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Stephen A. Wangsgard

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SECESSION, HUMANITARIAN INTERVENTION, AND CLEAR OBJECTIVES: WHEN TO COMMIT UNITED STATES MILITARY FORCES

I. INTRODUCTION

National aspirations must be respected; peoples may now be dominated and governed only by their own consent. "Self-determination" is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.

— President Woodrow Wilson¹

Though proclaimed more than seventy-five years ago, President Wilson's statement still rings true today. Across the globe, ethnic peoples are demanding the right to secede by sounding "a long blast on the trumpet" of self-determination.² The violence attending secessionist

1. Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT'L L. 1, 4 (1993) (quoting Woodrow Wilson, The Fourteen Points Speech (Jan. 8, 1918), in *THE PUBLIC PAPERS OF WOODROW WILSON: WAR AND PEACE* 155, 177 (Ray S. Baker & William E. Dodd eds., 1927)).

2. *Joshua* 6:5

self-determination claims often overflows into neighboring countries, consequently jeopardizing the very "walls" of the nation-state system.³ From the bloodshed of former Yugoslavia,⁴ to the successful severing of Czechoslovakia,⁵ from the disaster of Somalia,⁶ to the gains of Eritrea,⁷ and from the breakup of the former Soviet Union,⁸ to the demands of Quebec,⁹ the specter of secession haunts the global scene.¹⁰ The United States can ill afford to ignore the rampant threat of secession that imperils global stability and U.S. interests.¹¹ Moreover, the lack of a clear U.S. policy for responding to the increasing number of secessionist self-determination claims threatens America's ability to maintain global order.¹²

Accordingly, with the presence of U.S. forces in Bosnia,¹³ the time to establish clear U.S. guidelines for intervening in secessionist movements is now. This comment asserts that before the United States intervenes in the quagmire of a peoples secession, it must follow and implement three guidelines: first, the United States must ascertain whether the secessionist claim is legitimate; second, the United States must intervene only under multilateral auspices that abide by the principles of humanitarian intervention; and third, if the United States is to intervene, it must do so with clearly defined objectives. These three guidelines set practical, minimum standards for measuring the necessity

3. *Id.* See also Robin Knight et al., *Home Sweet Homeland*, U.S. NEWS & WORLD REP., July 26, 1993, at 38-42.

4. See generally MORTON H. HALPERIN ET AL., *SELF-DETERMINATION IN THE NEW WORLD ORDER* 157 (1992).

5. Holly A. Osterland, *National Self-Determination and Secession: The Slovak Model*, 25 CASE W. RES. J. INT'L L. 655, 658 (1993).

6. HALPERIN ET AL., *supra* note 4, at 129.

7. Minasse Haile, *Legality of Secessions: The Case of Eritrea*, 8 EMORY INT'L L. REV. 479, 481 (1994); Joshua Hammer, *Back from the Ruins: Can this be an African Nation that Works?*, NEWSWEEK, Feb. 26, 1996, at 40.

8. HALPERIN ET AL., *supra* note 4, at 148-57.

9. *Waving a Magic Wand in Quebec*, NEWSWEEK, Oct. 30, 1995, at 59.

10. Self-determination has two basic categories: secessionist and non-secessionist movements. This comment will solely address the nature of secessionist movements. For a list of the other forms self-determination may take see Lung-Chu Chen, *Self-Determination and World Public Order*, 66 NOTRE DAME L. REV. 1287, 1287-88 (1991).

11. Robert Cullen, *Collective Rights and Nationalism*, CURRENT, June, 1993, at 28; Amitai Etzioni, *The Evils of Self-Determination*, FOREIGN POL'Y, Winter, 1992-1993, at 21.

12. HALPERIN ET AL., *supra* note 4, at 123-60 (providing a detailed list of peoples claiming the right to self-determination); Karin von Hippel, *The Resurgence of Nationalism and Its International Implications*, WASH. Q., Autumn, 1994, at 185, 191-95 (also providing an informative list).

13. John Barry & Bob Cohn, *Starting the Hard Sell*, NEWSWEEK, Oct. 30, 1995, at 56; see generally Tom Morgenthau & John Berry, *On the March*, NEWSWEEK, Dec. 11, 1995, at 28; see also Bill Powell, *Dangers Ahead*, NEWSWEEK, Dec. 11, 1995, at 34.

of committing U.S. troops to a peoples secession abroad.

II. A BRIEF HISTORY OF SELF-DETERMINATION: FROM PRINCIPLE TO LEGAL RIGHT

Prior to the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples,¹⁴ the principle of self-determination had little practical value.¹⁵ In fact, after World War I self-determination was applied by the victorious Allies as a political tool to redraw the map of Europe.¹⁶ "Self-determination was considered only for 'nations' which were within the territory of the defeated empires; it was never thought to apply to overseas colonies."¹⁷ The seminal Aland Islands case underscores the low value the nascent League of Nations attributed to the principle of self-determination.¹⁸ The League held, under the decision of two panels of jurists, that self-determination afforded no right of secession and was not an accepted rule of the "Law of Nations."¹⁹

Self-determination evolved towards a legitimate legal right²⁰ when the United Nations (UN) formally adopted the 1960 Declaration.²¹ This evolving right applied, however, only to colonial peoples and did not include a right to secede.²² The 1960 Declaration holds: "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."²³ The right to self-determination solidified further with the passage, in 1970, of the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United

14. G.A. Res 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1960) [hereinafter the 1960 Declaration].

15. HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMODATION OF CONFLICTING RIGHTS* 33-34 (1990). The principle of self-determination is that "every people should freely determine its own political status" either through "greater autonomy or local self-government" and this has often led to a people's demand for secession or "total independence." *Id.*

16. *Id.* at 28.

17. *Id.*

18. *Id.* at 29.

19. *Id.* Hannum additionally relates that the league denied the Aland's the right to secede from Finland, despite the finding that most Alanders would vote to reunite with Sweden. *Id.* at 10.

20. Hannum, *supra* note 1, at 12 (stating decolonization of the Third World pushed the ideal of self-determination from "principle to right").

21. 1960 Declaration, *supra* note 14.

22. HANNUM, *supra* note 15, at 46; Mitchell A. Hill, *What the Principle of Self-Determination Means Today*, 1 ILSA J. INT'L & COMP. L. 119, 125 (1995).

23. 1960 Declaration, *supra* note 14.

Nations (1970 Declaration).²⁴ The 1970 Declaration reaffirmed the right of the "self-determination of peoples" and the continued pursuit of bringing a "speedy end to colonialism."²⁵ Hence, a firm, but limited right to self-determination occurred within the context of anti-colonial sentiments, and self-determination shifted from principle to legal right.

