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INTERNATIONAL HUMAN RIGHTS AND THE KURDS*

DR. AMIR A. MAJID**

I. INTRODUCTION

This article analyses the Kurdish rebellion for autonomy, the actions of the Iraqi forces against them and the measures taken by the United Nations, the United States and other Coalition States to protect the Kurds in the aftermath of the January/February 1991 Gulf War. The international actions will be assessed in light of the present rules of International Law and, in particular, whether they contravene any provision of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.¹

Before the commencement of Operation Desert Storm on January 17, 1991, and during this operation, various American, British, French, Kuwaiti, Saudi, Egyptian, Turkish and other leaders and politicians, as well as many Western world affairs commentators, looked towards the Iraqi people to remove Saddam Hussein and establish a fairer government in their country. Some of these leaders, mainly from the U.S. and

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1. 78 U.N.T.S. 277 (1951) (hereinafter 1948 Genocide Convention).

Israel, directly advocated the forcible overthrow of the Saddam Regime. Others outlined the misery of and devastation to Iraq brought about by his regime and, believing that it was for Iraqis to decide what kind of government they wished to have, expressed the hope that the Iraqi population would see its self-enlightened interest in ousting President Saddam Hussein and his confederates.²

On February 27, U.S. President George Bush announced the informal cease fire, effective midnight, Washington time, February 28, 1991. As soon as the change-seeking people of Iraq realised that Saddam Hussein's regime was definitively defeated, they rose up against it. The Shi'ites in the southern region of Iraq and the Kurds in northern Iraq had already been struggling for reform for several years. BBC World Service reported on March 4, 1991, that a major rebellion by the Shi'ites was underway and that some units of the Iraqi forces had joined the rebels. At the same time, the Kurds started to fight for freedom from Iraq, with combat intensifying in subsequent days.

The Shi'ite rebels, in light of their affinity with Iran and the Shi'ites in Lebanon, did not attract much sympathy from the U.S. or other allies until their plight became extremely intolerable in summer/autumn 1992. Some Western leaders went out of their way to express their belief in the territorial integrity and political independence of Iraq, even though the Shi'ites did not threaten these. The real fear appeared to be the possibility that if victorious the Shi'ites might or might not establish, in Iraq, a fundamentalist regime similar to that in Iran.

Sadly, an opportunity to effectively intervene was missed in the first few weeks after the ceasefire. The U.S. and allies watched the unequal battles fought by Iraqi Republic Guards against Shi'ites in the south and Kurds in the north, hoping that anti-Saddam forces would win in the end.

2. Many statesmen, politicians, intellectuals, commentators and journalists took this indirect approach of persuasion. For instance, Lord Carrington, a former British Foreign Secretary and past Secretary-General of NATO, took this approach in an interview with BBC Radio Four, FM News (Feb. 27, 1991).

However, as many military analysts observed, Saddam Hussein still possessed sufficient superiority over the ill-equipped and less organised rebelling pockets of population. It took more than five weeks for the world to realise that hundreds of thousands of refugees fleeing to Iran and Turkey were not likely to return to an Iraq governed by victorious rebels - instead, Saddam Hussein was intact and the remaining Shi'ites and Kurds were in danger of extermination.

Since the stated objective of the Kurds was to obtain a separate homeland (in negotiations scaled-down to regional autonomy), the Iraqi soldiers fought against them with more ferocity. In consequence, they were forced to flee in very large numbers. Iraqi soldiers chased them and thousands of them took refuge in the inhospitable peaks of the cold and barren mountains on the Iraq-Turkey border. An equal number of Kurds, if not more, took refuge in Iran. At the height of this unfortunate exodus, approximately three million Iraqi Kurds were in Turkey, Iran, and trapped in the Iraqi-Turkish mountains.

The Kurds did not suffer the same disadvantages as the Shi'ites in attracting the sympathies of the Western statesmen and citizens. In the middle of April, 1991, appalling television pictures and media reports about the plight of Kurds reached the West. On April 26, 1991, BBC World Service quoted an U.N. senior officer in the area as reporting that up to 2000 Kurds were dying every day due to worsening conditions, shortage of essential supplies, and lack of adequate shelter. Opposition politicians, commentators and members of the public roundly criticised governments for being the silent spectators of the brutal treatment meted out by the Saddam regime to the Kurdish minority. By then the Western States had lost the opportunity of seeing the removal of Saddam Hussein by the Iraqi people; by then non-intervention in the domestic affairs of Iraq had been indelibly engraved on countless public tablets.

