SOME IDEAS FOR A NEW INTERNATIONAL FRAMEWORK
A REPLACEMENT FOR THE UNITED NATIONS

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I. INTRODUCTION

A brief analysis of the current status of international law shows that it operates in a whirlpool of challenges and problems without ready solutions. For example, human rights violations are becoming endemic often the result of the particular self-interest of states. The violations are easy but there is no effective mechanism to stem or deal with them.

It may be said that international law currently rests on the principles of "effectivity" and "relativity". Effectivity means that both present and past experiences are the realities that dictate the formation of the law, and hence the law itself. The principle of relativity holds that nothing may be imposed on states without their consent. When effectivity and relativity work together, the latter acts as a constraint. This is because violations of international law will occur unless a framework recognising the significance of effectivity is created to bring about international peace, freedom and justice irrespective of the personal view of individual states.

The United Nations was an attempt to bring about world peace and order. Almost universally represented,[1] it was developed primarily to guarantee peace after two consecutive World Wars. This function fell predominantly on the Security Council, one of its principal organs. This organ has 15 members,[2] five of them permanent: China, France, Russia, United Kingdom and United States.[3] Owing to the their differing philosophies and opinions on economic, social and political matters, history has shown that the Security Council faces inherent

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[1] In January 2003, there were 191 members: List of Member States, United Nations (2003) at <www.un.org/Overview/unmembers.html> (visited January 2003).

[2] The ten non-permanent members are Angola, Bulgaria, Cameroon, Chile, Germany, Guinea, Mexico, Pakistan, Spain and Syria: Members, Security Council at <www.un.org/Docs.scinfo.htm#MEMBERS> (visited February 2003).

[3] United Nations Charter Article 23(1).

difficulties in decision making caused mainly by the permanent members' individual right to veto substantive decisions of this body.[4]

In a bid to address some of the problems, this article will overview the current status of international law and canvass the idea of a new framework to replace the existing regime. The framework will involve a separation of powers at the international level and include the creation of an international armed forces. The discussion will debate general propositions but does not profess to hold all the answers.

II. CURRENT STATUS OF INTERNATIONAL LAW

(a) Human Rights Violations

The international community has on several occasions failed to prevent violations of human rights. For example, in Rwanda the violations have included the illegal seizure of property, horrific massacres of civilians, large-scale rape, torture, arbitrary arrests and detentions, summary executions, abductions and enforced disappearances.[5] In 1999, the Secretary-General of the United Nations accepted the findings of an independent inquiry headed by former Swedish Prime Minister, Ingvar Carlsson, who was commissioned to report on the actions of the United Nations in Rwanda.[6] The report concluded that the international community had failed to prevent genocide caused by the "persistent lack of political will by Member States", stating:[7]

> The international community did not prevent the genocide, nor did it stop the killing once the genocide had begun. This failure has left

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[4] Ibid Articles 23, 27(2)-(3).

[5] Situation of Human Rights in Rwanda, Report of the Special Rapporteur Mr René Degni-Ségui, UNESCOR Commission on Human Rights, 51st Session, Provisional Agenda Item 12 paras 57, 66-68, 98-100, 106-109, United Nations Doc E/CN.4/1995/7 of 28 June 1995; UNSCOR, 49th Session, Supp, July-Sept 1994, paras 8 and 16, United Nations Doc S/1994/867, 25 July 1994.

[6] Department of Public Communication, United Nations, United Nations Charter Article 23(1) at <www.un.org/peace/africa/pdf/Rwanda.pdf> (visited December 2002).

[7] Report of the independent inquiry into the actions of the United Nations during the 1994 Genocide in Rwanda at <www.un.org/News/dh/latest/rwanda.htm> (visited December 1999).

deep wounds within Rwandan society, and in the relationship between Rwanda and the international community, in particular the United Nations.

The failure by the United Nations to prevent, and subsequently, to stop the genocide in Rwanda was a failure by the United Nations system as a whole. The fundamental failure was the lack of resources and political commitment devoted to developments in Rwanda and to the United Nations presence there.

(b) Infringement of Security Council Resolutions

During the 1990s, the former Yugoslavia was divided up. Trying to restore peace in the Balkan region, the Security Council passed several resolutions designed to encourage peace. Unhappily, since there was no mechanism to compel compliance with the resolutions, many of them were breached, the following reflecting some of the resultant problems:

1. Resolutions 713 (1991) and 724 (1991) that imposed a general and complete embargo on delivery of weapons and military equipment to Yugoslavia were allegedly breached.[8]
2. On 25 January 1993, the Security Council had to demand the immediate return of heavy weapons seized from the controlled storage areas of the United Nations Protection Force (UNPROFOR).[9]
3. Contrary to the Security Council's demand in its presidential statement of 2 September 1994,[10] Bosnian Serb forces denied prompt and unimpeded access to the United Nations Secretary-General's Special Representative and to UNPROFOR to an area known as Banja Luka in Bijeljina and other areas under Bosnian Serb control.

