

***Redirecting Sisyphus:
Restructuring Deterrence and Rationality in the Law of
International Intervention and Peacekeeping***

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“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war,...to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained,...AND FOR THESE ENDS...to unite our strength to maintain international peace and security, and to ensure...that armed force shall not be used, save in the common interest,...HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.”¹ So states the preamble of the Charter of the United Nations. It sets a tone of international cooperation, where the welfare of each is the concern of all. In an effort to uphold this ideal, the UN has a long history of attempts at military intervention, into matters of insurgency, aggression, and civil war, in the name of international peace, security and human rights. But most of those interventions, while being carried out in the name of international goodwill, neglected to improve or address the concerns of collective security, were motivated by the spirit of geopolitics, and were typically ineffective to the task of improving the welfare of citizens of the concerned nations. Currently, nearly every corner of the world plays host to violations of international law. Yet the UN stands by, impotent, unable to resolve any of these conflicts. Further, third party nations only choose to become involved in these situations when their interests are directly threatened. When their interests are not endangered, most nations either refuse to commit substantive forces, or pull out at the first sign of real trouble. As it stands, international criminal law enforcement is more fiction than fact. This is not entirely the fault of the UN. The very system of international enforcement is inherently flawed. This paper will review the current structure of international criminal law enforcement and peacekeeping, analyze it from a perspective of geopolitical implausibility, and recommend changes that could significantly improve that effectiveness of UN intervention and enforcement operations.

A wide collection of terms can be used to describe the role of the UN in international and criminal conflicts: preventive diplomacy, peace observation, UN presence, peace force, and pacific settlement, just to name a few. Typically, they get lumped under one term—peacekeeping. In reality, though, there are three distinct but related roles the UN plays in conflict situations:

(1) UN Peacekeeping. The goals of the UN here are to limit and, if possible, reduce the violence of a conflict already initiated. Another term for this is “conflict management.”² This type of action typically takes place in the form of lightly armed observers stationed in an area of conflict, deployed during times of established peace only (such as a cease-fire) and is not intended to accomplish any military objectives. The UN action in Lebanon in 1958 is a good example. The most extensive of this type of action is illustrated by the UN operation of interposing between factions in Somalia.³

(2) UN Peacemaking. Here the goal of the UN is to help resolve the basic, substantive issues of a conflict. This might also be called “conflict resolution.” The minimum example of this would be the negotiators of the Vance-Owens peace plan between the forces of the former Yugoslavia. The most aggressive peacemaking operation under the banner of the UN might be the landing of 20,000 US Marines in Somalia to restore order and end civil war.⁴

(3) UN Peaceservicing. Here the primary goal is to help avoid conflict through social and economic programs. This could range from technical assistance to administration of newly-established governments.⁵ These kinds of operations are conducted all over the world, wherever there is conflict and international crime. They are occasionally used to attempt the enforcement of law, such as the Second Gulf War of 1991, or the Balkans war crimes tribunals. But unless these are backed by a powerful nation willing to actually do something to assert some kind of forceful influence, they are typically ineffective.⁶

Within the framework of international law, there are what is known as “peremptory” rules—rules so absolutely binding that no form of derogation can be tolerated whatsoever.⁷ One of the greatest peremptory norms of international law is the principle of *Nullum Crimen Sine Peone*—no crime without a punishment.⁸ The United Nations was founded not only with collective security, but with the enforcement of international law in mind. Despite the UN’s efforts, however, the planet is pock-marked with the craters of war crimes, crimes against peace, and crimes against humanity.⁹ In the North Bosnian Serbs conduct mass-rape and genocide against the Bosnian Muslims. In the South the Warlord Aidid and his compatriots continue to deny the Somali people their right to self-determination. In the East North Korea continues to develop nuclear weapons illegally. And in the West Haitian military dictators terrorize their impoverished population. The list of war crimes, crimes against peace, and crimes against humanity currently being perpetrated all over the world is seemingly endless. It’s estimated that there were over 12.1 million war crimes conducted last year. That amounts to one every three seconds.¹⁰ This may only be half the actual number. While the UN might be able to investigate, catalogue, and report these crimes, they do very little to actually stop these crimes. In the former Yugoslavia, as in Somalia and most other places where the UN has peacekeeping troops, the main task of the UN is to safeguard and distribute humanitarian supplies. Often, the crimes continue right under the nose of UN troops while they administer their aid.¹¹ As an vigilant ender of war and a stopper of victimization, the UN Security Council, as the directing organ for peacekeeping operations, has a very poor record.

Unfortunately, the UN is the only organization willing to intervene and to attempt to enforce the law even when they have no geopolitical interests in the area. But since they typically lack the might or the will to correct the situation, the best they can do is to manage the conflict into a slightly less horrible situation, where air-

ports and supply routes might reopen, but the law goes unenforced. Nations who do possess the might to correct situations, and to enforce international law with real military power, such as the United States, are typically unmotivated to do so, despite their responsibility under international law.¹² All nations are guided primarily through self-interest. It's simply too risky for heads of state to act without considering the public relations consequences of their actions. But when a nation has decided that it's in their best interest to intervene, the international legal juggling act they have to perform to justify themselves can be enough to convince them to forget about it.

The United Nations represents a collective attempt to realize an ideal of global security. In its origins the pre-World War II League of Nations was an abortive attempt to translate this ideal into a working system.¹³ While unsuccessful, the League did manage to implant the idea of a collective security-oriented organization operating beyond the limits of state sovereignty. The *Declaration by the United Nations* of 1 January 1942, which spelled out the Allied plan to confront the axis powers, established and codified the working concept of a world security body.¹⁴ What followed in 1944 was a series of negotiations and proposals outlining the structure and function of the United Nations as an organization. Here, the idea of the Security Council, the only organ intended to have any real power, was born.

The further designation of the war-winners as permanent members, with special voting rights, ensured no action could be taken by the Security Council without unanimous consent of the great powers. The right of any of the great powers to veto any proposal, thus preventing any action from being taken against them, identifies the concern of the leaders of the time to assert national interests over collective security. As the war drew to a close, it became clear the great powers were becoming increasingly concerned with their ability to take care of their own interests in the face of a trans-national, collective security-oriented actor. To quote Roosevelt: "The

nearer we come to vanquishing our enemies, the more we inevitably become conscious of the differences among the victors.”¹⁵ His concern for national interests, and the unwillingness of the great powers to give serious concern to global security, denied the Security Council from taking any significant action in any area of the world for the entire duration of the Cold War.

The Theory of International Criminal Law Enforcement

In government, structure determines behavior. The structures of governments and institutions, to a large extent, determine the behavior of people within states. They can just as easily determine behavior between states. If terrible crimes of war, crimes against peace, and crimes against humanity are allowed to continue in the world, flaws in the structure of international conflict resolution and law enforcement must be at least partially responsible. The limits placed on power and the delegated function of international mediation and intervention may explain the international tolerance for action or inaction in the area of international law enforcement. In order to determine how much of a role structure plays in the continuation of crimes, the theoretical basis of that structure must first be understood.

Sovereignty and State Actors

Our entire system of international law has its roots in the Peace of Westphalia of 1648, which ended the Thirty Years War.¹⁶ The agreement codified the popular beliefs concerning the international actions of states at the time. This system of beliefs is now enshrined in our international law and shows no signs of changing. It is based on three tenets of theory. The first and most important of these tenets is the concept of sovereignty. Up until the 12th century, sovereignty meant that the head of state had ultimate power within his state (with very few notable exceptions, they were all men). One of the first great thinkers to challenge this idea of unchecked sovereignty was Jean Bodin who wrote:

For if we define freed from all laws [as absolute power] no prince anywhere possesses sovereignty (iura maiestatis), since divine law, the law of nature, and the common law of all people, which is established separately from divine and natural law, bind all princes.¹⁷

Bodin was the first jurist of the 12th century since late antiquity to pose the question of whether the prince was bound by any laws.¹⁸ Sovereignty, then, was the embodiment of princely characteristics. Prior to 12th century, it was described as *Dictatus papae*: rank, legitimacy, prerogative, and privileges.¹⁹

Frederick Barbarossa, dominator of the age, himself asked his best jurists about the limits of his power. His court, his chancellors, poets, and jurists were the most sophisticated of their time. Frederick was described as operating with “the art of a statesman, the valor of a soldier, and the cruelty of a tyrant.”²⁰ The recent discovery of the Pandects had renewed a science most favorable to despotism, and his venal advocates proclaimed the emperor the “absolute master of the lives and properties of his subjects.” Frederick claimed divine ordinance sanctioned his rule. His imperial duty was to coerce wrongdoers and to protect the good. Frederick promised to subject his authority to the law and to preserve each individual’s liberties and rights. He wished to direct his efforts to promulgating laws of peace. Hubertus, the archbishop of Milan, declared:

Frederick did not plan war, but the laws of peace. How Italy had suffered before him! Italians had endured unfair, arrogant, and cruel governments that proscribed the property of the rich without cause; they committed many other crimes as well. We know (directly quoting Roman Law) that all the people’s authority of making law is vested in you. Your will is law, for what pleases the prince has the force of law, since the people have yielded and granted the prince all their authority and powers. Whatever the emperor has established, decreed, or enjoined is law. **It is in accordance with Nature that he should enjoy the benefit of anything who must suffer the unpleasant consequences of that thing. So you who bear the burden of tutelage for all of us ought to rule us all.**²¹

This is the first 12th century proclamation that the sovereign has a responsibility, or anything resembling a responsibility, to serve the subjects. It also declares that natural law supports complete sovereignty for the service of the people.

This is not the first emergence of the natural law theory, which states that justice is a quality to be discovered rather than one defined by legal systems. The great thinkers of ancient Greece, Sophicles chief among them, incorporated natural law into their philosophy. In Antigone, composed in 442 B.C., Sophicles explores the basic conflict between the claims of the state and the demands of individual conscience. Antigone's identification of the "unwritten and steadfast customs of the Gods" as an argument against King Creon's edict, has since been associated with the incontestable authority of a higher law over human law.²²

As applied to the community, within the context of the internal structure of a political society, the concept of sovereignty brings with it the belief in an absolute political power within the community. As applied to the problems of trans-community relations, the concept of sovereignty yields the antithesis to this belief—that internationally, over and above the collection of communities, no supreme authority exists.²³ Since the Peace of Westphalia follows on the heels of this philosophy, this is the kind of sovereignty that now operates within the framework of international law. Nations may do whatever they want within their own borders, so long as they don't ignore the demands of the highest law of all—natural law. This is the first hurdle that must be overcome for a better system of international criminal enforcement. The limits of sovereignty must be plainly spelled out.

