THE CARTER MISSION TO HAITI: UNINTENDED CONSEQUENCES FOR HUMAN RIGHTS LAW

JEFFRY A. WILLIAMS and JOHN N. PETRIE[1]

Introduction

Almost coincident with the arrival of U.S. occupation forces in Haiti, significant issues emerged concerning the agreement that President Bill Clinton permitted former President Jimmy Carter to make with Haitian Lieutenant General Raoul Cédras. General Cédras was then in command of the military forces that deposed Haitian president Jean-Bertrand Aristide shortly after he took office through open and free elections in December 1990. In essence, Carter reached an agreement with General Cédras whereby he and other senior members of the Haitian military would escape accountability for seizing control of Haiti's government, if they would peacefully relinquish control of the government.[2] Additionally, those negotiating on behalf of the U.S. Government (and, ostensibly, President Aristide) bargained to allow the seated Haitian parliament—not the body elected with President Aristide—to decide if General Cédras and members of his command would be held accountable for various crimes, including the alleged murder and torture of President Aristide's supporters and other Haitian citizens. In accordance with the provisions of this agreement, on 13 October 1994 General Cédras and members of his staff were flown from Haiti

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[1] The opinions expressed are those of the authors alone and do not reflect the position of the National War College, the National Defense University, or the Department of Defense.

[2] The "Text of Agreement signed by Former President Carter and Military-Installed Haitian President Emile Jonassaint, Port-au-Prince, September 18, 1994" is appended to: The White House, Office of the Press Secretary, Release of September 19, 1994, "Press Conference by the President, President Carter, Senator Sam Nunn, and General Colin Powell: The East Room" (hereinafter cited as "Agreement"). Of specific interest is the seventh and final point of the agreement which reads: "It is understood that the above agreement is conditioned on the approval of the civilian governments of the United States and Haiti."

Jeffry A. Williams, a Captain in the Judge Advocate General's Corps of the U.S. Navy, is a student at the National War College. His next assignment will be in the Office of the Chief of Naval Operations. He holds the A.B. and J.D. degrees from the University of South Carolina and an LL.M. from George Washington University. John N. Petrie, also a Navy Captain, is a Professor of National Security Policy at the National War College. He holds an A.B. from Villanova University and the M.A.L.D. and Ph.D. degrees from the Fletcher School of Law and Diplomacy. He is en route to duty in command of a destroyer squadron.

to Panama aboard an airliner provided by the U.S. Government.[3] The United States also agreed to release the frozen assets of the Haitian military leaders.[4]

This was a most unusual agreement. If it occurred to Carter or other members of the U.S. negotiating team[5] to question whether their extraordinary settlement went beyond their authority under the terms of U.N. Security Council resolution 940,[6] or whether their agreement was in any way inconsistent with fundamental human rights laws, nothing was offered by way of explanation.

Neither the former president nor his agents—nor the Haitian parliament for that matter—were empowered legally to enter into such an agreement. Their mission was undertaken in an effort to avoid direct military action to compel compliance with a variety of agreements and U.N. Security Council decisions. Those agreements and decisions could be loosely summarized as requiring the restoration of the legitimate government and the cessation of the widely reported human rights abuses in Haiti. The attempt to immunize the perpetrators of these human rights abuses—which constitute the commission of crimes against humanity—violates fundamental concepts of international law. In other words, the Carter-Cédras deal might well be illegal.

It is truly ironic that Carter, a staunch human rights advocate, should conclude a pact that has questionable repercussions for human rights law. The Carter mission was undeniably an attempt to prevent the loss of human life that a direct military action would likely entail; the undesirable consequences of this action are clearly unintended. That is, they represent the downside of a major ethical dilemma which may not be accommodated by international law as easily as it is by politics or conscience. It is obvious that little deterrence can be derived from a deal which appears to reward the perpetrators of human rights abuses. Yet, this fact alone does not imply that the law has been violated. To understand how this episode is measured against international law, one must examine the juridical history of the prosecution of crimes against humanity and why the law applied in those prosecutions should not have been ignored in this instance.