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[8] Security Council Resolution 787, UNSCOR, 47th Session, 3137th Meeting, United Nations Doc S/RES/787, 16 November 1992, 2.

[9] Security Council Resolution 802, UNSCOR, 48th Session, 3163rd Meeting, United Nations Doc S/RES/802, 25 January 1993, 1.

[10] Security Council Resolution 941, UNSCOR, 49th Session, 3428th Meeting, United Nations Doc S/RES/941, 23 September 1994.

(c) National Interests of States

It is generally accepted that when states pursue their own national interests, they tie the hands of the United Nations, particularly those of the Security Council. The structure of the United Nations and the right of veto of the permanent members in the Security Council have allowed national interests to guide the outcome of matters brought to this supranational organisation for resolution. To illustrate, the Middle East conflict between Israel and the Palestinians will be used.

There have been a number of draft resolutions in the Security Council on the Middle East. *Inter alia,* they have called upon Israel to refrain from settlement activities in East Jerusalem,[11] demanded Israel cease immediately the Jabal Abu Ghneim construction in East Jerusalem,[12] and formed a United Nations observer force to protect civilian Palestinians.[13] In spite of this, ever since the 1993 Oslo Accord,[14] the United States had vetoed resolutions on Israel's violation of the 1949 Geneva Convention IV[15] and Israel's expropriation of land in East Jerusalem.[16]

In addition, the United States prevented the Security Council from adopting the draft resolution of 14 December 2001 condemning all acts of extra judiciary executions, excessive use of force and wide destruction of property within the Middle East.[17] This draft had received twelve votes in favour and two abstentions (Norway and United Kingdom). However, it was not adopted because the United States had vetoed it on the grounds that it did not address the dynamics

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[11] Security Council Draft Resolution 199, UNSCOR, 52nd Session, Supp, January-March 1997, 1; United Nations Doc S/1997/199, 7 March 1997.

[12] Security Council Draft Resolution 241, UNSCOR, 52nd Session, Supp, January-March 1997, United Nations Doc S/1997/241, 21 March 1997.

[13] Security Council Draft Resolution 270, UNSCOR, 56th Session, Supp, January-March 2001; United Nations Doc S/2001/270, 26 March 2001.

[14] Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993 at <www.usembassy-israel.org.il/publish/peace/peaindex.htm> (visited February 2003).

[15] 1949 Convention IV Relative to the Protection of Civilian Persons in the Time of War.

[16] Security Council Draft Resolution 394, UN SCOR, 50th Session, Supp, April-June 1995, 1; United Nations Doc S/1995/394, 17 May 1995.

[17] See United Nations Security Council, 4438th Meeting, Press Release S/7242, 14 December 2001 at <www.un.org/News/Press/docs/2001/sc7242.doc.htm> (visited February 2003).

of the region, had isolated politically, one of the parties to the conflict and did not mention the acts of terrorism against Israel.[18]

At this point, it is noteworthy that although France and Ireland had previously abstained in the Security Council vote to establish the United Nations observer force, they were now in favour of the draft. Jean-David Levitte (France) stated that the instrument was a balanced text that had called upon both disputing parties to make a stand and had provided a clear-cut condemnation of all forms of violence.[19] Similarly, Gerard Corr (Ireland) stated that the draft had specifically condemned all acts of terrorism.[20] However, their comments were to no avail when pitted against the power of the veto that the United States had exercised in pursuit of its particular interest.

(d) The Individual and Accountability

Classical international law is a law between states and it does not govern the activities of individuals. As such, it cannot consider or enforce individual accountability and responsibility at the international level. This is why the International Court of Justice (ICJ), a permanent international court modelled on the Permanent Court of International Justice and the principal judicial organ of the United Nations, is only open to states in contentious proceedings.[21] Private persons or entities and international organisations fall outside this jurisdiction.[22]

However, important modifications have since been made to the individual's accountability for international criminal behaviour. Under Chapter VII of the United Nations Charter, the Security Council has created *ad hoc* international criminal tribunals to prosecute individuals charged with serious violations of international humanitarian law. In practice, such tribunals may be inefficient or impractical as they involve a complex process that may allow evidence to be destroyed and/or perpetrators to flee. This may happen because it takes time and effort to create the tribunal, appoint judges and prosecutors, and

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[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Compare the ICJ's power to give advisory opinions when sought by United Nations organs and agencies: see United Nations Charter Article 96.
[22] ICJ Statute Article 34(1).

establish the headquarters. An example is the *ad hoc* International Criminal Tribunal for the Former Yugoslavia (ICTY).