There is one subtle but very important caveat to the tenet of sovereignty. That is the concept of self-determination. While not as old a concept as natural law, self-determination has been a fundamental ingredient for a "legitimate" government in the modern era. For Rousseau, the general will was the moral will.²⁴ Rousseau's thought, reflected later in the work of Kant and Hegel, laid the foundation for the

modern necessity for self-determination, and its incorporation as an integral function of collective security. In fact, the right to self-determination is recognized in the very first article of the UN charter.²⁵ This essentially establishes the belief that beneficial and mutually respectful international relations can not take place unless the genuine will of the citizens of the world are expressed in the initiatives of states. No state can wield legitimate authority, at least not with the hope of interacting with other states as a true equal, without granting self-determination to its peoples.²⁶ This simple principle can greatly affect the various justifications used for the conduct of UN peacekeeping operations.

Rationality and State Action

The second tenet that forms the foundations of international law is that of rational utility or rational choice theory. International law presumes that all actors subject to international law are rational, self-interested creatures. It presupposes that all people will evaluate their options and act based on what they think is best for them.²⁷ International law attempts to compensate for conflicting self-interest by setting aside agreements, written by the nations themselves, with which the nations believe they can actually comply. Since the nations themselves choose what responsibilities are required of them by treaty, they codify only that of which they consider themselves capable. Since they agree to it, they must have rationally determined that the agreement supports their best interests. So goes the theory of international law.

The ideal of rationality comes to us, as do many important concepts in international theory, from the ancient Greeks. Plato, who used his writings as both a record of the character and ideas of Socrates, and as a vehicle for expressing his own development of those ideas, believed that reason and rationality ought to play a pre-eminent role not only in the way we live and work, but in the very conduct of state-

craft itself.²⁸ In the realm of classical thought, heads of state are naturally going to use reason to determine and act on national interests. In a framework of international cooperation for the sake of collective security, national interests may best be supported by international stability.

The historical record seems to indicate that the actions and behaviors of heads of state, for the most part, represent the wills of intelligent, coherently-thinking individuals, and very rarely are heads of state compelled by passion to commit national force.²⁹ International actors, presumed to be representing the will of their peoples, work toward intentional security for the sake of supporting their own interests. Those in power are always interested in maintaining the status quo. The problem arises when international actors give preference, as they typically do, to outcomes rather than actions.³⁰ The question of which actions are appropriate are answered by determining which actions will produce the desired outcome, and while heads of state may be conforming to the rational choice theory in making that decision, they may rationally choose to violate international law in order to promote their own interests. The uncertainty of whether or not their desired outcomes are actually the self-determined will of constituent populations only compounds the problem further.

A further problem, particularly in less-developed or authoritarian societies, is that heads of state don't always act to advance their nation's best interests. That doesn't mean their leaders are mentally unstable. It means the occasional leader has an agenda which may not include the welfare of the national population. The objectives of that leader may be religious, military, or personal, and actions may be taken with uncanny intelligence to attain those objectives. Nevertheless, It is entirely possible that a sane, rational-thinking person can decide to do something which neglects the health of the people, thus committing a crime against humanity. Since in-

ternational law assumes that won't happen, the international legal order is not structured to prevent crime during the normal process of international relations.

Irrationality has become one of the common epithets of our times in the international arena. Ronald Reagan in late 1980 labeled Khomeini "irrational" due to the hostage-taking incident, and Iran's anti-Western policy. American officials in late 1981, (and many times since) called Khaddafi "crazy," because of Libya's alleged assassination plot targeted on the President.³¹ From Amin's regime in Uganda to Bokassa's reign in the Central African Empire, government leaders stand accused of irrational statements, decisions, and actions. Usually, this characterization connotes the most derogatory attributes of the heads of state described, often implying potential destabiliation of the international system and total incompetence at the job of running their countries.³² If a new system of international criminal enforcement is to have a good chance of putting an end to crimes rather quickly, it will have to expect the unexpected from heads of state.

The problem is further compounded when the factor of mass-media is considered. In the pre-modern times, particularly within the classical European great power system, diplomacy was as much an aristocratic profession as nobility. Diplomats, typically with familial ties, were part of an elite corps of professionals who operated on the basis of a common set of norms and principles. As members of a sort of "career caste,"³³ they saw it as their duty to maintain not only the affairs of their own states, but the international system as well. Negotiations were conducted in an honest environment, which was designed to be both accommodative and flexible. Since diplomats were held accountable only to the head of state, public opinion being of little concern, they could conduct secret negotiations and operation within each other's confidence. When negotiators wanted a concession or permission to explore a novel idea, they could do so without losing face or risking exploitation. They were not concerned with being branded "soft," and appeasement was an hon-

orable and regular practice. For the diplomats of old, communication was effective and agreements could address the interests of all involved parties.³⁴

Today, however, due to mass-media and representative government, diplomacy is much more problematic. Not only are negotiations conducted by heads of state as much as by professional diplomats, but the continual pressures of public opinion and domestic politics means that gaining favor back home is of greater priority than reaching mutually beneficial agreements. With the ever-present eye of the media focused on all international negotiations, grand-standing, tough-talking, and political charades have become the primary mode of discourse. Public pronouncements and negotiations are typically directed more to the home crowd than to the negotiators sitting across the table. Diplomats and heads of state don't speak to each other, and they don't generally listen to each other. Communication is not effective, real empathy and understanding for the other's position is gone, and dialogue is conducted via the wonder of CNN.³⁵

As a result of all this, diplomacy is a lost art. Procedural disagreements have become commonplace. In fact, not only are minor procedural matters argued over with a zealotry never before seen on the international stage, but in nearly all forums of international discourse, passionate ideological and other differences have displaced the smooth-flowing backdrop of cultural homogeneity which marked the classical European system. Negotiators have nearly no common ground from which to work, and most of their energy is directed toward posturing and image. Adversaries don't understand each other's goals, fears, desired ends, accepted means, ideological beliefs, or common perceptions. The finely-tuned strategies of policy and subtle bargaining tactics used in an era of clear communication simply don't work today. The model of rational-choice and utility theory, so appropriate for a different climate, is inadequate to the task of contemporary diplomacy.³⁶

Deterrence and State Avoidance

The third and final tenet of the international legal system is a natural outcome of the first two—deterrence. International law seeks to prevent crimes rather than stop them outright. The entire structure of not only legislation, but of the UN, is reactive rather than proactive.³⁷ A UN peacekeeping force is not able simply to respond to a discovered crime-in-progress like any other police force would. The UN Security Council must first decide to send force there. Imagine how inefficient any state or city police forces would be if congress or the national legislation had to decide where each and every officer would go as a response to crime. There are no standing UN police forces around the world whose job it is to end crime as soon as it begins. Rather, international law seeks to deter crime by threatening to send force (typically UN force) wherever it detects violations of international criminal law. Subjects of international law, presumably being rational self-interested actors, are supposed to decide it would not be in their best interests to break the law. Of course, potential criminals are also supposed to think there would be definite punishment for their crime.³⁸

The idea of deterrence in the enforcement of the international legal order has evolved naturally from the concept of conventional military deterrence, particularly where crimes of war are concerned. In its broadest sense, deterrence is the persuasion of an enemy, or a potential transgressor, not to engage in a specific activity because the perceived benefits do not outweigh the estimated costs and risks. Presumably, any state considering the use of force to accomplish a physical objective will not only note the physical costs required, but will also note the probable reactions of allies and adversaries, pertinent aspects of international law, the possible reaction of the UN, and the likely effect on the economy. Deterrence is ultimately defined as the functional relationship between gains and losses. Determining this relationship—possible gain and possible loss—has always been the function of military

and political strategy. No state considering the use of force, or for our purposes, the violation of international law, will forego this evaluation, theoretically. Historically, whenever the use of force is decided upon, the stakes are high enough for any state to want to make a good gain/loss evaluation before committing force. Assuming rationality, self-motivated rational choice, and a viable threat of enforcement or countermeasures, nations are supposed to decide not to violate international law.

A clear distinction should be made between deterrence based on punishment, which involves threatening to destroy large portions on an opponent's civilian population and industry, such as the Mutually Assured Destruction doctrine of super-power nuclear strategy, and deterrence based on denial, which requires convincing an opponent that goals will not be attained through the use of force.³⁹ International criminal law is structured for punishment-oriented deterrence. Not only is there the constant threat of military reprisal conducted by the UN-led international community against states sponsoring war crimes, but there is also the threat of prosecution and punishment of individual war criminals. If a criminal state is defeated in war, and if its military personnel are captured, it is generally well-known those personnel will be prosecuted for war crimes, crimes against humanity, and/or crimes against peace, with the severity of punishment varying up to, and including, death.⁴⁰

Deterrence, particularly nuclear punishment-oriented deterrence, became a codified part of international law during the cold war. Nagler described the effect it had in human terms: "But deterrence is even more two-edged than this [frightening the enemy because they frighten us. T]o frighten those whom we have made our enemies, policy makers need us to be afraid of them."⁴¹ Senate minority leader Arthur Vandenberg set the tone of the program at the initiation of the cold war: we will have to "scare the hell out of the country."⁴² Between 1946, when Senator Vandenberg made that remark about the fear crusade, and 1975, the United States spent \$1.6

trillion on what we choose to call defense, only to spend as much again from 1975 to 1981.

This expenditure has exerted a steady upward pressure on domestic prices, more serious in the long run than that caused by the insubordination of oil-producing nations. It has caused unemployment. According to Senator Kennedy, speaking in 1977, the annual military expenditure of \$107 billion took away the economic base for over a million jobs that could have been sustained in more stable and less capital-intensive occupations.⁴³ Professor Kenneth Boulding has estimated that at least 50% of our economic difficulty is caused by what he calls this unusable military “cancer,” without reference to the political impact of our prolonged crisis of “security” or the psychological state of young people who feel there is not going to be a future.⁴⁴ Clearly, deterrence has its problems.

The primary component of international law codifying deterrence is the ABM Treaty of 1972.⁴⁵ Interestingly enough, the US is currently engaged in debates about the effectiveness of deterrence for ensuring stability in the world. US security analysts are terribly concerned about the possibility of nuclear missiles being used against allied nations and US interests. Since 1982, the US Department of Defense has spent billions of dollars every year to develop a new ABM system to protect us and our allies. The US Congress has known all along that the proposed ABM deployment is irreconcilable with the ABM treaty, but felt the current strategic situation warranted it.⁴⁶

The single greatest testimony to the fact that deterrence is inherently flawed as a component of international legal enforcement is the fact that terrible crimes continue all over the world, despite UN threats to punish them. In the Balkans, for example, the UN has created a war crimes tribunal to prosecute and punish Serbian war crimes. Yet the crimes in the former Yugoslavia show no signs of abating.⁴⁷

Deterrence is currently ineffective. It should be augmented as an legal and collective security enforcement mechanism.