The importance of the 1970 Declaration is that it has created a limited right to secede.²⁶ Paragraph 7 is the key secession component of the Declaration.²⁷ Paragraph 7 is composed of three ideas: first, it upholds the territorial integrity of existing states;²⁸ second, it "implies that . . . all states will enjoy this inviolability of their territorial integrity"²⁹ so long as those states comply with "the principle of equal rights and self-determination of peoples . . .";³⁰ and third, governments not representative of the "whole people"³¹ belonging to the state do not enjoy the protection of this territorial integrity.³² The 1970 Declaration provides a means for a people to secede if the legitimacy of the government is not derived from all the segments of the populace.³³ If the government does not represent the "whole people" and creates distinctions among the people as to "race, creed, or colour", it is violating the right of self-determination of all peoples; thereby creating the

24. G.A. Res. 2625, U.N. GAOR, 25th Sess., Annex 8082, Supp. No.17, at 66, U.N. Doc. A/5217 (1970) [hereinafter 1970 Declaration].

25. *Id.* ¶ 2.

26. LEE C. BUCHHEIT, *SECESSION: THE LEGITIMACY OF SELF-DETERMINATION* 92 (1978); Hill *supra* note 22, at 126; Gregory J. Ewald, *The Kurds' Right to Secede Under International Law: Self-Determination Prevails Over Political Manipulation*, 22 DENV. J. INT'L L. & POL'Y 375, 377 (1994).

27. 1970 Declaration, *supra* note 24, ¶ 7 states:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour.

Id. See also BUCHHEIT, *supra* note 26, at 92 (stating that paragraph 7 of the 1970 Declaration recognized "the legitimacy of secession for the first time").

28. 1970 Declaration, *supra* note 24, ¶ 7.

29. BUCHHEIT, *supra* note 26, at 92. See 1970 Declaration, *supra* note 24, ¶ 7.

30. BUCHHEIT, *supra* note 26, at 93. See also Hill, *supra* note 22, at 129; 1970 Declaration, *supra* note 24, ¶ 7.

31. 1970 Declaration, *supra* note 24, ¶ 7.

32. *Id.* See also BUCHHEIT, *supra* note 26, at 93; Hill, *supra* note 22, at 129; Ewald, *supra* note 26, at 388; Frederic L. Kirgis, Jr., *Comment: The Degrees of Self-Determination in the United Nations Era*, 88 AM. J. INT'L L. 304, 306 (1994).

33. BUCHHEIT, *supra* note 26, at 93; Hill, *supra* note 22, at 129.

opportunity for the disenfranchised group to legitimately secede from the abusive, dominating government.³⁴ Thus, a narrow road to secession through self-determination does exist for a people where their government fails to represent the "whole people" or subjugates a segment of its people.

III. THE STANDARDS AND CRITERIA FOR LEGITIMATE SECESSION

A. *The Nature of Secession*

The international community views secession as an inherently dangerous ideal.³⁵ To give life to such an ideal would, in some cases, be akin to sovereign suicide.³⁶ Therefore, the general rule regarding secession is that no express right to secede exists under international law.³⁷ Where there is a rule, however, there is an exception. "Legal scholars", and institutions, including the UN, have recognized the applicability of self-determination "outside of the colonial context, though within rather strict limits."³⁸ International acceptance of a right to secede is premised upon the presence of: (1) a collective group,³⁹ (2) governmental subjugation of that collective group,⁴⁰ and (3) disruption to the original state and the international community when that collective group exercises the right to secede.⁴¹ The United States should only recognize a secessionist claim as legitimate if it successfully meets these three interrelated standards.⁴²

34. BUCHHEIT, *supra* note 26, at 93; Hill, *supra* note 22, at 129; Ewald, *supra* note 26, at 388.

35. Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 YALE J. INT'L L. 177, 178 (1991) (noting secession requires the re-drawing of existing territorial boundaries); von Hippel, *supra* note 12, at 189 (stating nations fear legitimizing a right to secede which may be imposed in their own backyard).

36. von Hippel, *supra* note 12, at 189.

37. Hill, *supra* note 22, at 126; Max M. Kampelman, *Secession and Self-Determination: New States and Old Problems*, CURRENT, Nov. 1993, at 38.

38. Kevin Ryan, *Rights, Intervention, and Self-Determination*, 20 DENV. J. INT'L L. & POL'Y 55, 64 (1991).

39. Kirgis, *supra* note 32, at 304, 310; Chen, *supra* note 10, at 1291; Haile *supra* note 7, at 524; Ewald, *supra* note 26, at 386.

40. Ewald, *supra* note 26, at 387-88; Haile, *supra* note 7, at 523; BUCHHEIT, *supra* note 26, at 218; Ved P. Nanda, *Self-Determination Under International Law: Validity of Claims to Secede*, 13 CASE W. RES. J. INT'L L. 257, 269 (1981).

41. Kirgis, *supra* note 32, at 310; Chen, *supra* note 10, at 1291.

42. Kirgis, *supra* note 32, at 308-10 (stating that a claim to secede is likely to have international acceptance if it meets these three standards).

B. *The Collective Group Standard*

The first standard for measuring the legitimacy of a secessionist claim is the presence of a collective group.⁴³ That is, whether a group perceives itself as a distinct, separate body unto itself, or colloquially, we are us and they are them. "To qualify as a national group or peoples entitled to secede a claimant must meet both objective and subjective requirements."⁴⁴ The objective and subjective requirements help to define the vague ideal of what constitutes a people. The objective requirement is measured by such characteristics as race, ethnicity, religion, language, history, or cultural heritage.⁴⁵ Claims to a historical territory may also suffice to meet the objective component of a collective group.⁴⁶ The subjective characteristic relates to the collective identity of the people as one; or rather, it is a shared sense of a common destiny with the promise of establishing a separate nation.⁴⁷ The subjective requirement measures the extent of the peoples' collective view of themselves.

Group coherence is also measured by examining the relationship between the group members and its leaders.⁴⁸ The leaders should personify the values and opinions of the group as a whole; if they do not, the secessionist claim "will fail for lack of a legitimate identifiable group."⁴⁹ Thus, a collective group must evince objective and subjective traits that bind it together as a single identity and commit it to the goal of a separate national status.

C. *The Subjugation Standard or the 1970 Declaration Standard*

The second standard for measuring the legitimacy of a secessionist claim is the presence of purposeful governmental subjugation of a collective group. This standard is derived from the 1970 Declaration.⁵⁰ The 1970 Declaration implies that when a government is not representative of the "whole people" and bases distinctions "as to race, creed, or colour,"⁵¹ a legitimate right to secede may exist.⁵² This

43. Ewald, *supra* note 26, at 385.

44. Haile, *supra* note 7, at 524.

45. *Id.* See Ewald, *supra* note 26, at 386.

46. Brillmayer, *supra* note 35, at 179 (arguing that a territorial claim is generally implicit in any secessionist movement); Ewald, *supra* note 26, at 386.