On 22 February 1993 after much deliberation, the Security Council decided to establish ICTY to prosecute persons charged with serious violations of international humanitarian law committed in the former Yugoslavia.[23] It took three months to adopt the Tribunal's Statute in May[24] and the finalisation of the list of candidates for the position of Prosecutor did not occur until the end of August.[25] It was another two months before Ramón Escovar-Salom was appointed Prosecutor in October.[26] There was a further delay of approximately six months since under Article 15 of the Statute the Tribunal judges had to adopt specific rules of procedure and evidence for the conduct of proceedings.[27]

Such inefficiencies, including other inherent problems, galvanised the international community into trying to provide a remedy by creating a permanent international criminal court. In July 1998, 128 member states of the United Nations adopted a treaty to establish the International Criminal Court (ICC).[28] This treaty, more commonly known as the Rome Statute,[29] came into force on 1 July 2002 after the 60th ratification was deposited according to Article 126 of the Statute.[30] While this may be a step forward, the ICC's jurisdiction remains not

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[23] Security Council Resolution 808, UN SCOR, 48th Session, 3175th Meeting, 2; United Nations Doc S/RES/808, 22 February 1993.

[24] Security Council Resolution 827, UN SCOR, 48th Session, 3217th Meeting, 2; United Nations Doc S/RES/827, 25 May 1993.

[25] Security Council Resolution 857, UN SCOR, 48th Session, 3265th Meeting, United Nations Doc S/RES/857, 20 August 1993.

[26] Security Council Resolution 877, UN SCOR, 48th Session, 3296th Meeting, United Nations Doc S/RES/877, 21 October 1993.

[27] Report of the Secretary-General pursuant to Security Council Resolution 808 (1993) para 2, UN SCOR, 48th Session, Supp, April-June 1993, 23; United Nations Doc S/25704, 20 May 1993 (Spanish text).

[28] UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Press Release L/ROM/22, 17 July 1998 available at <www.un.org/icc/pressrel/lrom22.htm> (visited February 2003).

[29] Rome Statute of the International Criminal Court, 17 July 1998, United Nations Doc, A/CONF 183/9*(1998).

[30] By end 2001 when the Statute became closed to signature, there were almost 140 signatory States: see "Rome Statute of the International Criminal Court, Rome, 17 July 1998" at <http://untreaty.un.org/E#NGLISH/##bibl#e/englishinternetbible/partI/chapterXVIII/treaty10.asp> (visited January 2003).

compulsory. The reason is that the ICC has jurisdiction only if the states concerned are parties to the Statute or have accepted the ICC's jurisdiction under Article 12(2). It is this acceptance that will trigger the Security Council to act under Chapter VII of the United Nations Charter and refer a situation to the ICC Prosecutor.[31]

III. A NEW INTERNATIONAL GOVERNMENT

It is a basic principle of international law that states have exclusive sovereignty in their own territory.[32] This internal or domestic power has to be exercised justly and the state is obliged to ensure the well being of its nationals. At the international level, states form a unique family that requires a higher institution to be in place and responsible for international peace, freedom and justice.[33] In this sense, grave and massive violations of human rights aimed at achieving ethnic cleansing during the Balkans war, for example,[34] cannot be classified as *internal state affairs*. In fact, even though those circumstances had required international military intervention to protect the innocent masses, it did not happen. When sifting through the rubble for the reason, one will find that the differing national interests of the permanent members of the Security Council were responsible for its inaction.

Another example is Rwanda, where it was seen earlier that the Security Council lacked a political will to intervene in similar circumstances resulting in untold suffering and deaths in the millions.[35]

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[31] Ibid Article 13(b).

[32] Refer Dupuy P-M, Droit International Public 61 (5th edition, 2000, Dalloz); Brownlie I, Principles of Public International Law 289 (5th edition, 1966, Oxford University Press, Oxford).

[33] "The whole world, which is in a sense a commonwealth, has the power to enact laws which are just and convenient to all men": De Vitoria F, (Pagden A and anor eds), "Political Writings" in Cambridge Texts in the History of Political Thought (1991, Cambridge University Press, Cambridge) at <www.visi.com/~contram/cm/features/cm02_vitoria.html>.