Intervention Currently

Of course, what makes international law international is the crossing of state borders. According to articles 1 and 3 of the Montevideo Convention on the Rights and Duties of States⁴⁸, all territory-bound populations which meet the four requirements must be considered sovereign states. They must have permanent populations, clearly-definable territories, governments, and the capacity to enter into international relations. If any group of national entities involved in a conflict are legally considered sovereign states, any conflict among them must be considered a use of force crossing international borders, and any presence by the forces of one on the territory of another must be considered a state of belligerent occupancy. This means that the laws addressing civil war and insurgency simply don't apply. The conflict in the Balkans, for example, is a war between states, and the Army of Serbia, being the invading force in Bosnia-Herzegovina, is currently engaging in acts of aggression and armed attack. Often, victim states clearly don't have the military ability to defend themselves adequately. This fact, combined with the general threat to world peace and security posed by aggressive actions, places upon the nations of the world a responsibility to come to the aid of the victimized⁴⁹ Any nation would be entirely justified in entering a war, on the side of the victim nation, for the expressed purpose of ending the conflict and stabilizing the situation.⁵⁰

Concerning armed attack, the first place we need to look is article 2(4) of the UN Charter, which states that force, or the threat of force, is not to be used against the territorial integrity or political independence of any state in a manner inconsistent with the purposes of the UN. Transgressions of the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the

European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Geneva Convention Relating to the Status of Refugees⁵¹ might warrant the use of force to abduct criminals. In the landmark decision made in the 1986 case: *Nicaragua vs. the United States*, the International Court of Justice declared that “the use of force could not be the appropriate method to monitor or ensure” respect for human rights (paragraph 268). So once a criminal is abducted, continued military intervention would not be warranted.

Genocide, on the other hand, is a particular variety of human rights violation that could justify larger-scale armed intervention and criminal prosecution. As inferred in Article VIII of the New York Convention on the Prevention and Punishment of the Crime of Genocide⁵², any nation may call upon the UN to intervene with force, if necessary, to prevent or suppress acts of genocide. Any UN force, upon the request of a host Government, would be free to use whatever force is necessary to end the crime of genocide on the host nation’s soil and punish those responsible.

Precedents have been set for the legitimate use of force in “humanitarian intervention,” the most notable of which was the action of Israel in 1976 to rescue hostages held on a hijacked plane in Entebbe, Uganda.⁵³ The US claimed its unsuccessful attempt to liberate diplomatic hostages held in Teheran in 1980 to be a similar action. While states have historically been reluctant to adopt this exception to article 2(4) of the UN Charter formally, the Charter does not prohibit the use of force for humanitarian intervention so long as it is strictly limited to what is necessary to save lives. We've already seen this mentality applied to Bosnia in the form of armed escorts for humanitarian supplies, an occupation force to keep the Sarajevo airport open for humanitarian airlifts, an enforcement of a No-Fly zone over Bosnia, and the creation of forcefully protected safe zones, such as the 20 km demilitarized zone around Sarajevo. This supposition might also be applicable to an attempt to rescue

Bosnians under siege . Furthermore, abducting criminals on foreign soil while coming to the aid of these people would be the obligation of the intervening forces.

The right to intervene to protect trapped nationals has been a right claimed by many states, and is generally more accepted geopolitically than intervention to prevent genocide or intervention for humanitarian purposes. As citizens of a third-party state, trapped nationals can be considered as extensions of a nation's sovereign authority, and the use of minimum force to rescue them from a clear and present danger is usually unchallenged by the machinery of international law.⁵⁴ Therefore, any campaign to drive out the criminal forces while obtaining custody of alleged Nuremberg-type criminals would be entirely proper and law-enforcing.⁵⁵

The notion that a state may defend an ally with force to assist a permanent population in regaining their “self-determination” may be somewhat applicable to the case of law-enforcing intervention. Self-determination is protected by Article 1(2) of the UN Charter. It is also incorporated in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights⁵⁶. In fact, neither the UN Charter nor any other provision of international law forbids genuine revolution and wars of independence. But whether that grants a third-party state the right to intervene with force is another matter entirely. Such action would only be defensible if the victim state actually asked for the help. UN General Assembly Resolution 2625 (October 24, 1970) states:

"In their action against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter."

Hence, the use of force to stabilize borders and drive aggressive forces out, while arresting alleged war criminals, would be justifiable as an act of preserving a peoples right to self-determination.

Perhaps the most feasible and defensible of positions to justify a massive, forcible, third-party intervention in a nation where crimes are being committed is the position of collective self-defense. Currently, aside from UN Security Council enforcement action, self-defense is the only independent use of force explicitly endorsed by the UN Charter and the legal community. Article 51 of the UN Charter grants every nation the right to use force to defend itself against an aggressive, invading power. So an invaded state is entirely within its right to use force against the aggressor in whatever manner it sees fit to defend itself, so long as it itself does not commit war crimes. Accordingly, allies of the invaded state could also join in the conflict in an act of collective self-defense. When one considers, however, the requirements of "necessity," "proportionality" (as specified in Article 51), and the measures typically taken by the Security Council to deal with such conflicts, the necessity of abducting criminals on victim nation soil while defending the victim nation from aggression becomes a co-dependent obligation.

It is necessary, when considering matters of self-defense under Article 51, to make a clear distinction between "use of force," and "armed attack," as only defense against armed attack is permitted by Article 51. In *U.S. vs. Nicaragua*, the World Court premised its ruling against the US on this very distinction. It claimed that under current international law, if a state intervenes in the internal affairs of another state by acts of force that constitute armed attack, there is a right to individual or collective self-defense. But if the acts of force fall short of an armed attack under Article 51, then countermeasures, including forcible countermeasures, but not armed counter-attack, may be taken only by the victim state. Therefore, if the forcible acts of one state against another are construed by the Security Council as not meeting the criteria for armed attack, then collective self-defense is not warranted and any forcible intervention would violate both Article 2(4) of the Charter and the 1965 Declara-

tion on the Inadmissibility of Intervention in the Domestic Affairs of the States and the Protection of their Independence and Sovereignty⁵⁷.

Article 2 of the 1974 Resolution on the Definition of Aggression grants the Security Council the right to determine whether or not an act of aggression has been committed based on the mitigating circumstances⁵⁸. But the language of Article 51 attempts to prevent armed counter-attack from becoming an all-purpose remedy for any illegal use of force by one state against another. It is quite possible, then, that in order to prevent armed interventionists from contriving an excuse for a massive counter-attack against a nation A, the Security Council might declare that the use of force against nation B by nation A does not constitute an armed attack. In that case, it would be nearly impossible to justify adequately an armed intervention to the international legal community. For reasons of geopolitics, the Security Council might be inclined to tie the hands of the world until nation B no longer exists

Belligerent occupation of an aggressor state for the purpose of abducting persons accused of crimes of war, crimes against peace, and crimes against humanity, given a widespread nature of these alleged crimes in any total war and the large number of possible perpetrators, would be justified, since it would take a considerable amount of force to extradite even a tiny fraction of the alleged criminals. The highest-ranking military officials would have to be tracked down and abducted, since it can be assumed they would not go willingly. Therefore a significant UN military presence would have to be established in concerned nations to punch through the aggressor's defenses and get to the alleged criminals. A military infrastructure would have to be established for the safe transport and detention of these criminals once they are abducted, and if the tribunals are to take place somewhere within the concerned states, then an adequate area would have to be secured.

The level of force required to accomplish all this would probably be commensurate with the level of force required to stabilize the conflict, reinforce the territorial

integrity of the victim, and destroy the offending military capability and command network of all aggressor forces. This could take place in the form of a Gulf War-like international coalition, or a significant UN enforcement army (discussed below), whose main objective would be to obtain custody of alleged enemies of humanity while driving aggressor forces out and stabilizing the conflict to the point where abduction and prosecution activities could take place uninterrupted by the scourge of war.

At this stage of the analysis, it seems quite clear that the structure of the international legal system is designed to reduce armed combat before any other conditions of human suffering are addressed. The international legal system, based on non-interference and sovereign equality, leaves the task of internal government to the individual states, and only when crimes cross international borders does the international legal code have any jurisdiction. The only exception to this would be a crime against humanity, such as genocide. In this instance, regardless of national borders, criminals are considered *Hostos humani generes*, and jurisdiction is universal, and any state may enforce the law.⁵⁹

Reaction vs. Enforcement:

A Military Analysis of Peacekeeping.

Generally speaking, whenever and wherever peacekeeping forces are employed by the Security Council, violence has already broken out and the Council is merely responding to an existing situation. While the UN may endeavor to conduct preventive diplomacy in areas where an outbreak of violence is feared, member nations are typically unwilling to commit troops unless a desperate need is clearly demonstrated.⁶⁰ Not only are peacekeeping operations characteristically responsive in nature, they are also mostly applied to situations which have some international

dimension. The following table summarizes UN Peacekeeping, Peacemaking, and Peaceservicing operation.