To neutralise the public outrage, the Western Coalition States turned to other options. One uncontroversial option was humanitarian assistance. This was provided with reasonable promptitude and efficiency. The U.N. bodies were galvanised

into action, most significantly the office of the U.N. Commissioner for Refugees. While this speed of action can favourably be compared to the quick response to other similar calamities, it did not rank as high as fighting wars. For example, in the beginning of April, 1991, the U.N. Secretary General appealed for £580 million for the Kurdish relief but despite the urgency the U.N. only funded £100 million after 4 weeks.³

The question arises: What could the world do legally? This is a formidable question. The nations have been so far too much concerned with their political, military, economic and other nationalistic interests. Thus, again, as on an intolerably high number of occasions, the welfare of the individual, "the ultimate unit of all law"⁴, has been pushed down on the agenda of formulation of new rules of International Law.

There is a burgeoning branch of International Law dealing with the declaration, preservation and protection of human rights. In the limited ambit of this article, the applicability of the present International Law to the Kurdish exodus and related issues can be assessed from three angles: 1. the 1948 Genocide Convention, 2. the Right of Self-Determination and 3. Human Rights in General. Before these can be addressed, however, the underlying issue of intervention in the domestic affairs of Iraq must be analysed.

II. INTERVENTION IN STATE DOMESTIC AFFAIRS

Whatever may be the legal analysis of the situation, one has to face the argument on behalf of Iraq that International Law forbids any State to intervene in the domestic affairs of another State. This is undoubtedly the case. The classical in-

3. The BBC U.N. Correspondent, in his report from New York, reported the frustration expressed by some U.N. officials and said that member States could not ask the Organisation to do certain things without providing it with the necessary resources. See "News Hour", BBC World Service, 1300 GMT (Apr. 27, 1991).

4. An expression widely used by one-time judge of the International Court of Justice, Hersch Lauterpacht; see, e.g., I INTERNATIONAL LAW - BEING THE COLLECTED PAPERS OF HERSCH LAUTERPACHT 303 (Elihu Lauterpacht ed., 1970).

ternational jurists were unwilling to make any concession to the inviolability of the municipal domain of a State.⁵ In consequence of awful abuses of human rights in the first 45 years of this century, particularly in the nazi era, many jurists believed and many States accepted that the human beings were the ultimate subjects of International Law and gross violation of these rights - including the right to life, liberty, culture, religion and self-determination - was a legitimate and active concern of International Law. This, however, has not gained universal acceptance. As recently as April, 1991, Chinese Prime Minister Li Peng denied the presence of any objective human rights under International Law and said that China would only be bound to subject its human rights record to the scrutiny of International Law to the extent it has obliged itself by treaty obligations. He deemed it as an "interference with the sovereignty of China" if the U.S. or any other State took any action linked to the Chinese human rights record.

As far as the legitimating role of International Law, the treaties and the U.N. resolutions pertaining to the protection of human rights are functioning well. The civilised States adhere to them and support any verbal condemnation by institutional resolutions. In the context of the controlling role of International Law, these States are reluctant to give full teeth to International Law of Human Rights. On some occasions, however, such as the UDI⁶ in Rhodesia and apartheid in South Africa, the usurpation of the majority rights has been punished by economic sanctions.

Almost every State and many modern international jurists are unwilling to go further than the penalty of economic sanctions. The reason behind this reluctance is too complex to be thoroughly discussed in this article. A key view though, in the eyes of the reconstructors of the post World War II regime and the framers of the U.N. Charter, was that the supreme evil was the "scourge of war". Hence, Article 2, para. 4 of the U.N.

5. This is abundantly clear from the writings of renowned international lawyers like Hyde, Moore, Hudson, Hackworth, Jessup, Oppenheim, Calvo and Tunkin. Briggs, for instance, perceived the situation not very differently soon after World War II. See THE LAW OF NATIONS 508-513 (Herbert W. Briggs ed., 2d ed. 1952).

6. Unilateral Declaration of Independence [of Southern Rhodesia].

Charter obliged the member States "to refrain . . . from the use or threat of force against the territorial integrity or political independence" of any member State. The object was to impose a complete ban on war, other than in self-defence (Art. 51). To ensure this complete embargo on war, the preexisting cornerstone principle of International Law of "exclusive domestic jurisdiction" was applied even to the U.N.. Accordingly, Article 2, para. 7 forbids the U.N. from intervening in matters which are essentially within the domestic jurisdiction of any state".⁷ Thus, the U.N. military enforcement is indubitably reserved for ending a breach of peace, threat to peace or an act of aggression.