47. Haile, *supra* note 7, at 524; Ewald, *supra* note 26, at 386.

48. Ewald, *supra* note 26, at 386 (stating leaders should represent the people as a whole).

49. *Id.*

50. 1970 Declaration, *supra* note 24. In particular, see *id.* ¶ 7.

51. *Id.*

52. Nanda, *supra* note 40, at 269-70; Hill, *supra* note 22, at 126-29; Ewald, *supra* note 26, at 377-78; Kirgis, *supra* note 32, at 306; BUCHHEIT, *supra* note 26, at 93. These all state that in extreme cases of subjugation a people may legitimately secede.

right to secede is derived from the notion of a colonial people to establish a separate identity free of government subjugation.⁵³ An unrepresentative or abusive government that purposely discriminates or violates human rights imbues the collective group with a legitimate right to secede. The purposeful subjugating of a people is held to occur within the context of racist regimes (i.e. the former apartheid system of South Africa),⁵⁴ "repressive dictatorships",⁵⁵ and governmental violation of fundamental human rights.⁵⁶

D. *The Disruption Standard*

The final standard for measuring a legitimate secession is to weigh the degree to which it disrupts the status quo. Secession is, however, inherently disruptive because it reconfigures the existing boundaries and populace of the original state.⁵⁷ Nonetheless, the disruption standard is a balancing test weighing the benefits and burdens of a right to secede.⁵⁸ On one side of the scale is secession, on the other is "the effects of separation on the remaining state . . . , and the effects on general international order."⁵⁹ The initial effect on the original state is its loss of territory and populace to the seceding state.⁶⁰

In determining the effect of this loss one must inquire into factors such as the economic significance of the seceding province to its former partners, and the strategic value of the territory and population. The amount of disruption will obviously be high if the secession threatens to remove the economic base of the country (as in the secession of the Katanga); expose the remaining state to aggression from a hostile neighbor; split the state in two geographically by the creation of a new entity between remaining regions; jeopardize access to ports or facilities for external trade and communication, and so on.⁶¹

These potential losses are, however, acceptable if secession promotes regional and international amity; or if it engenders great economic gains for the seceding state.⁶² Naturally, the presence of great burdens

53. Nanda, *supra* note 40, at 269-70; see 1960 Declaration, *supra* note 14.

54. Haile, *supra* note 7, at 516.

55. Kirgis, *supra* note 32, at 308.

56. *Id.*; Ewald, *supra* note 26, at 378; Hill, *supra* note 22, at 129.

57. BUCHHEIT, *supra* note 26, at 231-32; Brillmayer, *supra* note 35, at 178.

58. BUCHHEIT, *supra* note 26, at 232.

59. *Id.*; see Chen, *supra* note 10, at 1291 (noting effects of secession should be viewed "in terms of regional and international peace"); see Kirgis, *supra* note 32, at 308 (noting that the more democratic a state is the more it lessens the legitimacy of the claim; and conversely, the more repressive a state is the more it increases the legitimacy of the claim).

60. BUCHHEIT, *supra* note 26, at 232.

61. *Id.*; see Etzioni, *supra* note 11, at 29-34 (providing an interesting discussion of the economic harms associated with secession).

62. Chen, *supra* note 10, at 1291-92.

upon the original state correspondingly weakens the secessionist claim, and tips the scale in favor of a continued single entity.

The effect of secession on global order is an issue given great weight as well.⁶³ Related to global order is the need for seceding states to be economically self-sufficient.⁶⁴ If a seceding state is unable to provide for itself, it may become a needy and burdensome ward of the international community.⁶⁵ Other legitimate international concerns are, to name a few, the impact on "trapped minorities" within the seceding state,⁶⁶ and the violence often associated with secessionist movements.⁶⁷ The presence or likely presence of such factors will cause the international community to view with disfavor any attempt at secession. Understandably, the balance is tipped in favor of maintaining the status quo. Thus, the burden of proving insignificant disruptive effects to the present state and the international community rest upon the people claiming the right to secede.

IV. HUMANITARIAN INTERVENTION: STANDARDS AND CRITERIA

A. *The Doctrine of Non-Intervention and the Humanitarian Intervention Exception*

In both the nineteenth and twentieth century there are many examples of states intervening in other states' territory for humanitarian reasons.⁶⁸ Interventions for humanitarian reasons are, however, the exception; and the normal rule is that a state generally cannot infringe upon another state's territorial integrity.⁶⁹ The integrity of a state's territory is enshrined in Article 2(4) of the United Nations Charter.⁷⁰

63. BUCHHEIT, *supra* note 26, at 232.

64. *Id.*; see Etzioni, *supra* note 11, at 29-34 (arguing persuasively that secession unduly disrupts the economy of the original state and the seceding state).

65. BUCHHEIT, *supra* note 26, at 232.

66. *Id.*

67. Knight, *supra* note 3, at 38-42.

68. James A.R. Nafziger, *Self Determination and Humanitarian Intervention in a Community of Power*, 20 DENV. J. INT'L L. & POL'Y 9, 21 (1991) (relating that Russia, India, France, and the United States have used humanitarian reasons in the past to intervene in another state's affairs).

69. Ruth Gordon, *United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond*, 15 MICH. J. INT'L L. 519, 570 (1994); see also Nafziger, *supra* note 68, at 22.

70. U.N. CHARTER art. 2, ¶ 4. It states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations." *Id.* Article 2, paragraph 7, also limits the U.N.'s ability to intervene in domestic affairs of state. It states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settle-

Article 2(4) provides that nations must refrain "in their international relations from the threat of the use of force against the territorial integrity or political independence of any state."⁷¹ Hence, the general rule of non-intervention takes precedence over the use of force by one state in the affairs of another.

Nevertheless, international law expressly recognizes two exceptions to the rule of non-intervention: (1) state intervention as an act of self-defense or request for assistance in the self defense of another state, and (2) state intervention to maintain global peace and security.⁷² It is argued that states may act to defend themselves or to assist the defenseless from human rights violations by acting under the self-defense provisions of Article 51.⁷³ There is, however, no international acceptance of this view.⁷⁴

A more forceful argument for allowing humanitarian intervention is the respect granted by the UN Charter to the furtherance of human rights and basic freedoms.⁷⁵ That is, human rights are equal to, if not higher than, the principle of non-intervention established in the UN Charter.⁷⁶ Humanitarian intervention is deemed lawful when it is used to alleviate a grave threat or actual harm to human rights.⁷⁷ There-

ment under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Id. art. 2, ¶ 7.

71. *Id.* art. 2, ¶ 4.