The Nuremberg Principles

Jurisdiction to Adjudicate

After World War I the question of how to address what are now referred to as crimes against humanity was confronted in at least two separate situations. In January 1919, the Preliminary Peace Conference at Versailles created a *Com-*

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[3] Agreement, point 3. For context the point reads: "In order to personally contribute to the success of this agreement, certain military officers of the Haitian armed forces are willing to consent to an early and honorable retirement in accordance with U.N. Resolutions 917 and 940 when a general amnesty will be voted by the Haitian Parliament, or October 15, 1994, whichever is earlier. The parties to this agreement pledge to work with the Haitian Parliament to expedite this action. Their successors will be named according to the Haitian Constitution and existing military law."

[4] Douglas Farah, "U.S. Assists Dictator's Luxury Exile," *Washington Post*, 14 October 1994, at 1:1.

[5] The U.S. negotiating team consisted of former President Jimmy Carter, Senator Sam Nunn, and General Colin Powell, U.S.A. (Ret.). Informed sources confirm that the substance of the negotiations were dealt with by President Carter. Senator Nunn and General Powell played critical roles at the

mission on the Responsibility of the Authors of the War and on Enforcement of Penalties. The Commission sought to prosecute violations against the laws and customs of war and principles of humanity.[7] The American members, Secretary of State Robert Lansing and John Brown Scott objected that principles of humanity were too subjective for adjudication.[8] As early as May 1915, France, Great Britain, and Russia had held that the Turkish massacre of ethnic Armenians was a new crime *against humanity* and announced they would hold the Sublime Porte personally responsible.[9] In consequence, Article 230 of the 1920 Treaty of Sevres specifically provided for this—but the treaty was never ratified.[10] A new treaty, the 1923 Treaty of Lausanne, omitted this provision and was subsequently ratified.[11] Consequently, the pressure for enforcement—although consistent with the concept of the laws of humanity agreed to in the de Martens clause of 1907 Hague IV[12]—was insufficient to overcome competing issues when the time for accountability and prosecution came.

At the end of World War II, it was not entirely clear that the Allies intended to provide for judicial trials of major war criminals.[13] The decision was made by representatives of the Allied Powers at the conference in London which opened in June 1945. At that time, the representatives determined that there should be criminal trials for the offenses committed during the course of the war. The leadership of the German Government and six of its organizations were brought to trial before an international military tribunal at Nuremberg, Germany on charges of crimes against peace, war crimes, and crimes against humanity.[14] The authority and jurisdiction of the Nuremberg tribunal stemmed from an agreement signed by representatives of the four Allied Powers in London on 8 August

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eleventh hour when members of the Haitian team learned that invasion forces were airborne and en route. Some of the Haitians then believed that the negotiations were not undertaken in good faith. Senator Nunn and General Powell convinced them of the sincerity of their effort.

[6] The Security Council, in the operative section of Resolution 940, "[d]etermines that the illegal de facto regime in Haiti has failed to comply with the Governors Island Agreement and is in breach of its obligations under the relevant resolutions of the Security Council . . . [and] under Chapter VII of the Charter of the United Nations, authorizes Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership." U.N. Doc. S/RES/940 (1994).

[7] See Howard S. Levie, *Terrorism in War—The Law of War Crimes*, (1993) at 22-26 and 393 (citing *Foreign Relations of the United States*, (1915), Supp., *The Great War*, 981 (1928)).

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] See Convention (IV) Respecting the Laws and Customs of War on Land with Annex of Regulations, Signed at the Hague 18 October 1907, preamble, para. 9, 36 Stat. 2227-2309 ("[T]he inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the *laws of humanity*, and the dictates of public conscience.") (emphasis added). Note that this section is identical to the superseded text of the Hague Convention of 1899.