Some international lawyers narrowly interpret this prohibition and argue that human rights, *inter alia*, are not "essentially" within the domestic jurisdiction of a State; rather, they are matters with which mankind as a whole is concerned. Nevertheless, the concept of non-intervention remains a powerful obstruction to the enforcement of human rights.

III. BASES FOR PROTECTION OF HUMAN RIGHTS OF THE KURDS

A. 1948 GENOCIDE CONVENTION

In consequence of persuasive writings about Hitlerism and fascism, and the exposure of heinous war crimes of some individuals in the Nuremberg and other trials, the States were enthusiastic and committed to prevent any recurrence of genocidal oppression by any future dictator. The Genocide Convention, after its draft was circulated for consultation and remarks considered, was adopted by the U.N. General Assembly on December 9, 1948, in Paris.⁸ Iraq, being a Contracting Party to the Convention, has undertaken "to prevent and punish" genocide which is a crime under international law "whether committed in time of peace or time of war" (Art. I).

7. For analysis of this prohibition, see: D. P. O'CONNELL, I INTERNATIONAL LAW 308-313 (1970).

8. G.A. Res. 260A, U.N. Doc. A/810, at 174 (1948). On April 29, 1991, the Convention was ratified by 106 States. For a thorough resume of this instrument, see Matthew Lippman, *The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide*, 3 B.U. INT'L L.J. 1-65 (1985).

Thus, if genocide is proven, Iraq and other parties to the Convention have an obligation to enforce the Convention. What took place in relation to Kurds, in light of the present law, however, cannot be prosecuted as the crime of "genocide". The most appropriate provision under which genocide by the Saddam regime may be established is Article II(c). It provides that a State commits a crime of genocide when, "with intent to destroy" it inflicts, upon "a national, ethnical, racial or religious group" such "conditions of life calculated to bring about its physical destruction in whole or in part".

If the Kurds do not qualify as a "national" group since they are scattered in substantial numbers in Iraq, Iran, and Turkey, with some of their brethren living in Armenia and Syria, there is still no difficulty in categorising them as an "ethnical" or "racial" group. The difficulty lies in proving the "intent" to destroy the group as such and the commensurate actus reus. The U.S., which hesitated to ratify this Convention until 1988, has insisted that this intent, as opposed to "basic" or "generalised", must be a "specific intent".⁹ Furthermore, the domestic courts of the parties to the Convention, as they should be so authorised in compliance with Article V of the Convention, can convict a member of the Saddam forces. The alternative is to establish an ad hoc International Penal Court envisaged by Article VI of the Genocide Convention. Many difficulties surround the use of this option. These range from ascertaining proper venue and finding acceptable judges to overcoming the hesitancy of nations, like the U.S., which have historically not supported the concept of an international court assuming any criminal jurisdiction. In any event, such a tribunal was not established to examine the human right crimes against the Kurds in Iraq. In addition, in cases of either domestic or international adjudication, gathering reliable and cogent evidence from a territory under the occupation of an alleged perpetrator of the offence and from people on both sides of the hatred line makes the whole exercise academic.

9. See Lawrence J. Leblanc, *The Intent to Destroy Groups in the Genocide Convention: The Proposed U.S. Understanding*, 78 AM. J. INT'L L. 369-385 (1984).

B. SELF-DETERMINATION

The case for Self-Determination for Kurds is very weak. According to several authors and the International Court of Justice¹⁰, the U.N. General Assembly resolution 1514 of December 14, 1960 (passed by 89 States in favour, 9 abstentions and none against) represents modern Customary International Law. The resolution robustly enunciates the right of Self-Determination for peoples who are ethnically separate and occupy a geographically distinct territory. The Kurds may be able to prove that they are ethnically separate from the Arabs but they cannot show that they occupy a "distinct" territory. They are present in five different countries. Hence, they have virtually no chance of constructing a legal claim to Self-Determination. Even if they wish to achieve a political settlement, their position is hopelessly weakened by the fact that one of the States (Turkey) in which they live has great influence in contemporary times as a member of NATO.¹¹ Any grant of independent homeland to the Kurds will be blocked by Turkey or its allies as a dangerous precedent. Resistance to such an idea will also come from other States like India where several sizeable minorities are demanding Self-Determination.