72. David M. Kresock, "Ethnic Cleansing" in the Balkans: *The Legal Foundations of Foreign Intervention*, 27 CORNELL INT'L L.J. 203, 210 (1994) (explaining these two exceptions are derived from Article 51); U.N. CHARTER art. 51. In full, Article 51 states:

Nothing in the Present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the resources necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Id. See also U.N. CHARTER arts. 39, 41, 42, & 48 (describing how the Security Council may act to restore peace in the face of State aggression).

73. Nafziger, *supra* note 68, at 24; see also U.N. CHARTER art. 51.

74. Nafziger, *supra* note 68, at 24.

75. Ryan, *supra* note 38, at 58.

Articles 1 and 55 of the Charter commit the United Nations to promotion of universal respect for human rights and basic freedoms, and Article 56 gives member nations and obligation to act, jointly or separately, to achieve the purposes set out in Article 55 — that is Article 56 creates a duty to act to promote respect for rights and freedom.

Id.

76. *Id.*

77. Captain Benjamin P. Dean, *Self-Determination and U.S. Support of Insurgents: A*

fore, most nations and many scholars also recognize humanitarian intervention as an exception to the non-intervention rule.⁷⁸ International acceptance of humanitarian intervention is premised upon systematic and persistent human rights violations that imperil international order and security,⁷⁹ and this humanitarian intervention is further accepted when founded under multilateral auspices.⁸⁰ The United States should undertake humanitarian intervention only when these two standards are met.

B. *The Standards For Humanitarian Intervention*

Humanitarian intervention is acceptable when human rights violations pose a threat to global order and security.⁸¹ By threatening global order and security the human rights abuses become international concerns.⁸² Human rights violations that are systematic and persistent may trigger a larger international jurisdiction that supersedes a state's singular control of domestic matters.⁸³ This international jurisdiction is limited to the problem affecting global order and security; it does not extend to any other state functions.⁸⁴ Humanitarian intervention may occur only when a state violates human rights on a systematic and persistent basis.⁸⁵ "Violations of rights are systematic if they are part of a 'consistent pattern', or are a matter of 'state policy.'"⁸⁶ The state policy can be either overt practices or covert practices, which institutionalize the state's denial of human rights to a group of people.⁸⁷ "Violations of rights are persistent when they are more than occasional or of short duration[;]"⁸⁸ that is, they occur repeatedly over and over

Policy-Analysis Model, 122 MIL. L. REV. 148, 182 (1988). Captain Dean further states that U.S. troops should be proportional to the mission, should not remain long, and should be used after other alternatives are exhausted. *Id.*

78. Ryan, *supra* note 38, at 56.

79. *Id.* at 59-60.

80. See Kresock, *supra* note 72, at 214 (further pointing out that many commentators feel humanitarian intervention does not violate state "sovereignty" or "territorial integrity" because "territorial conquest" is not the aim of the humanitarily intervening party); Gordon, *supra* note 69, at 524; Nafziger, *supra* note 68, at 31.

81. Gordon, *supra* note 69, at 524; Nafziger, *supra* note 68, at 25-26 (listing a host of criteria that would ideally "define the legitimacy of humanitarian intervention").

82. Gordon, *supra* note 69, at 524-25.

83. *Id.*; see Ryan, *supra* note 38, at 59-61.

84. Gordon, *supra* note 69, at 524-25.

85. Ryan, *supra* note 38, at 61.

86. *Id.*

87. *Id.*

88. *Id.* "Admittedly, it is extraordinarily difficult to determine how long a practice must endure to be persistent . . ." *Id.* Factors to consider are: whether the persecution was the stated policy of the state; whether the persecution was exported to other countries; and whether the persecution was aided by governmental activities. *Id.*

during a period of time.⁸⁹ Therefore, the systematic and persistent violations of human rights over an extended period of time can trigger outside humanitarian intervention.

Furthermore, a second component adding legitimacy to humanitarian intervention is multilateral action.⁹⁰ Multilateral intervention is deemed superior to unilateral intervention because it provides a "more reliable consensus of support, checks abuses, and better ensures that intervention is warranted."⁹¹ It also tends to evince more clarity of purpose, since state actors forming the multilateral force must agree, in principle, on the purposes of the intervention.⁹² Moreover, a problem such as severe human rights violations in a region located far from America is insoluble without the support of other nations.⁹³ A multilateral approach can occur under UN auspices or other international and regional organs,⁹⁴ thereby adding the moral force of those organizations to the humanitarian intervention. Hence, before intervening in a secessionist claim, the United States must determine whether human rights violations are occurring on a systematic and persistent basis that, in turn, imperil international order and security. Additionally, the U.S. role in the intervention should be founded under multilateral auspices.

V. SECESSION AND CLEAR OBJECTIVES

Americans, being a moral people, want their foreign policy to reflect values we espouse as a nation. But Americans, being a practical people, also want their foreign policy to be effective.

—Former Secretary of State George Shultz⁹⁵

89. *Id.*

90. Gordon, *supra* note 69, at 521; *see also id.* at 521 n.6. "Unilateral interventions are generally to achieve the national interests of the intervenor. Multilateral interventions . . . have sought to maintain international peace and security, maintain national sovereignty and independence, advance self-determination, promote and protect fundamental human rights, alleviate massive suffering and advance the economic and social development of developing countries." *Id.*; *see also* Nafziger, *supra* note 68, at 26.

91. Nafziger, *supra* note 68, at 26 (further stating that U.S. leadership in collective actions, such as in the Gulf War and the subsequent Kurd problem in northern Iraq, has proven the successful applicability of multilateralism).

92. *Id.*

93. Paul H. Nitze, *Foreword: International Security in a New World*, 81 GEO. L.J. 481, 486 (1993).

94. Nafziger, *supra* note 68, at 33 (listing the Organization of American States, the Group of Seven, and the European Community as examples); *see also id.* at 31. Other examples are NATO, which is leading the way for peace in Bosnia, and SEATO.

95. George Schultz, *Power and Diplomacy in the 1980's*, Address Before the Trilateral Commission (Apr. 3, 1984) in DEP'T ST. BULL., May 1984, at 12-15.