[13] Secretary of the Treasury Henry Morgenthau, who had the ear of the president, called for the summary execution of the Axis leaders. Ann Tusa and John Tusa, *The Nuremberg Trial* 50 (1983).

[14] *The United States of America, the French Republic, The United Kingdom of Great Britain and Northern Ireland, and the Soviet Socialist Republics* v. *Goering, et al.*, reprinted in *International Military Tribunal Trial of the Major War Criminals (1947): Nazi Conspiracy and Aggression-Opinion and Judgment* (1947); 41 Am. J. Int'l L. 172 (1947).

1945. The tribunal existed for the limited purpose of trying the major war criminals of the Axis Powers.[15]

In this regard, there was again a well established legal basis for the prosecution of many of the cases involving violations of non-combatants' rights that would be tried. Articles 46, 47, 50, 52, and 56 of the Hague IV convention covered, in large part, the "laws and customs of war" as they apply to treatment of the population of an occupied territory.[16] The "General Participation Clause" in Article 2 of Hague IV, however, provides that the treaty is only binding on the parties to it and only when all parties to the conflict are also parties to the treaty. This article raised problems for the Nuremberg Tribunal because the belligerents of World War II were not all parties to Hague IV.[17]

On the other hand, the representatives of the Allied Powers were much less in agreement concerning the prosecution of both the "crime" of waging "aggressive war" (so-called "crimes against peace") and "crimes against humanity." With regard to these matters, there was considerable debate prior to, during, and for years after the war, as to whether the Allied Powers correctly applied existing legal precedents, or whether they simply extracted victors' justice. Because of the controversy surrounding both issues—and because both concepts were later codified and unanimously adopted by the United Nations in 1949 as general principles of international law[18]—it is appropriate to recount the fundamental nature of the controversy before proceeding.

Crimes Against Peace

Article 38 of the Statute of the International Court of Justice recognizes four primary sources of international law: international conventions, international customs "to the extent that they reflected a general practice of law", general principles of law "recognized by civilized nations," and judicial decisions and the teachings of the most highly qualified publicists of various nations.[19] It was appropriate, therefore, that those seeking to find a basis in international law for the prosecution of war crimes would seek to find international agreements,

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[15] Charter of the Interational Military Tribunal, London, 8 August 1945, 82 U.N.T.S. 279 (hereinafter "London Charter"); see also Levie, at Appendix VIII. The 1945 London Charter was as amended by the Protocol of Berlin of 6 October 1945. The Protocol of Berlin clarified the wording and intent of paragraph 6 (c) of the Charter which defines "Crimes Against Humanity." It is reproduced in Levie, as Appendix IX.

[16] Judgment of the Nuremberg Tribunal, September 30, 1946, Nazi Conspiracy and Aggression — Opinion and Judgment, para. VI (F), (1947) (hereinafter cited as "Nuremberg Judgment"). Supra note 14. Also digested in William W. Bishop, Jr., International Law: Cases and Materials, 3rd ed. (Little, Brown and Co., Boston, 1962), 1005, 1014-1015.

[17] Judgment of the Nuremberg Tribunal, supra note 14; Bishop, 1014-1015. In the present case, however, the "General Participation Clause" is not an issue because both Haiti and the United States are parties to Hague IV.

[18] 1 U.N. GAOR, 2d pt., Verbatim Rec., 1144 (1946); 45 Am. J. Int'l L., Supp., 103, 123-134 (1951).

[19] Statute of the International Court of Justice, entered into force October 24, 1945, art. 38(1), 59 Stat. 1031, T.S. 993. Amendments ratified December 17, 1963, 16 U.S.T. 1134, U.N.T.S. 143; December 20, 1965, 19 U.S.T. 5450, T.I.A.S. 6529; December 20, 1971, 24 U.S.T. 2425, T.I.A.S. 7739 (hereinafter "Statute").

customs, general principles, and writings which proscribed the acts committed by the Nazis during the war.