<i>UN Peacekeeping Operations, 1945-1992</i>	
Operation	Dates
United Nations Emergency Force-I (UNEF I)	1956-1967
United Nations Operation in the Congo (ONUC)	1960-1964
United Nations Security Force in West New Guinea (UNSF)	1962-1963
United Nations Peacekeeping Force in Cyprus (UNFICYP)	1964-present
United Nations Emergency Force-II (UNEF II)	1973-1979
United Nations Disengagement Observer Force (UNDOF)	1974-present
United Nations Interim Force in Lebanon (UNIFIL)	1978-present
United Nations Transition Assistance Group (UNTAG)	1989-1990
United Nations Trans-national Authority in Cambodia (UNTAC)	1992-present
United Nations Protection Force (UNPROFOR)	1992-present

Current Peacekeeping, Peacemaking, and Peaceservicing Operations

Operation	Dates	Costs ⁶¹	<u>Strength</u> ⁶²	<u>Fatalities</u> ⁶³
United Nations Truce Supervision (UNTSO)	1948-present	31	220	20
United Nations Military Observer Group in India and Pakistan (UNMOGIP)	1949-present	7	39	6
United Nations Peacekeeping Force in Cyprus (UNFICYP)	1964-present	45	1,076	163
United Nations Disengagement Observer force (UNDOF)	1974-present	36	1,071	31
United Nations Interim Force in Lebanon (UNIFIL)	1978-present	146	5,215	193
United Nations Iraq-Kuwait Observation Mission (UNIKOM)	1991-present	75	367	367
United Nations Angola Verification Mission II (UNAVEM II)	1991-present	42	69	3
United Nations Observer Mission in El Salvador (ONUSAL)	1991-present	35	363	2
United Nations Mission for the Referendum in Western Sahara (MINURSO)	1991-present	37	348	3
United Nations Protection Force (UNPROFOR)	1992-present	925	25,612	59
United Nations Transitional Authority in Cambodia (UNTAC)	1992-1994	741	9,354	55
United Nations Operation in Mozambique (ONUMOZ)	1992-present	310	6,517	6
United Nations Operation in Somalia II (UNOSOM II)	1993-present	977	26,112	81

United Nations Observer Mission in Uganda-Rwanda (UNOMUR)	1993-present	7	81	0
United Nations Observer Mission in Georgia (UNOMIG)	1993-present	23	88	5
United Nations Observer Mission in Liberia (UNOMIL)	1993-present	63	31	6
United Nations Mission in Haiti (UNMIH)	1993-present	50	1,267	0
United Nations Assistance Mission for Rwanda (UNAMIR)	1993-present	98	2,548	0
TOTAL:			76,461 TROOPS	\$2,981,000,000

While some peacekeeping operations may be conducted under circumstances dominated by domestic disorder, none are initiated in the absence of a potential threat to the international peace.⁶⁴ Furthermore, the overriding philosophy of peacekeeping is to send as few troops or armed observers as possible, with the preference being too few rather than too many. These forces tend to be not only small, but lightly-armed, again with the preference toward too little rather than too much force. The only two notable exceptions to this are the Korean conflict of the 1950s, and the Persian Gulf War of 1991. Both of these conflicts, however, were initiated by the United States, who had already determined a need for significant military intervention, with UN sponsorship sought only as a means of making the intervention legally legitimate.

To the UN's credit, the Congo operation was of significant force—20,000 troops—who were tasked with actively restoring order on an intra-national level. They still were restrained, however, from actually enforcing international law, and were not empowered to take action on the level necessary to ensure collective secu-

rity. The principle of not initiating the use of force and restricting its use to precisely defined situations of self-defense is the general rule of peacekeeping. The de-emphasis on the use of force has been proliferated with the hope of promoting peaceful and stable conditions and creating an atmosphere conducive to a real and lasting settlement. Often, though, the obligation to contain the unlawful use of force by state actors is neglected.⁶⁵

Peacekeeping forces operate with an entirely different mentality than other military operations. Peacekeeping armies are divested from self or national interest. They are interested only in fostering or creating a situation where hostilities are either not possible or not desirable. As a result, the stated goals of peacekeeping missions never involve military defeat of transgressors, even when destroying their ability to wield force might be the only way to enforce international law. And while peacekeepers don't think in traditional military terms, they also don't think in police terms. Intra-national police forces are prepared, and occasionally expect, to have to defeat forcefully or immobilize a violator of the law in order to restore peace and security. Occasionally, police may have to destroy any resistance they encounter. Police understand they may have to be the victors in a conflict. The primary lack of success or efficacy in peacekeeping operations, such as the Cyprus crises or the ongoing struggle in Bosnia, could be considered as being directly caused by the unwillingness of peacekeepers to defeat militarily the enemy. Also, the credit for the great peacekeeping successes, Korea, the Sinai, and the Persian Gulf, should be given to a true effort to defeat the identified enemy, end the threat to the collective security, and immobilize the violator of international law.

An Old Idea:

A Permanent Force in the Current System

Peacekeeping operations run by the UN today are organized on an ad hoc basis. There is no standing army, and the UN must rely on voluntary troop donations from member nations. Only a few nations, most notably Canada and the Nordic countries, have made any significant efforts toward training forces specifically for peacekeeping duty. Coordination and logistical planning occur only after an operation has been authorized to take place, with the method of organization varying from case to case. Generally speaking, though, there have been few major changes in the structure of UN observer and peacekeeping forces in the last fifty years.⁶⁶

Of course, the idea of a major changes to the conduct of peacekeeping, or even a permanent force, is not new. In fact, the collective-security-minded draft of the UN Charter, Article 43, requiring on-call availability of the forces of member states for UN purposes, leads one to believe that an ever-ready UN-controlled force would always be standing by. But the inability of the great powers to agree on the details of permanent force plans caused the spirit of Article 43 never to be realized. Since then, proposals and concepts for standing UN forces have come and gone. Most recently, in *An Agenda for Peace*, Secretary-General Boutros Boutros-Gali proposes a permanent peacekeeping force that could respond quickly to any situation in the world.⁶⁷ But these new ideas, as a sharp break from article 43, work with the current philosophy of peacekeeping, and do not propose the raising of a law enforcement army.

Of the multitude of proposals over the decades which received any serious consideration, there is no overriding pattern other than the fact that none have proposed the creation of a true law-enforcing or collective security army. They have all restrained themselves to the now-traditional paradigm of peacekeeping philosophy, a common set of assumptions and rational—hold the line in times of peace. While

some have been rather ambitious, detailing troop size and cost estimates for all aspects of a full-time standing army, most are undefined and merely lay out general guidelines for a “earmarking” system, where member nations plan ahead and designate certain units for peacekeeping duty, handing them over to the UN whenever necessary. As a result, all existing proposals have similar characteristics when it comes to the most basic elements.

Concerning the structure of these various proposals, peacekeeping personnel are solicited from member states, typically only after authorization by the appropriate UN organ. This means little advance planning to determine which states will contribute and how much. As a result, these troops must be assembled as national units, trained and equipped, before they can be assigned to peacekeeping duty. The most ambitious proposals call for force truly international in spirit, composed of jointly trained, jointly stationed, and immediately available troops whose sole assignment as earmarked troops is peacekeeping duty. This would roughly parallel national defense efforts, with the exception of any enforcement duty. Less extensive proposals call only for standby troops which may or may not have trained jointly. These troops would be pre-designated for rapid deployment to any theater. The range of option differs in degree of coordination needed and flexibility allowed, as well as the level of commitment member states must demonstrate. The intent of all variations is to make troops available for assignment and mobilization on short notice.

As far as training goes, the various proposals cover a wide range of ambition. Some dictate that UN soldiers undergo a rigorous training regimen under international regulation. Because of the unique attitudes, methods, and tactics of traditional peacekeeping, the theories argue, highly specialized training is necessary. Proposals include: an international training center run by the UN for national units, joint training operations such as that currently done by the Nordic countries, a regular train-

ing schedule conducted by a standing international force, the expansion of national and multinational training programs which currently exist to be under UN direction and include all countries, and finally, merely requiring states to follow a UN-approved curriculum and train forces which might eventually be assigned peacekeeping duties. The closest thing existing to an international training program is the series of seminars and courses conducted by the International Peace Academy, which is generally oriented toward the Nordic states and Canada, but is open to all commanders assigned to peacekeeping units.⁶⁸ Generally though, any training given to peacekeeping troops is conducted by national military establishments. Specific skill and knowledge related to UN-controlled peacekeeping operations is likely the result of service experience in prior operations.

For administrative staffing, Article 97 of the UN Charter provides for a Secretariat. This organ has historically been responsible for directing and coordinating all UN operations. There is, however, no ongoing staff effort to formulate peacekeeping scenarios, run simulations, or arrange for logistics to prepare for a sudden mission authorization. While their experience helps the Secretariat staff to organize missions on a short-notice basis, no long-term planning takes place. All permanent force proposals include either an expanded role for the Secretariat or some other UN organ to conduct advanced planning and coordination, not unlike the strategic planning done by national forces. Common to the proposals is a large, full-time staff, dedicated to planning and coordinating peacekeeping contingencies.

Peacekeeping missions, which are always rather labor-intensive, require a great deal of technical and logistical support. Their needs include transportation, communication, intelligence, heavy equipment, and basic supplies. As it stands, peacekeeping forces receive most of this support through donations of member states, either those with troops participating or those with only support personnel participating. Immediately following mission authorizations, the Secretariat staff

must determine the needs of the mission and formally request support. Despite an ongoing need however, no structure exists for identifying potential support nations or organizations or keeping an inventory of supplies, although some equipment is stored in Italy. A standing force would need a well-developed infrastructure and a continuous line of support. Some proposals suggest warehouses where necessary equipment and supplies would be stored, but a more limited idea would be for the Secretariat staff to secure standing commitments for various items of assistance, such as communications lines or heavy equipment. All proposals emphasize enhanced preparedness for logistical issues.

Financing has always been a problem for peacekeeping operations, and many innovative ideas have surfaced over the years. Some involve UN members sharing the cost of peacekeeping operations through a regular budget or some special provision, while others call for the creation of a permanent fund based on contributions from states and non-state organizations and individuals. Both approaches are designed to provide an ongoing source of funding to avoid reliance on ad hoc special accounts and charitable assistance typically needed for peacekeeping missions.

Historically, both the Security Council and the General Assembly have authorized peacekeeping missions, with the Secretary-General exercising a wide degree of latitude in directing some missions while staying nearly uninvolved in others. Most proposals for a permanent force mirror the historical pattern of authority, with control and organization varying from mission to mission. Some have suggested a new committee modeled on the Military Staff Committee, as outlined in Article 47 of the Charter. In any case, most proposals do not perceive a lack of international will as a significant problem for improving the current system.

Most of the espoused benefits from a standing peacekeeping force are based on the advantages resultant from increased preparedness. A majority of proposals, then, highlight operational rather than political benefits. They intend to improve

such qualities as: professionalism, as a result of better and more international training and operation; reaction time, as a result of a force more easily mobilized and supported; efficiency, as a result of stable and available lines of material and logistical support; and financial stability, as a result of a continuous source of funding. These would supposedly improve the efficacy of peacekeeping operations enough to make the maintenance of the standing force worth the effort. The improved training and professionalism would improve the employment of force and help to avoid reactionary mistakes, such as the overuse of force, which could jeopardize a very fragile peace. The improved reaction time could allow the application of force at critical junctures, such as a new cease-fire, which would give the permanent force more than a symbolic advantage. Dependable sources of logistical support would eliminate much of the confusion and inefficiency present in some peacekeeping operations, and create less controversy over the duties and performance of member states. A continuous source of funding would not only end the complication added to some peacekeeping forces of running out of money in the middle of an operation, but would also eliminate the large debt accumulated by the UN over the years from peacekeeping operations. A permanent peacekeeping force, it is argued, compliant to the attitudes and philosophy of traditional UN peacekeeping, could greatly improve the efficacy of multi-national force, even if it cannot enforce law or improve collective security.