C. HUMAN RIGHTS IN GENERAL

Thus, neither the Genocide Convention nor the Right to Self-Determination could have produced resolution of the Kurdish problems. This indeed is shameful.

There is, however, another possible basis for protective action. Over the years States have used the established principles of International Law of Human Rights to justify their actions. Examples of Rhodesia and South Africa have already

10. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1971 I.C.J. 16, 31; *Western Sahara*, Advisory Opinion, 1975 I.C.J. 12, 31-35. See also IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 595-598 (4th ed. 1990).

11. See Robert McCorquodale, *The World has a legal duty to protect Kurds*, *INDEPENDENT*, April 20, 1991 in which Prof. McCorquodale recognises these weakening aspects of the Kurdish case.

been mentioned. Embargo on loans, transfer of technology, or sale of weapons; withdrawal of "Most Favoured Nation" trading status; or breach or suspension of diplomatic relations have been used to control a violator of human rights. In the Kurdish case these measures were already in operation. The only option to stop the violation by the Saddam regime of the internationally recognised, basic rights of the Kurds to life, liberty, home, family, and culture was to intervene in the situation by the use or threat of force.

Can this be done under International Law? The answer is "yes". The "humanitarian intervention under International Law" - as it is known to Hersch Lauterpacht and other international lawyers - even though more easily justified when foreign citizens are being maltreated, can equally be undertaken "for the purpose of preventing a State from treating its own nationals in a cruel and barbarous fashion."¹² Sir Hartley Shawcross, representing the United Kingdom at the U.N., saw no legal impediment in undertaking an armed humanitarian intervention to prevent gross abuses of human rights. He said that where genocide was involved: "[H]umanitarian intervention by international law was even more definitely warranted. Dictators should be warned that if they infringed upon human rights, they acted on their own risk and that international law would condemn them".¹³ International Law acknowledges the primacy of domestic sovereigns but if they abuse it and take themselves over the limits of law, they forfeit this right of autonomy and become accountable to the authority of International Law.

It is a damning indictment of the community of States that they have not produced an effective machinery to deal with the illegalities of this serious kind. It appears that the U.S., in common with other major States, has been less than enthusiastic to establish a sound system of objective and disinterested machinery of verifying and punishing the human

12. See I INTERNATIONAL LAW - BEING THE COLLECTED PAPERS OF HERSCH LAUTERPACHT, *supra* note 7. For a recent progressive approach, see W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866, 876 (1990).

13. U.N. GOAR 6th Comm., 1st Sess., 22nd mtg. at 101-2, U.N. Doc. A/C.6/84 (1946); See also Lippman, *supra* note 8, at 6.

rights delicts.¹⁴ It would seem that one explanation for this stand is that those nations, such as the U.S. with superior power and wealth, wish to retain maximum control of the situation by dictating terms and gathering support to achieve a particular result.

In this perspective, regarding the plight of the Kurds, the Security Council could only pass resolution S/688 on April 5, 1991 - five weeks after the Kurdish uprising. Even though it was one of the most advanced manifestations of U.N. action in this field, the resolution still remains very weak. It represented a compromise amongst the U.N. members who genuinely wished to do something for the Kurds - such as the U.K., albeit in response to public pressure - and those who wished to avoid establishing a precedent with which they could not live in the future.

In resolution 688, the Security Council, “[m]indful of its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security” and “[r]ecalling Article 2, para. 7 of the Charter of the United Nations”, stated that it was “[g]ravelly 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”. It further stated that it was “[d]eeply disturbed by the magnitude of the human suffering involved”. To satisfy the supporters of Article 2, para. 7, the Security Council in this resolution referred to letters of Turkey, France, and Iran, thus thickening the international flavour of the issue. It mentioned that the repression lead to “cross border incursions” which it deemed to “threaten international peace and security in the region”. The resolution condemned “the repression of the Iraqi civilian population”, demanded the immediate end of this repression and insisted on immediate access of international humanitarian assistance organisations

14. The U.S. signed the Genocide Convention just two days after its adoption on December 9, 1948, but didn't ratify it until November 25, 1988, even then with two reservations and five “understandings”. For the reasons for this long delay by the U.S., see Marian Nash Leich, *Contemporary Practice of the United States Relating to International Law*, 80 AM. J. INT'L L. 612, 622 (1986); *Id.* 79 AM. J. INT'L L. 116, 131 (1985); and LeBlanc, *supra* note 11.

to all those in need. Paragraphs 4-5 authorised the Secretary General to provide humanitarian assistance and report back to the Council.