A. U.S. Objectives

U.S. policy objectives provide clarity of purpose and aid the decision of whether U.S. troops should go abroad.⁹⁶ The use of military force should not occur "without a clear and precise mission, solid public backing, and enough resources to finish the job."⁹⁷ Hence, before committing U.S. troops to a violent or possibly violent secessionist movement, the United States must establish clear objectives for the use of force in such a situation.⁹⁸ Clearly, uniform objectives cannot be tailor-made for each possible secession. Regardless, broad guidelines do provide a basis for a working litmus test and can provide adaptable means to fit particular situations. Well defined objectives also serve to promote the needed support of the American public, which is essential to success.⁹⁹ Finally, well-defined objectives can be weighed against the danger of committing U.S. forces; and naturally, if the danger outweighs the benefits or realistic limits of the objectives, U.S. forces should not be sent.¹⁰⁰

B. Objectives: The Criteria on the Use of United States Military Force

Any policy-making process for sending U.S. troops to any place of danger, especially violent secessionist movements, must determine the scope of the objectives and goals for placing American military forces in harm's way.¹⁰¹ To weigh the benefits and burdens of committing U.S. troops to a secession effort, whether the goal is to prop up the movement or to keep the peace, U.S. policy makers should consider the following specific criteria:

- 1) whether the threat to the vital interests of the United States or its allies is serious enough to warrant military action;¹⁰²
- 2) whether sufficient support (number of troops, finances, logistics) can be given to ensure a successful outcome or rather, a commitment to succeed;¹⁰³

96. Caspar W. Weinberger, National Press Club (Nov. 28, 1984), *reprinted in The Uses of Military Power*, DEFENSE, Jan. 1985, at 2 [hereinafter Weinberger National Press Club Speech]. Caspar Weinberger served as Secretary of Defense during the Reagan Administration. See also Caspar W. Weinberger, *U.S. Defense Strategy*, 64 FOREIGN AFF. 683 (1986) [hereinafter Weinberger, *U.S. Defense Strategy*].

97. George Shultz, Address at the 1984 Conference of the Trilateral Commission, *quoted in Dean*, *supra* note 77, at 212.

98. Weinberger National Press Club Speech, *supra* note 96, at 2.

99. Weinberger, *U.S. Defense Strategy*, *supra* note 96, at 685.

100. *Id.* at 685-86.

101. Dean, *supra* note 77, at 215.

102. Adopted and adapted from Weinberger National Press Club Speech, *supra* note 96, at 10, and from Dean, *supra* note 77, at 215.

103. Weinberger National Press Club Speech, *supra* note 96, at 10; see also Dean, *supra* note 77, at 215.

3) "[w]hether American armed forces are likely to become drawn into a protracted combat role;"¹⁰⁴

4) whether there is "some reasonable assurance" of the support of the American people;¹⁰⁵

5) whether there is a commitment to constantly reassess and adjust the use of U.S. forces as necessary;¹⁰⁶ and

6) whether diplomatic, political, and economic measures have been exhausted i.e., "the commitment of U.S. forces to combat should be a last resort."¹⁰⁷

Before committing U.S. forces to a people's secessionist movement most, if not all, of these six criteria should be met.¹⁰⁸ Employing such criteria engenders meaningful policy making and provides a good starting point for weighing the necessity of endangering American lives.¹⁰⁹ Most important of all, clear objectives educate the American citizenry, and for success to occur their support is a necessity.¹¹⁰

VI. SECESSION: THE BOSNIAN CLAIM TO INDEPENDENCE AND U.S. POLICY UNDER THE CLINTON ADMINISTRATION.

A. *Background on Bosnia*

In October, 1991, Bosnia-Herzegovina (Bosnia) declared its independence from Yugoslavia.¹¹¹ However, Serbs living in Bosnia contested the legality of the secession from Yugoslavia.¹¹² To quell the claims of the minority Serbs and to prove the legitimacy of their independence, the Bosnian parliament voted to hold a national referendum.¹¹³ The subsequent referendum for independence was approved by "nearly sixty-three percent of the Bosnian voters."¹¹⁴ Serb minorities declined, however, to participate in the referendum and rebelled against Bosnian independence.¹¹⁵ Hence, the crux of the problem in Bosnia is its diverse ethnic population where a substantial Serb minority refused to accept Bosnian independence from a Serb dominated Yugoslavia.¹¹⁶ In fact, the Serb minority has claimed its own right to

104. Dean, *supra* note 77, at 215.

105. Weinberger National Press Club Speech, *supra* note 96, at 10.

106. *Id.*

107. *Id.*

108. *Id.* at 9; Dean, *supra* note 77, at 215.

109. Dean, *supra* note 77, at 215.

110. Weinberger National Press Club Speech, *supra* note 96, at 5 (noting America's domestic turmoil and lack of support for the Vietnam War, which ultimately ended in American defeat).

111. Hill, *supra* note 22, at 130.

112. *Id.*

113. Kresock, *supra* note 72, at 221.

114. *Id.*

115. Hill, *supra* note 22, at 130.

116. William A. Schroeder, *Nationalism, Boundaries, and the Bosnian War: Another Per-*

secede and unite with the Serb majority of former Yugoslavia.¹¹⁷ Although the United States and the international community in mid-1992 have recognized Bosnia's claim to secede,¹¹⁸ neither the United States nor the international community have recognized a Bosnian Serb right to secede and reunite with Yugoslavia, now Serbia-Montenegro.¹¹⁹ Shortly thereafter, full scale war broke out with the Bosnian Serb minorities supported by the Serb dominated Yugoslavian army.¹²⁰

B. Bosnia and the Clinton Administration

The Clinton Administration has been decidedly confused on the Bosnian problem. The administration has vacillated from not involving U.S. forces,¹²¹ to air dropping humanitarian supplies;¹²² from no direct use of U.S. force in Bosnia,¹²³ to waging a bombing campaign on Serb forces;¹²⁴ and from not placing U.S. troops on the ground in Bosnia,¹²⁵ to committing 20,000 plus American soldiers in Bosnia under NATO auspices.¹²⁶ The Clinton policy is a gradualist approach to resolving the Bosnian problem. What remains unclear is whether the Clinton Administration will devise clear objectives for placing American soldiers in a hostile and dangerous locale.¹²⁷ An even more daunting task for President Clinton is whether he can obtain the support of the American public for maintaining the presence of U.S. forces in a hostile and seemingly intractable Balkan environment.¹²⁸

spective, 19 S. ILL. U. L.J. 153, 154 (1994) (further stating that "in the early 1990's Bosnia's population was 44% [to] 49% Muslims, 31% [to] 35% Serbs and about 17% Croats").

117. *Id.* at 155.

118. Lawrence S. Eastwood, Jr., *Secession: State Practice and International Law After the Dissolution of the Soviet Union and Yugoslavia*, 3 DUKE J. COMP. & INT'L L. 299, 327-28 (1993). During the Bush Administration the United States recognized Bosnian independence on April 7, 1992. *Id.*

119. Schroeder, *supra* note 116, at 155.

120. *Id.*

121. Barry & Cohn, *supra* note 13, at 56.

122. Kresock, *supra* note 72, at 231.

123. Barry & Cohn, *supra* note 13, at 56.

124. President Bill Clinton, *Why Bosnia Matters to America*, NEWSWEEK, Nov. 13, 1995, at 55.

125. Barry & Cohn, *supra* note 13, at 56.

126. *Id.*; see also Joe Klein, *A Grip-But No Gains*, NEWSWEEK, Nov. 13, 1995, at 52.