[34] Mazowiecki T, Situation of Human Rights in the Territory of the Former Yugoslavia: Report of the Special Rapporteur, UNESCOR, Commission on Human Rights, 1st Special Session, Agenda Item 3 para 1; United Nations Doc E/CN.4/1992/S-1/10, 27 October 1992.

[35] Department of Public Information, United Nations, The United Nations and Rwanda 1993-1996, United Nations Blue Book Series, Volume X 61.

An independent inquiry into the actions of the United Nations reported:[36]

> The decision by the Security Council on 21 April to reduce UNAMIR to a minimal force in the face of the killings which were by then known to all, rather than to make every effort to muster the political will to try and stop the killing has led to widespread bitterness in Rwanda. *It is a decision which the Inquiry finds difficult to justify. The Security Council bears a responsibility for its lack of political will to do more to stop the killing.* (emphasis added)

In light of the above examples, does the United Nations represent the kind of international government the world needs? Since almost every state in the world is a member of this body, the assumption is that the answer should be yes. However, and as seen earlier, its ability to act can be blocked in the Security Council by just one permanent member exercising the veto contrary to fundamental democratic principles. Thus, even though the Security Council is charged with the main responsibility of maintaining international peace and security, the veto has paralysed this body during times of great and urgent need at the international level.

Article 24(1) of the Charter of the United Nations states:

> In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

This provision invites two comments. First, the international community, through a sufficiently representative executive and not the Security Council shall be the body to adopt important decisions so as to achieve a more effective and democratic process. Secondly, the proposed international government's legitimacy will be jeopardised

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[36] Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda, 35 at <www.un.org/News/dh/latest/rwanda.htm> (visited December 1999).

seriously if only five favoured states are given a permanent and overwhelming control in the decision-making process. As a result, a better approach for the United Nations is to transfer the decision making power regarding peace and security from the Security Council to the General Assembly, a plenary body where every member state is represented. It is also here in the General Assembly where every member state of the United Nations has a vote under Article 18(1) of the United Nations Charter. Such a move will give more effect to this provision that has the purpose of "reaffirming faith in equal rights of nations large and small" as stated in the Preamble to the Charter.

IV. STRUCTURE OF THE NEW INTERNATIONAL GOVERNMENT

Following Montesquieu's classical model on the separation of powers, the proposed international framework will have an executive, legislature and judiciary.[37] It will also have an international armed forces to provide this new government with "teeth".

(a) Executive

The executive will be known as the Executive Assembly and comprise the whole international community. It is a forum where every state will have a right to contribute and be heard. Although the principle on the equality of states will be observed when establishing this body, it will be reasonable and practical to propose that the size of a state's population will also be a relevant factor. Other features will be irrelevant unless it is shown that the domestic political system of a state does not reflect the values of its people contrary to the assumption that they have some role in the choice of their representatives or delegates. Following this approach, each state will be entitled to at least one representative, with another one added for every 50 million heads of population or some other figure to be agreed upon, subject to a maximum limit.

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[37] Montesquieu B, Del Espíritu De Las Leyes 106-107 (Mercedes Blázquez and Pedro de Vega transl, 1748, reprinted 1985, Tecnos). Following Charles de Secondat, Baron de Montesquieu, democracy does not guarantee political freedom by itself; abuse of power must also be controlled. In order to achieve this, Montesquieu realised that a separation of powers was required to counter the inherent human tendency towards the abuse of power.

A state with more than one representative will team them into a cohesive group at the domestic level so that they may represent the state's interests best. However, it is acknowledged that since states may have various political parties, this may be hard to achieve in practice. Be that as it may, the main objectives are to establish an executive according to the proposition above, for state leaders to be elected freely and to limit the influence of multiple political lobbies. A benefit from this streamlined process is the enhanced economic growth of developing states. This is because democratic systems if well administered have proven to be effective at diminishing poverty.[38]

To ease the international community into the proposed international framework, a transitional period will be necessary during which the executive would be structured like the International Monetary Fund where the voting power of members is subject to a quota system. These quotas, expressed as Special Drawing Rights (SDRs),[39] are be based on a variety of economic factors including gross domestic product, current account transactions and official reserves. Owing to the differing economic status of states, it will also be necessary to distinguish between three groups of states. Group 1 will include states whose voting power will be less than 0.10% of the total, with each state being assigned one representative. Group 2 will include states whose voting power will be between 0.10 and 1% of the total, with each state being assigned two representatives. Group 3 will include states whose voting power will be more than 1% of the total, each state being assigned three representatives.[40]

The executive's main task is to authorise the taking of *urgent* measures to maintain justice and international peace and security in the world. This may include military intervention if required. The approval for such measures will need a qualified majority or two-thirds of the total representation voting in their favour. The executive will operate until the judicial regime is able to assume control.