The U.S. representative to the London Conference was Robert H. Jackson, who stepped down from his position as a Justice of the U.S. Supreme Court to assume that responsibility. Justice Jackson successfully argued that international law was composed not only of treaties and written agreements between nations, but also of customs which, through years of practice and observation, had become binding as principles of law. He believed strongly that the initiation of "aggressive war" was a crime and that those responsible for beginning the war could be held personally liable for their actions. In his report to the President, he stated: "By the time the Nazis came to power it was thoroughly established that legitimate warfare was no longer available to those who engaged in such an enterprise. It is high time that we act on the juridical principle that aggressive war-making is illegal and criminal."[20]

At the time, Jackson's opinion was not without its strong dissenters. They contended that he was creating a precedent rather than adhering to one; the results of World War I, and the position of the U.S. representatives to the Commission bore them out. Perhaps anticipating his critics, Jackson wrote, "We cannot deny that our own day has it right to institute customs and conclude agreements that will themselves become sources of newer and strengthened international law."[21] He was thus able to persuade his counterparts at the conference that the time had come to prosecute the waging of "aggressive war." Justice Jackson's position subsequently became the basis for Count Two of the Nuremberg Indictment which condemned the "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances."[22]

The Dissenting View

In a 1947 article entitled "The Criminality of Aggressive War," Professor Leo Gross of the Fletcher School of Law and Diplomacy responded to the contention of Justice Jackson and others that wars of aggression were prohibited by customary international law at the time of the German invasion of Poland.[23] After considering numerous resolutions, the Kellogg-Briand pact, and other non-aggression agreements concluded between the First and Second World Wars, Professor Gross concluded that while such efforts reflected profound "humanitarian interests" in condemning war, such a series of failed agreements could

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[20] U.S. Dept. of State Pub. No. 3080, Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London, 1945, 51 (hereinafter "Jackson Report").

[21] Ibid., 52-53.

[22] International Military Tribunal, Nuremberg, Indictment, supra note 14; digested at Bishop 1002-1004, 1003 (hereinafter "Nuremberg Indictment").

[23] Leo Gross, "The Criminality of Aggressive War," 41 Am. Pol. Sci. Rev. 205 (1947); Leo Gross, *Essays on International Law and Organization*, 2v. (1984) (hereinafter "Gross, Essays"); see F. B. Schick, "The Nuremberg Trial and International Law of the Future," 41 Am. J. Int'l L. 770 (1947); see also Hans Kelsen, "Will the Judgment in the Nuremberg Trial Constitute a Precedent?," 1 Int'l L. Q. 155 (1947).

not logically be cited as confirming international principles of law or "as evidence of a general practice accepted as law."[24]

As is often the case concerning the dimensions of international law, the debate remained largely unresolved. In the final analysis, however, it was hard to argue with Justice Jackson's statement to President Roosevelt that "every custom has its origin in some single act."[25] In this instance, it is clear that the Charter of the Tribunal elaborated certain widely held moral values and held them to be legal principles—exactly those moral values which Secretary of State Robert Lansing and John Brown Scott could not accept after World War I. In doing so, the nations which agreed to the Charter of the Nuremberg Tribunal intended to create a principle of international law. That principle, when applied by the Nuremberg Tribunal, met the criteria of Article 38(1)(d) of the Statute[26] as a subsidiary means of determining the law. Consistent with these criteria's expectations, the principle in turn became a basis for the United Nations' Definition of Aggression.[27]

Crimes Against Humanity

Count Four of the Nuremberg Indictment charged most of the defendants with crimes against humanity.[28] The legal basis of these prosecutions was no less controversial.[29] The 1945 London Charter defined crimes against humanity as "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in the execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."[30]

Broad language was chosen to make it possible to prosecute acts committed by the German government against its own citizens prior to, as well as during World War II. A problem arose because, prior to the Nuremberg trials, there was no universally recognized customary law or international agreement that prohibited the sorts of brutal acts the Nazi government had committed against its own citizens. Ultimately, the Nuremberg Tribunal tried to get around the issue by linking the inhuman acts of the German government to a common scheme

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[24] Gross, *Essays*, 324.