127. Clinton, *supra* note 124, at 55. President Clinton promises that U.S. troops "will have clear rules of engagement, a carefully defined mission, and an exit strategy." *Id.* It remains to be seen whether his promises will be kept.

128. Barry & Cohn, *supra* note 13, at 56. As of late October, 1995, a Newsweek poll found that 27% of Americans support sending U.S. troops to the Balkans, while 59% oppose it. *Id.*

VII. APPLICATION OF THE PROPOSED STANDARDS AND CRITERIA
FOR UNITED STATES INVOLVEMENT — A BOSNIA CASE EXAMPLE

A. *U.S. Guideline Number One: The Standards and Criteria for Legitimate Secession in Bosnia*

1. The Collective Group Standard

The first standard the United States should apply to measure the validity of Bosnia's claim to secede is the collective group standard. The people of Bosnia arguably do not meet the collective group standard. In general, Bosnia meets the objective requirements of a collective group because the majority of the people share a common Slavic ethnicity, language, and cultural heritage.¹²⁹ On the other hand, the ethnicity of Bosnia is further delineated into three ethnic groups: Muslim, Serb, and Croat.¹³⁰ Thus, Bosnia is not a culturally or ethnically distinct nation but rather a conglomerated group of three separate ethnic identities. The people of Bosnia also do not share a common religion, which has led in part to the intensity of the fighting among Bosnians. The Bosnian Muslims are Islamic; while the Serbs are primarily Eastern Orthodox Christians; and the Croats are primarily Roman Catholics.¹³¹ Thus, the diverse ethnic people of Bosnia do not meet the objective requirements of the collective group standard.

Moreover, if the people of Bosnia do not meet the objective requirements, they certainly do not meet the subjective requirement of a collective group. Although each of the three groups share a collective identity as a distinct people, the people of Bosnia as a whole do not share a collective identity.¹³² Hence, under the collective group standard the United States should not have so readily recognized Bosnia's claim to secede from Yugoslavia. To demonstrate the application of Bosnia to the rest of the proposed guidelines this comment will assume that the people of Bosnia are a collective group.

2. The 1970 Declaration Standard or the Subjugation Standard

The second standard the United States should use to determine the validity of Bosnia's claim to secede is the 1970 Declaration Standard. Assuming the people of Bosnia meet the collective group standard, their right to secede under the 1970 Declaration is strong. Prior to

129. Richard F. Iglar, *The Constitutional Crisis in Yugoslavia and the International Law of Self-Determination: Slovenia's and Croatia's Right to Secede*, 15 B.C. INT'L & COMP. L. REV. 214, 231-34 (1992) (stating Bosnians are Slavs; its language is Serbo-Croatian; and its history traces back to the ninth century).

130. Schroeder, *supra* note 116, at 154.

131. Iglar, *supra* note 129, at 232-33.

132. *Id.* at 230-35 (discussing the broad commonalities and specific differences of the Muslim Slavs, Serbs, Croats, and Slovenes). See Schroeder, *supra* note 116, at 153-54.

secession, Bosnia was part of a federated Yugoslavia dominated by Serbs.¹³³ Moreover, since the outbreak of war in 1992, there is ample evidence of Serb ethnic cleansing in Bosnia.¹³⁴ The Serbs use of ethnic cleansing against the Croat and Muslim Bosnians is a blatant attempt to subjugate a people in the most heinous fashion—genocide. The widespread use of ethnic cleansing is certainly a violation of fundamental human rights. Undoubtedly, the Bosnian Croats and Muslims have been imbued with the right to secede.

3. The "Disruption" Standard

Bosnia arguably satisfies the disruption standard as well. Although the secession of Bosnia had considerable disruptive effects to the state of Yugoslavia, those effects occurred in conjunction with the secessions of Croatia and Slovenia.¹³⁵ Additionally, Bosnia is not the economic base of Yugoslavia; nor has it exposed the remaining state to a hostile neighbor.¹³⁶

Moreover, Bosnia is, though neither rich nor poor, capable of sustaining itself economically without undue charitable aid from the international community. The disruptive effects to global order are, however, quite considerable. Violence in Bosnia is significant and the presence of ethnic cleansing has not contributed to global order.¹³⁷ There is also a substantial number of trapped Serb minorities within Bosnia. On the other hand, the cause of the violence is largely attributed to the Serbs and no one could have anticipated the horror and widespread practice of Serb ethnic cleansing. The extreme violation of Bosnian human rights at the hands of Serbs is compelling evidence that continued Serb rule of Bosnia would not have been peaceful, further disrupting global order. In such a case, the balancing test of the disruption standard may likely tip toward the right of Bosnia to legitimately secede.

133. Philip J. Cohen, M.D., *Ending the War and Securing Peace in Former Yugoslavia*, 6 PACE INT'L L. REV. 19, 19 (1994).

134. Kresock, *supra* note 72, at 221-25 (listing several official and unofficial reports of Serbian-led systematic killings of Bosnian Muslims, which has been applied to the Croats as well).

135. Eastwood, *supra* note 118, at 325.

136. Iglar, *supra* note 129, at 223. Though Bosnia is not the economic base of the former Yugoslavia, both Slovenia and Croatia constitute such a base. "Slovenia is Yugoslavia's most prosperous and most industrialized republic. Croatia is its second most wealthy republic. Combined, the two republics produce approximately 50 percent of Yugoslavia's total exports and they enjoy the highest standards of living in Yugoslavia." *Id.* See also Kresock, *supra* note 72, at 221 (noting that Bosnia's desire to secede was peaceful and did not become violent until Bosnian Serbs, supported by the Yugoslavian federal government, attempted to repudiate Bosnian independence).

137. Kresock, *supra* note 72, at 223.

B. U.S. Guideline Number Two: The Standards and Criteria For U.S. Humanitarian Intervention in Bosnia

1. Systematic and Persistent Human Rights Violations

For the United States to justifiably intervene in Bosnia, it must show systematic and persistent violations of human rights. When human rights abuses disrupt international order and are present on a systematic and persistent basis, a larger international jurisdiction takes precedence over the traditional right of domestic state control.¹³⁸ In Bosnia, the practice of ethnic cleansing by the Serbs is disrupting international order and is undoubtedly systematic and persistent. It is estimated that by the end of 1992 "Serb forces had killed as many as 200,000 Bosnian Muslims"; "held up to 75,000 Bosnians in concentration camps"; and "raped as many as 50,000 Bosnian Muslim women."¹³⁹ Ethnic cleansing by the Serbs is regarded as an attempt to create a "Greater Serbia" and has been carried out since June, 1992.¹⁴⁰ Hence, the Serbs' use of ethnic cleansing is an internationalizing event that provides the United States and other third party states a right to intervene in Bosnia to instill order.¹⁴¹

2. Multilateral Action

Humanitarian intervention under multilateral auspices also adds legitimacy to the U.S. efforts to secure peace in the Balkans. Because the human rights violations are occurring in central Europe, it is necessary for the United States to have support from other nations, especially the nations of Europe.¹⁴² The current involvement of Germany, Great Britain, France, Russia, and the European Union in general demonstrates a "reliable consensus of support" for resolving the Bosnian problem.¹⁴³

Presently, the United States is intervening in Bosnia under NATO auspices.¹⁴⁴ By so doing, the United States is demonstrating its commitment to peace in a war torn region through the teamwork of other nations also committed to ensuring global order. Such a multilateral effort led by the United States evinces altruistic ideals while protecting the broader U.S. interests of a strong unified Europe and global order. A U.S. multilateral effort to alleviate human suffering further demonstrates that America does not have territorial designs in the world

138. Gordon, *supra* note 69, at 524.

139. Kresock, *supra* note 72, at 223-25.

140. *Id.* at 223.

