union's intervention in Czechoslovakia is an example. The Soviet Government stated that the Czech Government had asked for assistance in quelling the 1968 riots; however, this was a fabrication. Around the time of the invasion, "one of the jokes making the rounds was, 'What are 500,000 Soviet troops doing in Czechoslovakia? . . . Looking for the person who invited them in!'" \textit{Conference Proceedings Part II: The Present, Humanitarian Intervention and the United Nations} 100 (R. Lillich ed. 1973). The Soviets made another spurious claim in Hungary. J. Michener, \textit{The Bridge at Andau} 145 (1957).
It is also claimed that reviving the doctrine will increase the likelihood that the superpowers will go to loggerheads, triggering a nuclear confrontation. The behavior of the superpowers since World War II, however, suggests that it is unlikely that military action would occur under cover of humanitarian intervention without consideration of national and international consequences. When the United States intervened in the Dominican Republic and in Lebanon, and the Soviet Union invaded Czechoslovakia and Hungary, there was no counter-intervention by the other superpower. In the Vietnam conflict, the Soviet Union and the People’s Republic of China did not introduce their own forces into the war, though they supplied arms to the VC/NVA. More recently, the Soviet invasion of Afghanistan has not brought even minimal help from the United States to the Afghan rebels.144

Notwithstanding the arguments about the U.N. Charter and a comparison between the India-Pakistan conflict and the Cambodia-Vietnam war,

The Bengali [or Cambodian] villager who has just seen his family slaughtered . . . doesn’t give a damn about what happened in the nineteenth century, and he doesn’t give a God damn about what happened in the eighteenth century [or about the meaning of Articles 2(4) and 2(7) of the U.N. Charter]. He looks to the rest of the world, he looks to the rest of his species, who are alive now, to do something, to intervene on his behalf.145

Not only the Cambodians, but the Ugandans, Laotians, and others have a right to live. Their concern is not that the end justifies the means; that there should be no intervention to halt genocide because action might jeopardize world peace.

The practice of non-intervention to preserve world peace violates the most fundamental precept of natural law.146 Worse yet, it is indistinguishable from Pol Pot’s behavior. The world condemned Pol Pot for his inhuman methods of bringing about his Khmer revolution, but found a similar analysis on the inter-

national level quite palatable. The result of such an international attitude can only be a ratification of the carnage in which each state is responsible. The purpose of the framers of the U.N. Charter was to avoid such a violation.

The Vietnamese, whatever their motives, have all but eliminated the remains of the Khmer Rouge policies in Cambodia and have put the beleaguered nation on the road to recovery. It is the responsibility of the United Nations and the world to assure that the Vietnamese will leave Cambodia.

This will not happen until the United States changes its policy toward Cambodia. The United States continues to recognize the Pol Pot government in the U.N., even though President Carter, who boasts of his concern for the human rights of all, denounced Cambodia as the worst violator of human rights in the world. Only when the new government is recognized—even if only for the present—and accommodations are made with the Vietnamese will Cambodia be able to begin its long journey toward recovery.

James Lutfy

147. Time, Nov. 12, 1979, at 50.