While there are some attractive features to the types of proposals outlined above, few studies have thoroughly explored the extent and true importance of those feature in relation to the cost involved. It is often argued, as it was by James Boyd, that “It is difficult to argue against the intrinsic value of having a permanently constituted force.”⁶⁹ But, on further analysis, the advantages to such a force, so long as they maintain an non-enforcement role, are not as significant as they might seem.

While the present ad hoc system is far from ideal, the benefits of a standing force may not be significant enough to warrant the expense and effort.

For instance, while the current force may not receive the kind of training proposed under the most ambitious plans, they are certainly not inexperienced in peacekeeping matters. Many nations conduct suitable training for peacekeeping forces at home, and some nations, such as the Nordic states, conduct extensive and specialized peacekeeping training. Unless the use of peacekeeping forces expand into an enforcement or collective security role, there already exists enough experienced personnel to form the bulk of peacekeeping operations.

Concerning rapid deployment, the present ad hoc system is not that far from the standard one might expect from a permanent force. Some troops are on the ground and in place only a few days after authorization. In some cases, such as the intervention in Cyprus, peacekeeping forces were there within 24 hours of the authorization. In most cease-fires, traditional peacekeeping cannot prevent a renewal of violence, so only a symbolic presence can be offered anyway. Inadequacy of planning or coordination, while creating occasionally inefficiency and confusion, has never seriously jeopardized an operation.

And finally, financial instability has never seriously hindered the conduct of further operations, and the system of funding could be improved without the creation of a permanent force. In short, since all existing proposals for a permanent peacekeeping force address neither the flaws of the traditional peacekeeping doctrine, nor the interest-charged politics which have seriously hindered UN operations, they are inadequate to the task of providing real solutions to the collective-security problem. Traditional peacekeeping will not put an end to war, it will only keep it at bay. Only a redirection of peacekeeping philosophy and thought can have a serious impact.

***The Force of Law:
A New Focus for the Aim of Peacekeeping***

The way the international community has conducted what has been called “peacekeeping,” as reviewed above, has been well-suited for a certain types of ends in international security. Peacekeeping, as historically done, does not focus on law, but rather on political desires and concerns. Peacekeeping forces have typically presented themselves as disinterested, non-threatening forces wanting only to preserve order. Where considerations of national honor and the need to save face are compounded by the antagonism of distrustful or recently-embattled states, traditional peacekeeping can be of great value.⁷⁰ In situations where nations invite peacekeepers onto their soil to assist them in establishing order, a hostile or overly-powerful force would seem too threatening to be desirable. Where conflicts are characterized by a great deal of political and ethnic strife, and in cases of limited war, the kind of force proposed in the next section would simply not be appropriate.

When it comes to total war, however, where nations disregard international law and muster all their resources with the intent of destroying their enemies, the traditional peacekeeping methods are utterly ineffective. When tanks roll across borders, or when ballistic missiles rain down on populations, lightly-armed, non-threatening forces are not going to be effective. In cases where crimes of war, crimes against peace, and crimes against humanity are being grossly and flagrantly conducted, only powerful, resolved forces, such as those assembled for Korea or the Gulf, will end the crimes and restore peace. Such a force must be concerned only with the spirit of international law, and be determined to end a transgressor’s activities. A force with a mindset not unlike a national police force, intent on enforcing the law, the kind of force that would eliminate the need for nations to keep their own standing armies to protect themselves from outside threats, would be the only desirable force.

***Toward a Better System of Enforcement:
Part 1, Stimulus-Response Legislation.***

If the international arena is to be a place where no crime goes unpunished, then international law must be adjusted to allow for what may be called “automatic law enforcement.” As explained above, the UN Security Council, the highest international security organization on the planet, must decide where every single UN soldier goes and what exactly each soldier is allowed to do. The actions of the Security Council are typically reactive in nature, and follow a chain-of-events philosophy. This philosophy, first presented and adopted in the Yalta Formula, proposed at the San Francisco Conference where the Charter of the UN was drafted, allows the five permanent members to review and veto any facet of a Security Council proposal at any stage of its development. Not only does this severely limit the Security Council to undertake only actions to which all the great powers would agree, but it creates an incredibly inefficient amount of bureaucracy and red tape that must be navigated before any proposal can come to fruition.⁷¹ Even the pettiest of circumstances where UN troops or observers are or may be sent, the UN security council has to agree to every aspect of their situation and decide specifically to send them. This is inherently cumbersome. The Security Council cannot possibly keep up with all the cases that need attention. And even if they could, the political interests of the member nations would probably keep some nations exempt from international criminal retribution. This manner of looking after the security of the world is an entirely unresponsive way to go about it, and allows the violations of the world to go largely ignored.

If the UN had an effective military force at its disposal, which will be discussed below, then it could write and alter legislation that could make law enforcement automatic. Better yet, if the UN could establish “police stations,” military bases of significant force, all over the world, those troops could be legally empow-

ered to enforce the law when necessary. By adding an amending sentence to article 2(4) of the UN charter, for example, which might read something like “...and any military force crossing an established national border will be immediately neutralized by UN forces with an adequate force ratio,” the UN could become a truly enforcing organization. Adding further and similar amendments to all the treaties and conventions defining international crimes and putting an automatic responsibility into the hands of UN commanders to stop the crimes and arrest the criminals, the UN might be able to live up to its preamble.

The important principle for this whole idea is to take the *decision* to use force away from the state actors who run the UN and the Security Council. The decision as to how to react physically to a situation should be that of the regional UN commander, the actual police force in the region. By *requiring* UN forces to react to situations in a law enforcing manner, it may be possible remove the spinelessness from international law enforcement that currently prohibits justice from being done. Enforcement of the law should never be a subject for debate. Action should be automatic. The international criminal tribunals can debate as to the fate of the alleged criminals, but the crime should be ended, forcefully, as soon as it starts.

It is important to note that this type of structure would not be a replacement of current non-forceful peacekeeping activities. The forces charged with armed intervention would only engage targets actively involved in violating international law. It would not be total war in that the non-front-line military units and support facilities would not be targeted. Rather, it would be limited war in that all efforts will be designed only to end the transgressions, and only aggressive, combat-involved units would be counter-attacked. The current structures for negotiations and the management of state interaction would be totally unaffected by this. If, as was the case with the Congo crises, UN forces are invited onto the soil of a nation in

need, those forces would look much like they always have, and would not be interested in engaging an enemy or defeating anyone militarily.

Toward a Better System of Enforcement:

Part 2, An International Peacekeeping Force of Consequence

If the nations of the world were interested in establishing an enforcement structure and altering international legislation, a new type of UN military would have to be built. Currently, UN forces, who are structured to be non-threatening, are completely inadequate to the task of preventing and ending wars and enforcing the law. In fact, only rarely when a nation like the US decides to initiate an operation, do UN forces even get the chance to enforce law. When UN forces act solely under security council direction, they go about trying to accomplish a vaguely defined mission, with very irresolute rules of engagement, and are typically undermanned and under-armed. This is no way to enforce the law on a global scale.

The first step toward creating a substantive UN force that can actually accomplish something like global enforcement would be to make it an independent entity, free of national affiliation. Currently, the UN forces are composed of bits and pieces of the militaries of the world. While serving, UN forces wear the uniforms of their home nations, use the equipment of the home nations, and typically, follow the orders of their home nations. The very nature of UN forces make them ineffective on an international scale. They are constantly divided by national self-interests, and only enter a situation when some nation has an interest in their being there. The UN force should be given a name first of all, like the IPF (International Peacekeeping Force). They should also have their own uniforms, rank structure, common language, heavy equipment, training institutions and academies, and military bases. They should be molded into a cohesive fighting force, capable of competently tackling any military force in the world. And with the amazing and overwhelming

power demonstrated by the air forces of the great powers in the Gulf War, an IPF should be an air-dependent force, using primarily long-range strike aircraft with standoff air-to-ground weapons. This would give them the flexibility and responsiveness to react to any unlawful use of force, anywhere in the world, instantly.

A few things would have to be accomplished in order for this to happen. First of all, the UN should stop asking member nations to submit complete military units. The UN force could never incorporate an American infantry division into its force structure as effectively as the American Army could, because the American Army created that division to serve its own purpose. The IPF should employ the same strategy, by not asking for units, or vehicles, or weapons, or even troops from its member nations. The IPF should only receive funds from its member nations. It could then use those funds to purchase its own advanced weapons (American defense contractors are terribly eager to sell advanced military hardware to anyone they can.) It should also recruit its forces independently of any nation. There are plenty of unemployed soldiers in the US and the former Soviet Union right now who probably jump at the chance to build a new military. By providing the same benefits and prestige to its recruits that the American military always has, the UN could probably recruit more soldiers from every nation on earth than it would ever need to enforce the law as it should be enforced. Since the existence of the IPF would not detract from any nation's own defense, and no restrictions would be placed on any nation that would interfere with self-defense Article 51 of the UN Charter, the IPF could be politically very acceptable and desirable, particularly by less-developed nations. It would also remove the historic burden carried by Canada and the Nordic countries, who have contributed a disproportionate share of peace-keeping troops over the years.

The strategic doctrine of nuclear deterrence will most likely hold as the primary approach to nuclear security by the great powers, especially as less-developed

nations begin to develop and deploy their own weapons of mass-destruction. To be a truly effective preventor of war for all nations, the IPF would have to have a significant nuclear arsenal and ballistic missile defense system deployed in areas of concern. As for the weapons, the IPF could accept a transfer of the nuclear forces affected by the START I treaty to their control, along with the tactical nuclear weapons of the INF treaty. This would be an attractive alternative to START I and INF nations to spending the billions it would take to dispose of these weapons safely. Since the START I treaty effectively cuts the US strategic arsenal in half, the IPF could have a nuclear force equal to America by the turn of the century.⁷²

The tactical arsenal provided by transferred INF weapons would give the IPF the theater nuclear forces it needs to make nuclear reprisal a very real threat to less-developed nations, such as Iran⁷³, who aspire to use nuclear weapons in their wars of aggression. Once the IPF has a stabilizing deterrent in operation, they could then begin a program of de-nuclearizing the world and continuing the work already done in nations like Iraq and North Korea. Eventually, the IPF should have a complete monopoly on weapons of mass-destruction, in order to preserve global security.