141. Clinton, *supra* note 124, at 55.

142. Nitze, *supra* note 93, at 486.

143. Nafziger, *supra* note 68, at 26.

144. Barry & Cohn, *supra* note 13, at 56; Clinton, *supra* note 124, at 55.

arena. Hence, the current Clinton plan for intervening in Bosnia under NATO auspices is certainly a justified, lawful exercise of humanitarian intervention. The multilateral effort also serves to legitimize the humanitarian intervention and increase worldwide support.

C. U.S. Guideline Number Three: U.S. Objectives for Intervention In Bosnia

As President Clinton continues to convince the American public of the need for U.S. forces in Bosnia, both he and the American people should seek clear objectives for doing so. Clear objectives provide the Clinton Administration and the American people with a working litmus test for measuring the necessity of committing and maintaining U.S. troops abroad.¹⁴⁵

1. Vital U.S. Interests

Arguably, vital U.S. interests and those of our allies are at stake in Bosnia. "Peace in Bosnia matters" to America because "[w]e have an urgent stake in stopping the slaughter, preventing the war from spreading, and building a Europe at peace."¹⁴⁶ A war raging in the heartland of Europe threatens European interests; and thus threatens U.S. interests.¹⁴⁷ "A united[, peaceful] Europe will be America's best partner in security and trade."¹⁴⁸ Nevertheless, are the vital interests of the United States and its allies threatened enough to warrant military action? And is it necessary to risk the lives of U.S. troops to maintain peace in Bosnia? The Bosnian War has raged for more than three years and it has not spread outside the realm of former Yugoslavia.¹⁴⁹ Moreover, why should the United States risk the lives of its citizens, when the nations of Europe will not authoritatively act to solve a problem occurring in their own heartland?¹⁵⁰

Despite these shortcomings, the United States does have legitimate interests at stake both in Europe and the world.¹⁵¹ Winning the peace

145. See *supra* text accompanying notes 102-07 for a list of the necessary objectives.

146. Clinton, *supra* note 124, at 55.

147. Cohen, *supra* note 133, at 20 (stating that if Serbia "is not stopped in Bosnia, the aggression predictably will extend to Kosovo and Macedonia, where ominous signs point to the possibility of wider regional conflict").

148. Clinton, *supra* note 124, at 55.

149. Barry & Cohn, *supra* note 13, at 56.

150. This comment does not mean to malign the gritty efforts of the U.N. peacekeepers in the former Yugoslavia, many of which are composed of European military forces, but only to show that united European action to end the fighting in Bosnia has not occurred.

151. Maja Popovic, *Yugoslavia: A Case Study of International Consequences of Independence*, 87 AM. SOC'Y INT'L L. PROC. 205, 208-12 (1993) (arguing that the war could spread beyond former Yugoslavia); Paul D. Wolfowitz, *Clinton's First Year*, FOREIGN AFF., Winter, 1994, at 33 (stating that vital U.S. interests implicated in the Bosnian War are to maintain

in Bosnia directly effects U.S. interests, and our unique qualification¹⁵² to resolve the Bosnian ordeal makes a compelling case for a leading U.S. role. Under this criterion for deploying U.S. troops to Bosnia, the answer is likely — yes.

2. A Commitment to Succeed

The present U.S. intervention in Bosnia must occur with a clear commitment to win a lasting peace in Bosnia. The proper number of troops with the proper amount of force should be applied to ensure that hostilities will not resume as soon as U.S. forces have left the field. “If we are unwilling to commit the forces or resources necessary” to win a lasting peace, “we should not commit them at all.”¹⁵³

President Clinton has insisted that the current deployment of U.S. troops to Bosnia is based on “the parties [the Serbs, Croats and Muslims] commitment to a solid peace agreement.”¹⁵⁴ Despite this insistence, it is doubtful that the Serbs, Croats, or Muslims will entirely commit to a lasting peace.¹⁵⁵ Thus, deploying U.S. forces in harm’s way as a temporary stop gap measure is not a commitment to win a lasting peace.¹⁵⁶ Under this criterion for deploying U.S. troops to Bosnia, the answer is a resounding — no.

3. The Risk of a Protracted U.S. Role

The Clinton Administration must weigh the risks of involving U.S. troops in a protracted military quagmire. At the present time, the three ethnic groups involved in the fighting are militarily exhausted and stand to gain more from a peace settlement than continued strife.¹⁵⁷ The Clinton Administration feels that the Serbs will not pose a serious challenge while U.S. troops are present.¹⁵⁸ Despite these educated guesses, it is uncertain whether U.S. troops could potentially be drawn into a wider conflict.¹⁵⁹ Under this criterion for deploying U.S.

“NATO confidence”; to minimize damage to relations between “the West and the Muslim world”; and to lessen the “pronuclear sentiments in Ukraine”).

152. Since the demise of the Soviet Union, the United States is the sole remaining global superpower.

153. Weinberger National Press Club Speech, *supra* note 96, at 10.

154. Clinton, *supra* note 124, at 55.

155. Klein, *supra* note 126, at 53 (stating that the Croats will likely seek to “carve up Bosnia when the Americans leave;” and the Serbs will likely resume hostilities as well).

156. Wolfowitz, *supra* note 151, at 4 (arguing that U.S. intervention in Bosnia presents the “very great likelihood of a forced military retreat”).

157. Klein, *supra* note 126, at 52.

158. *Id.* at 53 (stating that it was likely that the Serbs would go underground once U.S. troops arrived; and that any serious resistance to U.S. troops would melt away as it did in Haiti after U.S. Marines gunned down ten Haitian policemen).

159. Popovic, *supra* note 151, at 207 (noting that Serbs comprised a large bulk of the armed

troops to Bosnia, the answer is a tentative — maybe.