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[38] Mundial B, Informe Sobre El Desarrollo Mundial 2000/2001, Lucha Contra La Pobreza 113 (2000, Mundi-Prensa).

[39] See the International Monetary Fund website at <www.imf.org/external/about.htm> (visited December 2002).

[40] Presently, Group 1 has 93 states, Group 2 has 71 states and Group 3 has 20 states: ibid.

(b) Legislature

The legislature will be known as the Legal Commission where voting will be by majority and no member given the right of veto. The main criteria for this power's composition is the consideration of cultural differences. In order to guarantee it, I suggest as follows. Each country will choose one candidate and the final commission of nine persons will be selected by lot assuming this ratio: two for Europe, two for America, two for Africa and three for Asia & Oceania. This procedure will be followed on a continuous basis and once a country has been picked, it remains off the list until all other countries have been selected for the Commission.

During the transitional period, there will be nine members appointed according to this weighted formula: the United States and the European Union (two members each); Japan, China and Russia (one member each); remaining industrialised countries (one member); and developing states (one member). The reasons for the weighting are both realistic and practical. For example, the economic power of the European Union, Japan, the United States and other industrialised states justify their "heavier" representation[41] while China's economic growth[42] and Russia's political influence during the past century[43] justify theirs. Additionally, developing states will be given a voice for cultural, democratic and demographic reasons.

The legislature will develop and create international norms based on principles of freedom, justice and peace. This will require the representatives to have expertise in law or law making. A suggestion is that the legislative power be given to a group of international law teachers chosen by their colleagues and not by politicians. Once again,

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[41] Organisation for Economic Co-operation and Development, 12 Main Economic Indicators, 2001, 273 available at <www.sourceoecd.org/content/html/index.htm> (visited December 2002). The United States' gross domestic product at prevailing prices and exchange rates amounted to US$9896.4 billion in 2000 while the European Union's was US$7836.7 billion and Japan's was US$4749.6 billion for the same period: ibid.

[42] China's average growth rate of total real gross domestic product at market price was 10.7% from 1990-1999: United Nations Conference On Trade And Development, Handbook of Statistics 2001, 296 at <www.unctad.org/Templates/Page.asp?intItemID=1890&lang=1> (visited December 2002).

[43] Chudoba B, Rusia Y El, Oriente De Europa 390-407 (1980, Rialp).

this idea is generally drawn from the ICJ Statute where under Article 6, nominations for its members result from consultation with "legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law", *inter alia*. In any case, a state cannot under any circumstances interfere either in the election or in the working of this legislative body. Any fraudulent activity will be challenged in the administrative tribunal reflecting the principle of separation of powers where one arm of government is prevented from controlling another.

Members of the legislature will propose general norms or principles for states to accept and obey. Their significance within the international framework will require such norms or principles to be adopted unanimously or at least by consensus so as to promote international cooperation and understanding and allow states to contribute to the achievement of common goals. The reception of such norms and principles will be automatic and states will be obliged to implement them domestically. In other words, this obligation will give international law a new meaning and change its nature from one based on consent *(pacta sunt servanda)* to one based on compulsion. This "new" version of international law will also have a modified or more limited application at the domestic level because, theoretically, it will have to operate in tandem with the principle of state sovereignty.

(c) Judiciary

The judiciary's emphasis will be on its independence. Its role is to settle international disputes between states and/or organisations and bring individuals to justice if they commit internationally criminal acts. Ideally, disputing states will resolve their conflicts directly and the methods used may include consultation, diplomacy or arbitration. However, if justice and peace are threatened on the international level, the judiciary will have compulsory jurisdiction and be able to act *ex officio*. If the parties agree, smaller chambers deemed more expeditious and efficient may be formed and used in lieu of tribunals.

The judiciary will operate through tribunals and have two divisions, administrative and criminal. It will comprise 18 judges to be divided equally between the divisions. During this transitional period, the nine judges in each division will be appointed in this manner: the United

States and the European Union (two each); China, Japan and Russia (one each); the remaining industrialised countries (one); and developing states (one). Besides China, Japan, Russia and the United States, a state will not be allowed to designate a judge in more than one tribunal. Two tribunals of three judges each will determine a dispute and tribunal decisions are by majority vote. If the tribunals' findings are dissimilar a third tribunal will decide the matter.