Essentially, this new IPF would be a real military, capable of effectively fighting any military in the world. It would be a well-trained and well equipped, all-volunteer force. Most nations would probably be more willing to donate more funds to this army than they spend on the troops they themselves assign to the UN, since there is no real risk for them. Their own military forces would never again be squandered on ill-conceived peacekeeping mission. Nations rarely care about the casualty figures of other nations' armed forces, so long as they themselves suffer no losses. With an IPF, America would never again lose a soldier to a conflict it did not create itself. Also, by purchasing the latest in high-tech, long-range weapons from American and Russian defense contractors, the IPF would be far better equipped to handle third world threats than it is now, since the bulk of the UN

forces are only minimally armed. The IPF would be an international military force truly empowered to keep any peace or end any international crime that may arise today or in the future.

The IPF would essentially be an Air Force, capable of striking against a target as small as a single vehicle, anywhere in the world from anywhere in the world. It would have virtually no naval forces, as airpower is more responsive and flexible, and it would employ ground forces only when a standing presence is necessary. It would eventually have its own communications and reconnaissance satellites and ballistic missile defense systems. If done right, the IPF could be a serious force to be reckoned with, permanently stationed all over the world to react instantly whenever needed.

Last year, the UN spent a little over four billion dollars a support nearly eighty-thousand peacekeeping forces deployed throughout the world. Only a small fraction of the budget went toward training and equipment, with the rest going toward supporting the actual operations of those forces. If rather than donating the forces themselves, complete with light armor, member nations contributed what they actually spent to recruit, train, and equip those forces, the UN could easily have an annual budget of over 40 billion dollars. This would certainly be enough to assemble a formidable force.

As stated above, the workhorse of the IPF would be long-range aircraft with standoff weapons. Assuming the single greatest military threat to the compliance with international law is the armored vehicle, whether that be a tank, personnel carrier, self-propelled artillery, or ballistic missile launcher, it would be the primary target of law enforcing military intervention. Whether the international crime being conducted is an act of aggressive war, an act of illegal blockade, or an act of unlawful use of force, the armored vehicle is the most likely means of enabling a force to conduct such a crime. The current superpower philosophy of the employment of air

power is to use forward-deployed tactical and strategic forces to initially cripple the command, control, and communications networks of an enemy, achieve air zone superiority to protect airlift corridors, and to provide close-air support for ground operations. Essentially, while air power may be employed as the most decisive arm in an operation, as it was in the 1991 Gulf War, it is still used as a means to the successful conduct of ground operations. Air power is not employed as an end in itself.

But since the IPF would not be concerned, in most cases, with occupying territory, or securing resources with military force, it could use air power as a method of “risk-free” intervention. If an armored invasion or attack was detected, a group of aircraft could take off from any base in the world, proceed to the combat area, launch standoff weapons from a great enough distance to preclude the danger of countermeasures, and return to the home base. In effect, an IPF air standoff strike force could completely immobilize an unlawful military operation without ever deploying ground troops or ever exposing a single life to enemy fire. Ideally, an IPF could be everywhere and nowhere, capable of enforcing international law without ever being seen.

Toward a Better System of Enforcement:

Part 3, the Problem of Sovereignty

The structure and concept of sovereign relations makes international security much more problematic today than it ever has been. There is a great gap, economically, militarily, and socially, between the developed nations of the West, and the less-developed countries (LDCs) of the world. This “development gap” makes collective-security actions very difficult for the UN to undertake, since developed nations want to maintain the status quo and their positions of dominance, while the LDCs want to assert their identity and grab some of the limelight for themselves. As a result, there is no common ground, and no common perspective of collective secu-

ity. Therefore, an IPF could be loyal only to the spirit of international law, in order to maintain true impartiality.

This proposed system of international legal enforcement, as described above, would completely eliminate two of the structural problems of international law. The UN being incapable of deterring crimes would no longer be a problem since the treaties and conventions that are international criminal law will be adjusted to the purpose of ending the crimes rather than preventing them or cleaning up after them, which they never have anyway. International actors behaving in a manner inconsistent with rational choice theory would not be a problem because the new International Peacekeeping Force would be empowered and required to put a stop to international crimes as soon as they occur, whether these crimes be war crimes, crimes against peace, or crimes against humanity. But could either of these changes be truly effective without adjusting the principles of sovereignty? Will any nation allow these kinds of activities to go on under their sovereign noses?

If done correctly, yes. The idea of sovereignty as a nations authority to act independently has slowly been diminishing in the modern era. Today, the strict legal definition of sovereignty reduces to a condition of mere constitutional independence, where the constitution of every state is not part of a larger constitutional arrangement.⁷⁴ What this means is that every state is equal in the eyes of the law, much in the same way that every American citizen is equal in the eyes of the law. While the politics of the judicial system puts some nations above others *de facto*, the *de jure* law remains a constant. Therefore, an improved system of international legal enforcement would be just as righteous as the current system of international legal enforcement. With both, the status of each individual nation does not change. In fact, the new system would actually improve the status and increase the relative influence of less-developed nations by treating them in exactly the same way they treat developed nations. The IPF would end the crimes of any nation, regardless of

their relative international profile. The IPF would be just as bound to neutralize an American force invading Mexico as it would be an Iraqi force invading Kuwait. And it would have the strength to prevail in both instances.

The creation of an IPF would be very attractive to most nations, from a geopolitical standpoint. For the developed, Western nations, it gives them a very good excuse to continue their isolationist trends of late. A well-made IPF could take over all current international peacekeeping efforts, relieving all nations of the burden of sending their troops where they would rather not, like Somalia and Bosnia. It also reduces dramatically the cost of fulfilling their treaty obligations. By simply taking over due-to-be-destroyed nuclear weapons, the IPF would save the US and Russia billions, and might give the Ukraine the ability to ratify START I, and Russia the ability to comply with START I. And by eliminating the US and other nations responsibilities overseas, the IPF could further save the international community billions in duplicated effort.

For the less developed nations, an IPF might allow them to free up the resources currently being expended on military buildup for the purposes of social and economic development, which could greatly increase the standard of living for billions of people. Also, an IPF would increase their geopolitical status in the world since all the major powers would be held as accountable to international law as they are. The only losers among the less-developed nations in the creation of an IPF would be those nations intending to commit crimes of war, crimes against peace, or crimes against humanity. But that is the whole point. And the reasons why many of these nations commit war crimes would be removed and nullified by an IPF. So, really, there would be no legitimate reason for any nation to oppose the creation of such a force. Of course, since it represents a threat to the status quo, a considerable objection from the five permanent members of the Security Council should be expected.

As a note, for situations where traditional peacekeeping forces have been successful—civil disorder, cease-fires, certain types of humanitarian assistance, and insurgency—a traditional-type of force could be employed. In a world of omnipresent IPF enforcement, there would certainly still be a need for the lightly-armed, non-threatening, dis-interested peacekeepers currently used around the world. Whether such forces would still be composed of the traditional multi-national force, or the independent troops of the IPF, would really depend on how well the IPF has established itself at the time of mission authorization. In any case, traditional peacekeeping is not totally obsolete.

Watching the Watchers: Ensuring a Just Intervention

While the potential for such is force is wholly remarkable, constituting essentially a newfound ability to respond instantly to any transgression of international law anywhere in the world, there is a danger. The kinds of remarkable force capabilities held by the IPF will empower them to conduct risk-free intervention—the use of military force with no losses. Long-range, stealth aircraft, with standoff weapons, means the IPF could target and fire its weapons without ever having to expose itself to enemy attack. This brings a certain danger of forcible measures becoming the first resort rather than the last resort. Measures would have to be taken to ensure all IPF operations remained subject to the limits of *jus in bello*, the laws of war.⁷⁵ Any intervention actions would have to be only as forceful as is exactly necessary to end the crime and enforce law with the appropriate proportion of force.⁷⁶ Furthermore, a system of checks and balances would be necessary between the IPF and the Secretariat to ensure a civilian-subordinate force.

**Toward Global Protection:
The Life You Save Could Be Your Own**

In the final analysis, it seems quite clear that the current system of international criminal enforcement is woefully inadequate to the task of making the world truly safe from crimes of war, crimes against peace, and crimes against humanity. Based on old world values, the current structure of international criminal enforcement is inherently flawed and actively prevents the law from being enforced. By restructuring the system, so that military enforcement is automatic against all transgression, the structure could clear the way for the creation of an international peace-keeping force that would be in the best interests of all nations and could make great strides toward world where international law has some real meaning and can actually save lives. By giving the United Nations the power and authority to uphold the standard of *nullum crimen sine poene*, we could truly make the world a slightly safer place in which to live.

Notes

¹ Emphasis added.

² Yashpal Tandon, "Consensus and Authority behind United Nations Peacekeeping Operations," *International Organization* 21, no. 2 (Spring 1967): 254-83. This source lists almost seventy "peace organs" within the UN in the period of 1946-1965.

³ This action was initiated in December of 1992 by the United States to re-open aid routes to the starving Somalia masses. The operation quickly became one of peacekeeping when US Marine would seek out faction leaders and weapons caches. UN forces also patrol the cities and country side to stop any violence that might erupt.

⁴ As described in note 2, this peacemaking operation became a peacekeeping one.

⁵ There is another alternative theoretically available to the UN, that of Peacebreaking. Removing a determined illegitimate regime from sovereign power. The Gulf war of 1991 might be viewed as such an action.

⁶ As expressed in the preamble of the Charter of the United Nations, the purpose of the UN is to secure peace for the global community and establish conditions which promote justice, order, and social progress. This is one of the fundamental principles of international law, and all treaties or binding agreements of international law are written with the assumption that all nations should respect the rights of other nations to establish security and promote better standards of living for their people. Without this assumption, all international law would be meaningless.

⁷ Article 53 of the Vienna Convention of the Law of Treaties (done at Vienna, 22 May 1969) states: "...a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Even a treaty that might seek to make legal behavior which violates these norms or make criminal behavior protected by these norms would be invalid. Article 53 further states: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law." This is further applied to newly existing norms by Article 64 of the same convention: "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates."

⁸ Punishment, perhaps one of the original meanings of justice, is certainly one of its most essential elements. See: R. C. Solomon and M. C. Murphy, What is Justice?: Classic and Contemporary Readings, 1990.

⁹ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and the Charter of the International Military Tribunal, Article 6:

Crimes Against Peace: namely, planing, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on

political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

“Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.” Done at London, 8 August 1945.

¹⁰ Michael N. Nagler, America Without Violence, Island Press, 1982. Page 13.