4. The Support of the American People

The current United States intervention in Bosnia must have, to ensure success, the support of the American public and their representatives. To commit U.S. troops without the support of the public sows discord in the nation and lessens the chances for a successful outcome.¹⁶⁰ At the present time, the Clinton Administration does not have the support of the American people for its use of U.S. troops in Bosnia.¹⁶¹ In fact, the majority of Americans oppose the presence of U.S. troops in Bosnia.¹⁶² Lack of public support is subject to change, provided the Clinton Administration can rally the American people and present a clear case for why America should maintain its presence in Bosnia. Moreover, President Clinton must continue to convince a wary Congress of the need for U.S. troops in Bosnia.¹⁶³ Under this criterion for deploying U.S. troops to Bosnia, the answer is clearly and presently — no.

5. A Commitment to Adapt to the Situation

The Clinton Administration must also be committed to constantly reassessing and adjusting the use of American forces present in Bosnia. The President must be willing to adjust the number of troops in Bosnia; adjust the “rules of engagement”; adjust the parameters of the “mission”; and adjust the “exit strategy”.¹⁶⁴ Indeed, the Clinton Administration must be prepared to lengthen the time frame U.S. troops may need to win a lasting peace beyond the currently planned one year stay.¹⁶⁵ In light of President Clinton’s pledge to do his utmost to “protect our troops and ensure the effectiveness of the operation,”¹⁶⁶

forces of former Yugoslavia and that former Yugoslavia was “itself a modern authoritarian, garrison state having the fifth-largest army in Europe”). See also Michael Hirsh, *Back to the Woodshed*, NEWSWEEK, Feb. 26, 1996, at 36 (relating the threat posed by the presence of Iranian terrorists working with Bosnian Muslims).

160. Weinberger National Press Club Speech, *supra* note 96, at 5.

161. Barry & Cohn, *supra* note 13, at 56. As of October, 1995 a Newsweek poll found that only 27% of Americans favored sending U.S. troops to Bosnia. *Id.*

162. *Id.* Fifty-nine percent of Americans oppose sending U.S. troops to Bosnia. *Id.*

163. Kevin Fedarko, *Getting Down to Business*, TIME, Nov. 13, 1995, at 75 (stating the House of Representatives “passed a nonbinding resolution prohibiting Clinton from even pledging to send U.S. troops to Bosnia without congressional consent”).

164. Clinton, *supra* note 124, at 55 (quoting the terms the President has initially set for U.S. troop involvement in Bosnia).

165. Klein, *supra* note 126, at 53. The administration is optimistic that GIs can be inserted with relatively low risk—and pulled out, triumphant, a year later just in time for the elections. *Id.*

166. Clinton, *supra* note 124, at 55.

it would seem he is committed to adjusting to the situation. The President's one year time table for U.S. troop withdrawal is, however, problematic. Under this criterion for deploying U.S. troops to Bosnia, the answer is a tentative — maybe.

6. U.S. Force as a Last Resort

The current U.S. intervention in Bosnia must occur only after reasonable diplomatic, political, and economic measures have been exhausted. Arguably, the Clinton Administration has done little diplomatically or politically to defuse the Bosnian problem.¹⁶⁷ On the other hand, the U.S. sponsored peace meeting in Dayton has engendered much diplomatic and political pressure on the quarreling parties.¹⁶⁸ Economic pressure has also been applied. Indeed, the United States and the United Nations (UN) have imposed economic sanctions against Serbia-Montenegro (Serbia) since the advent of hostilities.¹⁶⁹ The effectiveness of the economic sanctions on Serbia is, however, questionable.¹⁷⁰ The sanctions have also caused harm to Bosnia, the country the sanctions sought to help.¹⁷¹ The United States and the UN have applied reasonable diplomatic, political, and economic pressure that momentarily have resulted in a tentative cease fire among the warring parties. Nevertheless, the peace will not last without significant outside military intervention. President Clinton recognizes the tentativeness of the cease-fire and feels that the presence of U.S. troops in Bosnia will solidify a more lasting peace. Under this criterion for deploying U.S. troops to Bosnia, the answer is a simple — yes.

Although the Clinton Administration has articulated why American interests are at stake in Bosnia, it has not clearly articulated to the American people or their representatives why U.S. troops are necessary to win the peace in Bosnia. Moreover, the Clinton Administration has not carefully scrutinized the potential for a protracted U.S. role in Bosnia; nor has it realistically weighed the necessity to adapt to changing circumstances in Bosnia. Hence, at the present time the Clinton Administration has failed to articulate clear and convincing policy

167. Wolfowitz, *supra* note 151, at 4 (stating that "treating the Bosnian government like a real government—including opening an embassy in Sarajevo" would have provided more concrete diplomatic and political recognition of Bosnia).

168. Fedarko, *supra* note 163, at 74-75; *see also* Klein, *supra* note 126, at 52-53.

169. M. Jennifer Mackay, *Economic Sanctions: Are They Actually Enforcing International Law in Serbia-Montenegro?*, 3 TUL. J. INT'L & COMP. L. 203, 222-23 (1995).

170. *Id.* at 227 (arguing that the sanctions seem to have strengthened Serbia's belief that it is "surrounded by enemies"; moreover, most Serbs "blame the West for their country's predicament instead of the government and its economic policies").

171. *Id.* at 223-24; *see also* Wolfowitz, *supra* note 151, at 4 (stating that the arms sanctions imposed against both Serbia and Bosnia aided Serbia at the expense of Bosnia).

objectives for intervening in Bosnia.

VIII. CONCLUSION

Within the context of Bosnia's secession, it is clear that the people of Bosnia do not meet the collective group standard. They do meet, however, the 1970 Declaration standard and, arguably, the disruption standard. Nonetheless, the legitimacy of secession is measured by these three interrelated standards. The failure of the Bosnian people to meet the collective group standard is directly averse to committing U.S. troops to bolster Bosnia's secession. However, in light of the practice of ethnic cleansing, the moral imperative for U.S. humanitarian intervention in Bosnia is strong. The overall policy objectives for determining whether the United States should humanitarily intervene in Bosnia are not entirely clear either. It is important to note, however, that only two of the six criteria (vital interests and force as a last resort) possibly affirm U.S. intervention in Bosnia. The Clinton Administration obviously carries the burden of persuading the American people of the need for endangering U.S. troops in Bosnia. Accordingly, U.S. forces should not have been deployed to intervene in Bosnia.

There is no bright line rule for determining whether U.S. forces should presently be in Bosnia. In fact, there is no bright line rule for determining when to commit U.S. forces at all. As is apparent, the three guidelines established in this comment provide conflicting answers to the Bosnian problem. The purpose of such guidelines is not just to provide answers, but to engender debate within our government and among our people. There will always be people who agree or disagree with the answers. More important is the need to ask the hard questions; or rather, do the means justify the ends.

Stephan A. Wangsgard