The tribunals will be permanent in nature and characterised by the functional approach. This will extend the administrative jurisdiction to all disputes between states and extend the criminal jurisdiction to individuals who are accused of war crimes, crimes against peace and humanity or other similar international crimes. To enhance effectiveness, the judiciary will be invested with a general binding jurisdiction. Thus, as a model, it will be different to the ICJ for two fundamental reasons. First, the ICJ's jurisdiction is optional in the sense that states may submit to it.[44] Secondly, individuals have no standing in the ICJ. Rules similar to those applying to the legislature will apply in the judiciary when its members or judges are elected.

An interesting aspect of this proposal on the judiciary concerns the role of judges. Not only will they have to apply the law but they will also have to bring about justice.[45] What does this mean?

First, judges are not entirely conditioned by positive law when they determine the outcome of a case. The Latin maxim, *nullum crimen sine lege, nulla poena sine lege,*[46] helps to avoid arbitrariness and provides a safeguard or juridical security. Since it is presumed that all law has both a meaning and a purpose, the role of justice may be lost if judges are to merely apply the law. In other words, the expectation is that when a "crime" is committed, justice will follow regardless of whether international or domestic law gives the act a specific label or even a wrong label. An example is the German law of 14 November 1935 denying the Jewish population the right to vote and to hold public

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[44] ICJ Statute Article 36(2).

[45] De Aquino ST, Suma De Teología II-II (a), q 60 a. 5 (Ovidio Calle Campo & Lorenzo Jiménez Patón trans, BAC, 2nd edition, 1995).

[46] The New Encyclopedia Britannica 756 (15th edition, 1986).

office. Another example is the law Hitler passed in 1940 condemning the elderly and sick to death.[47]

The absence of a legal term to describe an act deemed criminal in nature would not make it any less a crime. For example, the lack of a label or concept to describe the deliberate and systematic destruction of large racial, religious, political or ethnic groups did not stop the Nuremburg Tribunal from finding the Nazi defendants guilty of genocide. This was despite the defence argument that a crime should not be punished if there was no pre-existing law:[48]

> A fundamental principle of all law – international and domestic – is that there can be no punishment of crime without a pre-existing law....It was submitted that ex post facto punishment is abhorrent to the law of all civilized nations, that no sovereign power had made aggressive war a crime at the time the alleged criminal acts were committed, that no statute had defined aggressive war, that no penalty had been fixed for its commission, and no court had been created to try and punish offenders.

Secondly, the judiciary may invoke common sense in practice and be required to pro-actively address lacunas in the law. It may reject written international norms if they are deemed unfair, though by a qualified majority. It will also have to consider and apply both legislation and principles of equity. If not, the strict application of legal norms may generate unfair results.[49]

Thirdly, the judiciary will be responsible for the execution of judicial orders and its judgments may be reviewed in appropriate cases (for example, the discovery of previously unknown evidence). A frame-work will exist to pardon convicted criminals depending on various factors such as the nature of the crime and the criminal's repentance, attitude and behaviour in prison. This reflects the theory that the

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[47] Heydecker JJ and anor, El Proceso De Nuremburg 300, 313 (Víctor Scholz transl, 2nd edition, 1963).

[48] Judgment of the International Military Tribunal, 30 September and 1 October 1946 at <www.yale.edu/lawweb/avalon/imt/proc/judlawch.htm> (visited December 2002).

[49] Suárez F, and ors, De Dios Legislador 13 (1967, Instituto de Estudios Políticos); Castán J, La Equidad Y Sus Tipos Históricos En La Cultura Occidental Europea 65-68 (1950, Instituto Editorial Reus).

criminal justice system will not only punish but also consider the convicted criminal's rehabilitation and return to society.[50]

Finally, it is expected that the above approach will appeal to the personal conscience of the judiciary, contribute to universal legal certainty and ensure a balance between legislative and judicial powers.

V. INTERNATIONAL ARMED FORCES

The issue here is the creation of an international armed forces and its form. The discussion below will show that an alternative to what the United Nations provides is needed to protect against the international dislocation the world is experiencing presently.

(a) Form and Functions

To help states comply with executive or judicial orders an international armed forces will be required to provide the necessary coercion. One state or a group of them will not be permitted to dominate this military body since it has to reflect international cooperation in its creation. Its constitution has to be balanced and powerful, a *conditio sine qua non* for success. It cannot act without authority and must implement executive orders when urgent measures have been adopted. This means that militarily stronger states cannot unduly influence its willingness or unwillingness to act, an important point if justice is to be equal for all.