¹¹ UN troops are all too often obligated to use “measures short of force” to administer aid, and can only use force to defend themselves. David P. Forsythe, United Nations Peacemaking, Johns Hopkins University Press, 1972. Page 8.

¹² Codified by the Convention (No. IV) Respecting the Laws and Customs of War on Land. “Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the laws of nations, as they result from the usage established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.” Done at Hague, 18 October 1907. Also known as the Marten’s Clause.

¹³ K. P. Sarkensa, the United Nations and Collective Security. 1974

¹⁴ Followed by the Moscow Declaration of October 1943 which called for, at the earliest possible opportunity, a general international organization based on the principle of sovereign equality of all peace loving states, and to open membership to all such states, large and small, for the maintenance of international peace and security. While this did accomplish ground-breaking work toward creating the United Nations, the declaration, written by China, the United Kingdom, the United States, and the Soviet Union, made it clear the post-war era would be organized and dominated by the allied powers. For text see R. B. Russel and J. E. Muther, A History of the United Nations Charter. 1958.

¹⁵ Message on the State of the Union, 6 January 1945.

¹⁶ At the time, 1648, The Reformations had brought about a great rebellion against the Church. Heads of States resisted the division of authority imposed upon them by the Church. After the Reformations, most heads of states declared the determination of the civil authority to be supreme in their own territories, and brought about the existence of the modern, unified, national state. Over half of Western Europe adopted this philosophy—even countries that rejected Protestantism. The Peace of Westphalia marked the acceptance of the new political order in Europe. J. L. Brierly, The Law of Nations, The Claridon Press, 1963. Page 5.

¹⁷ *De republica libri sex* (3rd ed. Frankfurt: 1594) Page 132.

¹⁸ Kenneth Pennington, The Prince and the Law, 1200-1600, University of California Press, 1993. Page 9.

¹⁹ Pennington, Page 9.

²⁰ Edward Gibbon, History of the Decline and Fall of the Roman Empire, ed. O. Smeaton, quoted by H. Koeppler, “Frederick Barbarossa and the Schools of Bologna: Some Remarks on the Authentica Habita,” EHR 54 (1939) Pages 577-607.

²¹ Otto of Freising and Rahewin, Gesta Friderici I. Imperatoris, ed. G. Waitz and Baron von Simson (MGH, Scriptores rerum Germanicarum in usum scholarum, 46; 3rd ed. Hannover-Berlin: 1912, 236-237; Robert Benson analyzed Frederick's "Oratio" at Roncaglia in 1158 in a paper delivered at Dumbarton Oaks, February, 1985, and still unpublished, in which he demonstrated that the text is a pastiche of quotes from Sallust, Roman law, and Gratian's Decretum. Benson identified the sources of canon and Roman law. See Benson's remarks in "Political Renovatio," 364-369.

²² This is only the most famous of Greek references to natural law. There are many others. Aristotle, for instance, advised the exponents of his Rhetoric that when there was no case "according to the law of the land," they should rely on "the law of Nature." He argued that "an unjust law is not a law." As far as the actual function of international power, however, the more appropriate geopolitical expression would be the one made by Thrasymachus in Plato's Republic: "Right is the interest of the stronger." L. R. Beres, Reason in Realpolitik: U.S. Foreign Policy and World Order, Page 80. 1984.

²³ In theory, this is not a paradoxical outcome but a logical consequence of the nature of the sovereignty concept. The idea that there is a sovereign authority within the community leads to the belief that internationally, where there is no identified community, only a collection of actors, there is no sovereign authority. The actors collected on the international stage are all sovereign in their own communities. A state which claims freedom from limits and control within its community will concede the same freedom to other states as a matter of course. F.H. Hinsley, Sovereignty, Page 159. 1966.

²⁴ Rousseau's philosophy of the legitimate state was much more involved, and as a result, much more demanding than either Hobbes or Locke. For Rousseau, no state could be legitimate unless the whole people acted themselves in developing their own laws. The social contract was not a ploy used to start a society only to be pushed into the background later. Rather, it was an ongoing constitutive principle of society. Only with the approval of the general will could any state act morally. P. T. Manicas, The Death of the State, Page 56. 1974.

²⁵ Article 1(2): "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

²⁶ This was first recognized during the debates of the sub-committee of Committee I of Commission I of the San Francisco conference to draft the charter of the UN. These debates included an exchange of views on the meaning of the principle of equal rights and self-determination of peoples. The sub-committee concluded that: "the respect of that norm [self-determination] is a basis for the development of friendly relations, and is in effect, one of the appropriate measures to strengthen universal peace." UN publication E/CN.4/Sub.2/404/Rev.1, The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments, Page 2. 1981.

²⁷ While this model of rationality is not spelled out in any particular agreement, it was the common belief at the time of the Westphalia treaty, and was adopted as the standard model for international legal analysis. The fact that these models were typically inaccurate didn't seem to bother international lawyers until after World War II, since they assumed that as international interactions increased, their descriptive concepts of the functions of international law become too complex for a model to thoroughly describe. Michael Barkun, Law without Sanctions, Yale University Press, 1968. page 153.

²⁸ This is most ardently expressed in a statement by Socrates: "an unexamined life is not worth living." In classical thought, this means that not only is reason effective for discovering how to live a worthwhile life, but the only way to figure out how to structure a state so as to fully develop the po-

tential of a society. Reason is means to collective security. S. Nathanson, The Ideal of Rationality, Page 2. 1985.

²⁹ B. B. Mesquita and D. Lalman, War and Reason: Domestic and International Imperatives, Page 6. 1992.

³⁰ Actions are chosen as a means to attain an end. Of course, given various cultures and philosophies, not all means are justified by their ends in the international forum. We must assume there is a political cost for all actions which cause some sort of conflict for the use of force, even successful force. Forceful actions will only be chosen if the ends they produce far outweigh the cost they exact. *ibid.*, Page 96. 1992.

³¹ Marci McDonald, "The Maestro of Terrorism," *Maclean's*, 97 (April 30, 1984): Page 31.

³² Robert Mandel, Irrationality and International Confrontation, Greenwood Press, 1987. Page xiii.

³³ Stanley Hoffmann, Janus and Minerva: Essays in the Theory and Practice of International Politics, Page 5. 1987.

³⁴ Thomas Princen, Intermediaries in International Conflict, Page 8. 1992.

³⁵ Robert Jervis, "Rational Deterrence: Theory and Evidence," *World Politics* 41 (2), Page 198. 1989.

³⁶ This is not quite the case in purely regional negotiations. The negotiations concerning the civil strife in the Philippines, El Salvador, Nicaragua, and Cambodia, where the concerned cultural paradigms are fairly similar to each other, ideological differences appear to be less encumbering than questions of representation, venue, and agenda. Regardless, the actual content and mutual interests of negotiations are typically neglected. G. A. Craig and A. L. George, Force and Statecraft: Diplomatic Problems of Our Time, Page 159. 1983.

³⁷ Sources of international law, such as treaties, convention, lawful agreements, and the writings of highly qualified publicists, list all the things nations agree to do. Nowhere does it list things that are illegal regardless of agreement. There is the Marten's clause (see note 12), but that was added as an additional mechanism to international law rather than being incorporated into the basic structure of international law. The UN has to wait for a transgression of international law before they can interpret it and decide on a course of action. Police in every nation have a standing body of actions to take given certain circumstances, which allows them to get involved in crimes as they occur rather than having to respond to them afterward.

³⁸ Most studies have shown that, even in the face of tremendous probability for punishment, most criminals' behavior is not affected. It seems only reasonable to assume that this principle extends itself internationally. Johannes Andenaes, Punishment and Deterrence, University of Michigan Press, 1952. Page 21.

³⁹ Deterrence based on punishment is usually associated with nuclear strategy and deep-penetration bombing. Conversely, military denial is typically associated with conventional tactical forces. While nuclear weapons have been developed, and are being refined, for tactical use, the strategy of the nuclear powers still places weapons of mass-destruction in a predominately punishment-deterrence role. John J. Mearsheimer, Conventional Deterrence, Page 15. 1983.

⁴⁰ While there is no standing international criminal court, there are a variety of options available for the prosecution of international criminals. If the crime is severe enough to violate one of the per-

empty norms of international law, any nation holds the jurisdiction to prosecute such alleged criminals. Nations holding persons accused of international crimes may prosecute them in their own courts, extradite them to a more appropriate nation (the nation against which the crime was committed, or the nation of which the alleged criminals are citizens), or send them to an ad hoc international tribunal, similar to the Nuremberg War Crimes Tribunal held at the end of World War II. The model of such a tribunal can be found in the London Charter of 1945, which established the Nuremberg tribunal and its procedure.

In addition to the principle of universal jurisdiction (see note #59), there are several other guidelines for determining jurisdiction. They are: *Territorial principle*, jurisdiction belonging to the state upon whose territory the crime occurred; *Nationality principle*, jurisdiction belonging to the state whose citizenship the alleged criminals hold; *Protective principle*, jurisdiction belonging to the state whose national interests are most injured by the offense; and the *Passive Personality principle*, jurisdiction belonging to the state whose citizenship the persons injured by the offense hold.

⁴¹ Nagler, Page 107.

⁴² *ibid.*, Page 107.

⁴³ *ibid.*, page 108.

⁴⁴ *ibid.*, page 108.

⁴⁵ Done at Moscow, May, 1972.

⁴⁶ SDI as it Relates to the ABM Treaty, hearings before the Senate Committee on Foreign Relations, 24 April 1991. America's ABM program has developed from a system of complete protection to Global Protection from Limited Strikes (GPALS) which protects deployed forces from tactical and theater ballistic missile threats. Also, it will afford some measure of defense against small ICBM attacks against the US, such as those that might come from China or a former Soviet republic.

The "Testimony of Hon. Stephen J. Hadley, Assistant Secretary of Defense for International Security Policy" attempts to dissolve a clear line between strategic ABM and tactical ABM, since the ABM treaty hints at such a difference but makes no clear distinction.

It's interesting to note that Congress seems terribly interested in complying with the 1972 ABM treaty, SALT I, and all nuclear deterrence-related treaties in general. In fact, in light of the US's current compliance with START I despite non-compliance by the former Soviet republics, it seems the Congress has a true zealotry for complying with MAD-related treaties even while they neglect human rights treaties and our UN peacekeeping relations worldwide.