This resolution would certainly have had a positive effect on a civilised regime but the Saddam regime carried on its brutal deeds - to some extent fueled by the military activities of the Kurdish rebels. When public outrage intensified, the British Prime Minister, Mr. John Major, put forward a plan of "safe haven for the Kurds". The plan envisaged that some territory in northern Iraq could be identified as a haven in which Kurds could live unmolested by Iraqi soldiers. With the support of the U.S. and other allies, the Iraqis were forced to allow the units of the Coalition forces to establish a "safe zone" to which the Kurdish refugees were encouraged to return. Later the zone was further extended. The safe haven did induce many of the displaced Kurds to return to their homes and, as of May 27, 1991, only about 200,000 Kurds were still in Iran, Turkey and in mountains on the Iraqi-Turkish border.

On April 28, 1991, in a meeting with the British Foreign Secretary, Mr. Douglas Hurd, other Foreign Ministers of the EEC (the "European Union" since November 1, 1993) pledged their support for the maintenance of the safety zone. Britain and its friends at the U.N. sought a resolution by the Security Council to give international legitimacy to the "safe haven" concept, but they met stern resistance. The U.N. legal advisers rejected it as being "ultra vires" the provisions of the Charter and in particular in contravention of Article 2, para. 7. This view was widely shared. For instance, Sir Anthony Parsons, a former U.K. Permanent Representative to the U.N., doubted the legal basis of it and said that the Security Council had already gone far enough under the Charter in passing resolution 688. However, this pragmatic concept is presently proving to be a great reliever of sufferings in Bosnia. It now appears to have gained legitimacy in the United Nations because it is the only effective mechanism available in contemporary International Law to prevent gross violations of human rights.¹⁵

15. In the Security Council Resolution 918/1994, dated May 17, 1994, (to be reprinted in U.N. Doc. S/Res./918 (1994)), the concept of "safe haven" has been

In the Iraqi context, when the international community was not willing to legitimate the idea of "safe haven", the allies had no choice but to talk to the Iraqis. Of course, the militarily defeated Iraqis were cooperative after negotiating and receiving strong diplomatic representations including, no doubt, warnings of possible real consequences of non-compliance with the wishes of the allies. Accordingly, with the Iraqi "consent" (in the barest sense of that term) the "Allied Kurdistan Operation" had to carry on under the U.S. military command to create suitable conditions for the Kurds. After having established themselves in the border town of Zakho, as a result of an agreement with Iraq¹⁶, the allied units entered on May 24, 1991, the Iraqi city of Dohuk which is farther south and the seat of a governette. One salient clause of this agreement was the search for weapons of the Kurds returning to Dohuk at certain check points manned by the Kurdish members of the Iraqi police. The U.N. was also operating on the basis of Iraqi consent and its negotiations produced an agreement with Iraq which allowed it to send about 500 lightly armed guards selected from personnel generally guarding the U.N. offices all over the world.¹⁷ It was hoped that the security provided by the allied and U.N. forces would send a signal of confidence about the safety of the zone and the remaining 200,000 Kurds would be persuaded to return from Iran, Turkey and the mountains on the Iraqi-Turkish border.¹⁸

The above discussion discloses that the principle of non-intervention in domestic jurisdiction triumphed over the coer-

accepted as a viable solution. The U.N. Secretary General advised the Security Council: "[I]t is very urgent that, as called for in resolution 918(1994) secured humanitarian areas be established [in Rwanda] where the estimated 2 million of these unfortunate displaced persons can be provided with both security and assistance." U.N.S.C. *Report of the Secretary-General on the Situation in Rwanda*, S/1994/640 (May 31, 1994) (required by paragraphs 7 and 20 of S.C. Res. 918/1994 to be submitted to the Security Council).

16. See THE TELEGRAPH, May 23, 1991, at 8.

17. See "News Desk" BBC World Service, midnight GMT (May 24, 1991).

18. The residual pockets of the Kurdish refugees were given sufficient sense of security to return and by the end of August, 1991, virtually all of them returned to their ancestral homes. However, when the Saddam forces realised that the world had again pushed the Kurdish problem down the agenda, they launched a military attack and, according to the BBC World Service, in November, 1991, about 200,000 Kurds were coerced to flee to safe areas - the issue still appears to be as complex as ever.

cive enforcement against the gross violations of human rights by a government of its own citizenry.