To provide the armed forces with a truly international composition, the representation in the command shall mirror the same geographical distribution ratio as seen in the legislature and the judiciary. A Chief of Staff will head the command for a non-renewable five-year term so that this position may rotate among the member states. The command will organise military interventions and, depending on the affected zone, indicate which states based on proximity and resources shall contribute with land, naval and/or air forces. All decisions (including the appointment of the Chief of Staff but excluding militarily strategic decisions) will be by majority vote of all the members in the executive.

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[50] Roxin C (Luzón DM, Díaz M and De Vicente J transl), Derecho Penal. Parte General: Fundamen-tos (1997, Diego-Manuel Luzón Peña, Miguel Díaz y García Conlledo, Civitas) 81-103.

Since the proposed international framework is meant to represent the agreement of states and guarantee peace and justice in the world, the concept of a new international government will not be unrealisable without their acquiescence. That is why it will be important for the international armed forces to comprise contributions from its member states and their national counterparts being kept at the international military command's disposal. If an international military intervention is planned following executive approval, states participating will be reimbursed their expenses from a fund managed by the executive to be established. States will contribute annually to this fund according to a similar financial contribution formula seen below.

(b) United Nations – Peacekeeping and Peace Enforcement

In December 2000, 15 peacekeeping operations were deployed at a cost of US$2 billion. Although not specifically envisaged in the United Nations Charter, such forces were pioneered in 1948 when the United Nations Truce Supervision Organisation in the Middle East was created.[51] In practice, they are the responsibility of the Security Council. They involve military observer missions and/or peacekeeping forces and their personnel are volunteered by member states.[52]

At present, there seems to be misgivings on the limited success of peacekeeping efforts. The peacekeeping operations in Rwanda and the former Yugoslavia have been described as poorly organised. They are dependent on the willingness of states to supply the requisite military personnel but the international community has generally shown a lack of interest. The Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda reported:[53]

> UNAMIR, the main component of the United Nations presence in Rwanda, was not planned, dimensioned, deployed or instructed in

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[51] Refer to the United Nations Truce Supervision Organization at <www.un.org/Depts/ dpko/missions/untso/> (visited December 2002).

[52] Department of Public Communication, United Nations, United Nations Charter Article 23(1), 73-74, 78 at <www.un.org/peace/africa/pdf/Rwanda.pdf> (visited December 2002).

[53] Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, 28 at <www.un.org/News/dh/latest/rwanda.htm> (visited December 1999).

> a way which provided for a proactive and assertive role in dealing with a peace process in serious trouble...
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> The lack of will to send troops to Rwanda continued to be deplorably evident in the weeks following the decision by the Security Council to increase the strength of UNAMIR to 5,500. For weeks, the Secretariat tried to solicit troop contributions, to little avail.[54]

In November 1999, the United Nations Secretary-General had this to say on the Security Council's role and the United Nations membership regarding the fall of Srebrenica:[55]

> None of the conditions for the deployment of peacekeepers had been met: there was no peace agreement – not even a functioning ceasefire – there was no clear will to peace and there was no clear consent by the belligerents. Nevertheless, *faute de mieux*, the Security Council decided that a United Nations peacekeeping force will be deployed...The attack on Srebrenica therefore reflected the nature of the entire policy on Bosnia and the former Yugoslavia: one of reactive improvisation and 'muddling through'. Srebrenica fell into the hands of the advancing Bosnian Serbs despite its enjoying the status of a Safe Area and despite the presence of Dutchbat.

Certain international conflicts require peace enforcement more than peacekeeping operations. Chapter VII of the Charter allows Security Council enforcement measures to maintain or restore international peace and security, including military action.[56] Although it had previously authorised the use of force in certain cases, they were under the command of the participating states, not the United Nations. According to a United Nations report on Iraq's invasion of Kuwait:[57]

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[54] Ibid 41.

[55] Report of the Secretary-General pursuant to Resolution 53/35 of the General Assembly: The Fall of Srebrenica, United Nations General Assembly Official Records, 54th Session, Agenda Item 42 para 492, United Nations Doc A/54/549, 15 November 1999, 10.

[56] United Nations Charter Article 42.

[57] Department of Public Information, United Nations. Basic Facts about the United

> The Security Council set 15 January 1991 as the deadline for Iraq's compliance with the Council's resolutions, and authorized Member States cooperating with Kuwait to use *all necessary means* to implement these resolutions and restore international peace and security in the area. Faced with Iraq's non-compliance, on 16 January coalition forces allied to restore Kuwait's sovereignty began attacks against Iraq. These forces acted in accordance with the Council's authorization, but not under the direction or control of the United Nations. Hostilities were suspended in February, after the Iraqi forces had left Kuwait.