The dilemma presented by the ABM treaty, that of an agreement forged in the spirit of rational self-interest between the two then-superpowers to preserve their own existence, now leaves us potentially vulnerable to the non-rational-self-interest actors of the less-developed world. If the US and the complying members of the CIS agree to amend the ABM treaty, we will be making a rational decision to allow ourselves to react irrationally in the face of dangerous irrationality. This is one of the ultimate jokes of international law.

An apparent shift of philosophy between Phase I and GPALS. Phase I, as explained by the American top brass, was not so much to provide protection against a Soviet first strike, but to deter the Soviets further by confusing and defeating their targeting strategy. Theoretically, if the Soviets knew that they could only count on a small percentage of their warheads to get through, they might not believe they can destroy our retaliatory capabilities, thus making a first strike useless. This was never fully understood by the general public and it didn't deviate from the fundamental MAD doctrine that was the heart and sole of all American military thinking for many years.

GPALS, on the other hand, has the explicitly expressed intention of providing complete protection against limited theater and unauthorized strategic strikes. This new attitude represents the beginning of the end of rational utility theory as the military doctrine of the US.

Considering the "Testimony of John B. Rhinelander, Shaw, Pittman, Potts, and Trowbridge, Washington D.C." GPALS, if considered in a "what would we think if they were doing it" perspective, would be potentially violating the ABM right now, and certainly violating by the time of deployment. GPALS violates every substantive article of the ABM treaty. If it were to be deployed, every article would have to be amended. Some articles would have to be completely discarded. Actually amending this treaty would represent a fundamental shift in the thought-process of international law and would also mean the beginning of the end of rational utility theory as the backbone of international law.

⁴⁷ "War Crimes Report," Section 3 Part 1. Beres et. al. 1993. Unpublished assessment done at Purdue University. The UN has already formed a central organization, the Bureau for the Investigation of War Crimes in the Former Yugoslavia (BICY), whose job it is to oversee all war crimes investigations in the former Yugoslavia. It is a single, authoritative organization providing a single opinion. With only one opinion, the task of deciding whom to indict is understandably simpler. BICY acts exclusively on behalf of the UN. Its board consists of representative reviewers and field researchers, who are tasked with the job of identifying war criminals, and have the liberty of determining their own procedural and structural guidelines. The five nations represented on the board are the permanent members of the Security Council. In addition, Bosnia, Croatia, and Serbia each have two representatives on the board, to ensure fairness and objectivity.

⁴⁸ Done at Montevideo, 26 Dec, 1933.

⁴⁹ (Same as note 6) As expressed in the preamble of the Charter of the United Nations, the purpose of the UN is to secure peace for the global community and establish conditions which promote justice, order, and social progress. This is one of the fundamental principles of international law, and all treaties or binding agreements of international law are written with the assumption that all nations should respect the rights of other nations to establish security and promote better standards of living for their people. Without this assumption, all international law would be meaningless.

⁵⁰ (Same as note 12) Codified by the Convention (No. IV) Respecting the Laws and Customs of War on Land. "Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the laws of nations, as they result from the usage established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." Done at Hague, 18 October 1907.

⁵¹ A detailed account of these crimes, along with a draft indictment, can be found in "War Crimes Report." Beres, et. al. 1993.

⁵² Article VIII: "Any 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 acts enumerated in Article III." Done at New York, 9 Dec, 1948.

⁵³ Henkin, Louis "Use of Force: Law and U.S. Policy." Swing et. al. Page 41.

⁵⁴ Buergenthal, Maier., "Public International Law" West Publishing Co., St. Paul, MN.

⁵⁵ The use of force for the protection of nationals is not inconsistent with the first clause of Article 2(4) whenever this does not involve a separation of part of the State which is the object of intervention (otherwise its territorial integrity would be violated) or a prolonged presence of the intervening state's troops in the state where the intervention has taken place. (Pg. 1 Ronzitti)

⁵⁶ Article 1 of both: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Done at New York, 16 Dec, 1966.

⁵⁷ Paragraph 1: "No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state." Adopted by the General Assembly, 21 Dec, 1965.

⁵⁸ Annex: "*Recalling* that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." Adopted by the General Assembly, 14 December 1974.

⁵⁹ The principle of universal jurisdiction has its roots in natural law and the presumption of solidarity among all nations in the enforcement of law. The principle is discussed in Grotius' *De jure belli ac pacis* (Book II, Chapter 20); and in Vattel's *Le droit des gens* (Book I, Chapter 19). The case for universal jurisdiction, particularly in instances where extradition is difficult or impossible, is codified by the 1949 Geneva Conventions which clearly impose upon all parties the obligation to punish certain grave breaches of law, regardless of where the transgression took place or the nationality of the perpetrators. See Convention 1, Article 49; Convention 2, Article 50; Convention 3, Article 129; and Convention 4, Article 146. See also: M. C. Bassiouni, *International Extradition in US Law and Practice*, 1983, and "Restatement of the Foreign Relations Laws of the United States, Tentative Draft No. 5," 1984, sections pages 402-404, 443, and 18 U.S.C section III (c).

While the Genocide convention itself does not stipulate universal jurisdiction, there is law to support it. For instance, in 1985 the US Court of Appeals ruled for the extradition of accused Nazi war criminal John Demjanjuk to Israel, even though the crimes charged were committed against persons who were not citizens of the state of Israel, as Israel did not exist at the time of the crime. As stated by the court: "When proceeding on the jurisdictional premise neither the nationality of the accused or the victims(s), nor the location of the crime is significant. The underlying assumption is that the crimes are offenses against the law of nations or against humanity, and that the prosecuting nation is acting for all nations." *Demjanjuk, v. Petrovsky*, 776 F. 2d. Pages 582-3 (6th Cir. 1985); cited in Bassiouni, *International Criminal Law*, Page 286.

⁶⁰ The current situation in the former Yugoslavia is a great and a terrible example. Analysis tends to indicate that a decisive but limited intervention during the initial outbreak of violence, air strikes against invading armored columns for example, would most likely have ended to conflict before it started. The invading Serbian army met with little to no resistance in nearly all its current occupied territory. If the Western Powers had demonstrated a forcible intolerance of their aggression, the Serbs would likely not have gone as far as they did.

Even in the 1991 Gulf War, where the Western Powers had vital interests in the area, force was not used until after seven months of failed negotiations and political posturing. The factors of the Iraq conflict were as well-suited to outside intervention as possible, and the impending Iraqi invasion of Kuwait was predicted by the world intelligence community months in advance. But, as is typical, nations prefer to deploy forces only when all other avenues for peace have been explored and exhausted.

⁶¹ Rough annual cost to the UN in millions of 1993 dollars. Compiled from bi-monthly issues of *Peacekeeping and International Relations* journal.

⁶² Number of combatants assigned as of December 1993. *ibid.*

⁶³ Troops lost since the operation began. *ibid.*

⁶⁴ The United Nations Force in the Congo is one such example. On 30 June 1960, the Congo became an independent republic. Less than two weeks later, on 12 July, the newly independent government appealed to the United Nations for the “urgent dispatch” of military assistance. This conflict, characterized by internal strife, was perceived to be the result of “external aggression against the national territory” and therefore threatening to international peace. This is only one such example of the UN responding forcibly to an internal situation considered to pose a general threat to the collective security. J.M. Boyd, United Nations Peace-Keeping: A Military and Political Appraisal, 1971. Page 59-66.

⁶⁵ *ibid.* Page 95.

⁶⁶ While peacekeeping operations may be ad hoc in nature, draft guidelines for their conduct do exist. See “Draft Formulae for Articles of Agreed Guidelines for United Nations Peace-Keeping Operations (1977)—Report of the Special Committee on Peace-Keeping Operations, eleventh Report of the Working Group,” Annex II, Appendix 1 or 2, December 1977. P. F. Diehl, International Peacekeeping, Page 108. 1993.

⁶⁷ *International Affairs Journal*, Spring ‘94 issue.

⁶⁸ See R. Swift, “United Nations Military Training for Peace,” *International Organization*, Page 28 (1974); Page 267-280.

⁶⁹ James Boyd, United Nations Peacekeeping Operations: A Military and Political Appraisal, 1971.

⁷⁰ A. James, Peacekeeping in International Politics. 362. 1990.

⁷¹ The issue came to be known as the “double veto” problem. The Yalta Formula meant that “any decision regarding the preliminary question as to whether or not such a matter is procedural must be taken by vote of [nine] members of the security council, including the concurring votes of the permanent members.” This allows the five permanent members to veto the mere procedure of a proposal before its substance is even addressed. Even if they agree to the procedure, they still have the power to veto it on the basis of questionable enforcement action. While the smaller powers argued that the Council has the duty rather than the right to conciliate disputants and that no member should have the right to veto resolutions aimed solely at pacific settlement of disputes, the great powers would not have it. They made it known that if Article 27, which outlined their proposed voting rights, was not adopted, there would be no United Nations. Russel and Muther, Page 766.

⁷² Michael O. Wheeler. Nuclear Weapons and the National Interest, National Defense University Press, Page 35. 1989.

⁷³ Louis Beres, Israel, Iran, and the Prospects for Nuclear War in the Middle East, *Strategic Review*, Spring 1993.

⁷⁴ Alan James, Sovereign Statehood, London, 1986. Page 25. James describes sovereignty as a legal, absolute, and unitary condition. Legal in that a sovereign state is not subordinate to another sover-

eign, but is necessarily equal to it by international law, even though it may not necessarily be by international geopolitical fact.

⁷⁵ See S. Pufendorf, On the Duty of Man and Citizen, for an early account of the limits of war under the law: “As for the force employed in war against the enemy and his property, we should distinguish between what an enemy can suffer without injustice, and what we cannot bring to bear against him, without violating humanity. For he who has declared himself our enemy, inasmuch as this involves the express threat to bring the worst of evils upon us, by that very act, so far as in him lies, gives us a free hand against himself, without restriction. Humanity, however, commands that, so far as the clash of arms permits, we do not inflict more mischief upon the enemy than defense, or the vindication or our right, and security for the future, require.”

⁷⁶ Proportionality, as a principle in the just conduct of war, has its origins in the biblical *Lex Talionis*: the Law of Exact Retaliation. The “eye for an eye, tooth for a tooth” philosophy, which can be found in three separate passages of the Jewish Torah, or biblical Pentateuch, can also be found in the Code of Hammurabi—c. 1728-1686 B.C., as the first written mandate of exact retaliation for law enforcement. In contemporary international law, evidence of the rule of proportionality can be found in the UN Covenant on Civil and Political Rights, Article 4, or 1966. Also, the European Convention on Human Rights, Article 15, provides for the derogation from the provisions during time of war or public emergency, according to the conditions of proportionality.