IV. CONCLUSION

In conclusion, this author would like to repeat the age-old plea¹⁹ for the priority consideration of establishment of impartial organs to monitor and adjudicate the increasing and worsening violations of human rights.²⁰ This will minimise the chances of abusive auto-interpretation of situations by powerful States which could find excuses to intervene by force in the domestic jurisdiction of a country based on selfish and ulterior motives. Until this is done, the majority of States will remain apprehensive about subscribing to an effective machinery. In this regard, the United States can play a significant role because it enjoys at this time the title of the only real superpower in the world. A glimpse of its policing capability was the attack on the malevolent Bosnian Serb units on August 5, 1994, which could have not been contemplated without U.S. support. The attack forced the Serbs to promptly promise to return one tank, two armed personnel carriers and some other ammunition, which they had brazenly removed from the U.N. compound in Sarajevo a few days earlier.²¹

19. Jurists like Prof. Brierly were advocating, though with some pessimism, international mechanisms to enforce human rights in the early life of the U.N.. See II INTERNATIONAL LAW - BEING THE COLLECTED PAPERS OF HERSCH LAUTERPACHT, *supra* note 4, at 448.

20. Paragraph 5 of the U.N. Secretary-General's Report (*see supra* note 14), entitled "The Massacres in Rwanda", records an appalling story of atrocities. According to the Report, between 250,000 to 500,000 children, women and men out of the 7 million Rwandan national population were killed in the previous 7 weeks. *Id.* In hypothetical, proportional terms this would be approximately the equivalent to 9-18 million in the U.S.. *Id.* In light of this level of violence, the Secretary-General in this Report states: "On the basis of the evidence that has emerged, there can be little doubt that it constitutes genocide, since there have been large scale killings of communities and families belonging to a particular ethnic group." *Id.* at para. 36. For further details of the unprecedented violations of human rights in Rwanda, *see also: Report of the U.N. High Commissioner for Human Rights on his Mission to Rwanda*, U.N. ESCOR, Commission on Human Rights, 3rd Special Sess., U.N. Doc. E/CN.4/S-3/3 (May 24-25, 1994) (hereinafter U.N. Report on Rwanda).

21. In the aftermath of a totally inexcusable carnage of civilians in a busy market square of Sarajevo on February 5, 1994, the U.N. Secretary-General by his letter of February 6, 1994, informed the North Atlantic Treaty Organisation (NATO) that the U.N. Protection Force (UNPROFOR) had established that at least

By a dedicated effort aimed at boosting confidence in its sincerity, backed by consonant deeds, the U.S. can convert the global "tenuous consensus"²² at the U.N. into a cohesive world order that can effectively safeguard not only international peace but also basic human rights. That it has to be done without wasting any time is amply clear from the U.N. Secretary-General's lament about the outrageous human conditions in Rwanda in 1994 stemming from civil war. He wrote:

The delay in reaction by the international community to the genocide in Rwanda has demonstrated graphically its extreme inadequacy to respond urgently with prompt and decisive action to humanitarian crises, entwined with armed conflict. . . . We all must recognise that in this respect we have failed in our response to the agony of Rwanda and, thus, have acquiesced in the continued loss of human lives. Our readiness and capacity for action has been demonstrated to be inadequate at best and deplorable at worst, owing to the absence of the collective political will. The entire system requires review to strengthen its reactive capacity.²³

one of the mortar attacks on the shoppers in the market square on February 5, 1994, was the work of the Bosnian Serb forces. [Letter from the U.N. Secretary-General, to the North Atlantic Treaty Organisation, (Feb. 6, 1994)]. "This made it necessary to prepare urgently for the use of air attacks to deter further attacks of this kind", wrote the U.N. Secretary General. *Id.* Acting on the request of the U.N. Secretary-General, the NATO Council in a meeting in Brussels on February 9, 1994, gave authorisation to launch air strikes, at the request of the U.N., against artillery or mortar positions on or around Sarajevo which were determined by the UNPROFOR to be responsible for attacks against civilian targets in that city. U.N. News Summary, NS/4/1994, (Feb. 10, 1994).

22. See D. W. Greig, "Self Defence And The Security Council: What Does Article 51 Require?", 40 INT'L & COMP. L.Q. 366, 390 (1991).

23. See U.N. Report on Rwanda, *supra* note 32, at para. 43.