(c) Humanitarian Law and Banned Weapons

Legislation will be needed to regulate the use of armed force, meant to be the method of last resort for resolving disputes. The better methods are diplomacy, mediation, arbitration or even litigation. However, if armed force is deployed, humanitarian law and the laws on acceptable weapons will apply. Nuclear, biological or chemical weapons will be banned as they are deemed weapons of mass destruction. In this respect, the terrible consequences of the atom bomb in Hiroshima and Nagasaki shall always act as a reminder.[58]

International legislation such as the 1968 Treaty on the Non-Proliferation of Nuclear Weapons[59] will be adhered to strictly.[60] Included in this category are the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.[61]

Nations 99-100, U.N. Sales No. E.00.1.21 (2000).

[58] Ishikawa I and anor, Hiroshima and Nagasaki: The Physical, Medical And Social Effects Of The Atomic Bombings 113-114 (1981, Hutchinson, London).

[59] The Treaty entered into effect on 5 March 1970.

[60] The United Nations Weapons of Mass Destruction Branch, Department for Disarmament Affairs provides substantive support for the activities of the United Nations in the area of weapons of mass destruction: refer <http://disarmament.un.org/wmd/> (visited December 2002).

[61] Ibid.

Scientific research on such weapons will be prohibited and punishable by legislation[62] and a permanent group of independent experts appointed to control their elimination. Research and military use will be limited to conventional weapons only, and whenever not deemed to be excessively injurious or to have indiscriminate effects. Examples of restricted weapons include mines, booby-traps and other devices whose fragments injure.[63]

VI. FINANCING

It is expected that the new framework will be cheaper to administer than the United Nations, its main costs linked to items such as legal experts, judges, army personnel, weapons control, and "essential" administrative personnel. Generally, the costs incurred by the executive representatives will be borne by their own states. In this respect, a huge bureaucracy will be avoided and emphasis placed on efficiency instead.

Financing will go through two different phases. The first will be during the transition period when states, divided into three groups, will contribute according to a geometric formula. The groups will be:

1. the main economic powers (United States, European Union and Japan);
2. the remaining industrialised states and China and Russia; and
3. the developing states.

The second one will involve an arithmetic contribution by states in the same groupings based now on their gross domestic product and adjusted by per capita incomes.

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[62] In these circumstances it is no defence to argue that the end will justify the means: Spaemann R (del Barco JL transl), Felicidad Y Benevolencia 190-196 (1991, Rialp, Madrid).

[63] See 1980 Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, in particular Protocol 1 on Non-detectable Fragments, which entered into force on 2 December 1983 at <www.icrc.org/Web/Eng/siteeng0.nsf/0/86AE7866A775A013C1256B66005B334B/$File/1980_CCW.pdf?OpenElement> (visited January 2003); Center of Contemporary Conflict, "Strategic insight: The Convention on Certain Conventional Weapons" at <www.ccc.nps.navy.mil/rsepResources/si/mar03/wmd.asp> (visited March 2003).

Many states, some of them developing, usually assign large budgets to defence at the expense of essential areas such as health or education. States in this category include Azerbaijan, China, the Congo, India, Pakistan and Somalia, and to a lesser extent, Angola, Burundi, Guinea, Mozambique, Myanmar, Oman, Russia Syria and Uganda.[64] If this proposal for a new international framework is adopted, those states will be able to reduce their military expenditure without compromise to their security and protection, thereby allowing them to divert more spending to improving essential social services.

VII. CONCLUSION

Some of the features proposed above are not new and may be found in international organisations in existence today. However, it is clear that those organisations fall short of the proposed new international framework. If the United Nations is to accord with this framework, it will have to remove the Security Council, or at least change it radically, and provide the General Assembly with an executive role.[65] The legislative body will have to be set up and the ICJ will have to make important changes. In addition, international armed forces will have to be created. In this respect, the North Atlantic Treaty Organisation may be used as its basis but with modifications to its composition.[66] It will not be given autonomous decision-making powers but will form an integral part of the international government responsible for the execution of legal orders and other decisions.[67]

The proposed framework will be based on mankind's ontological unity and imply that a state's sovereignty will not be absolute. Although states may continue to exercise national competences, this will be in a more limited sense to accord with the new international framework's overarching intention to achieve and improve justice, peace and order for the entire world community.

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[64] United Nations Children's Fund, Estado Mundial De La Infancia 98-101 (2001, United Nations Publications, New York).

[65] United Nations Charter Articles 10-16 and Articles 24-26 indicate the functions of the General Assembly and Security Council respectively.

[66] For the list of NATO member states see <www.nato.int/structur/countries.htm> (visited December 2002).

[67] Compare the 1949 North Atlantic Treaty Articles 5 and 63.