[25] Jackson Report, 52.

[26] Statute, Article 38(1)(d) allows that the International Court of Justice may apply as law "subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." Article 59 provides that *stare decisis* will not result.

[27] See 29 U.N. GAOR, Supp. No. 19, Doc. A/9619 (1974); 69 Am. J. Int'l L. 480 (1975).

[28] Nuremberg Indictment, supra note 14; Bishop, 1003.

[29] See Finch "The Nuremberg Trial and International Law," 41 Am. J. Int'l L. 20-21 (1947); see also Levie, 393-404. Discussion of the justiciability of "Crimes Against Humanity" by the Nuremberg Tribunal is included in the Nuremberg Judgment in the sixth para. of section VI(F). Bishop, supra note 17, at 1016-1017.

[30] London Charter, art. 6(c); see also 41 Am. J. Int'l L. 172 (1947). The similarity between the list in the 1945 London Charter and U.N. Security Council Resolution 917 is unmistakable. See infra note 67.

or plan committed by the government in furthering the first alleged offense, crimes against peace.[31]

The effort to deal with crimes committed prior to the war essentially failed. In its consideration of this issue, the Nuremberg Tribunal ultimately held that:

> [R]evolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crimes [within the jurisdiction of the Tribunal]. . . . [B]ut from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and . . . they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity.[32]

After the onset of World War II, therefore, crimes against humanity were considered to be within the jurisdiction of the Nuremberg Tribunal and were prosecuted. In fact, sixteen of the eighteen individuals so charged were convicted of crimes against humanity.[33]

Development of the Nuremberg Principles

The Charter of the United Nations

In addition to the references to human rights and principles of international law in the Preamble of the U.N. Charter,[34] as a member state, Haiti assumed significant responsibilities for the guarantee of human rights. Article 1(3) requires "promoting and encouraging respect for human rights and for fundamental freedoms of all."[35] The obligations are stated most clearly in Chapter IX. Article 55 requires "universal respect for, and observance of, human rights and fundamental freedoms for all."[36] and Article 56 simply and succinctly demands that "All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."[37] Therefore, there can be no question that Haiti—and those who claim to act for her—are obliged by law to observe and enforce human rights

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[31] Tusa and Tusa, 87. The United Nations War Crimes Commission considered these principles to be "novel" or innovations in the law. Levie, 396 (citing United Nations War Crimes Commission, *History of the United Nations War Crimes Commission* 188-192 (1948)).

[32] Judgment of the Nuremberg Tribunal, para. VI(F), supra note 14; Bishop at 1015.

[33] See Bishop, 1017; Gross, *Essays*, 349-350; see also Tusa and Tusa, 504 (listing the defendants, the charges, the verdicts, and the sentences).

[34] U.N. Charter, preamble para. 2 (stating the members' determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person").

[35] U.N. Charter art. 1(3).

[36] U.N. Charter art. 55(c).

[37] U.N. Charter art. 56.

and fundamental freedoms. Those concepts, however, are not specifically defined within the Charter.

While no one should be surprised that the Haitians violated the law by their behavior, how does this make Carter's action illegal? One interpretation is clear in the wording of the Charter itself. Chapter I of the Charter details its "Purposes and Principles." Article 1(3), quoted previously, places human rights and fundamental freedoms in the list of purposes. Article 2 lists the principles and paragraph (3) requires that disputes be resolved by peaceful means "in such a manner that international peace and security, and justice, are not endangered."[38]

This language logically supports the notion that *preserving the peace at the expense of justice can be considered a violation of the Charter Principles.* That is, if efforts to preserve the peace by solely peaceful means endanger the peace and security of other member states or—as in the present case—if justice is endangered by limiting efforts to solely peaceful methods, then those methods could prove inconsistent with the Charter's Principles. Therefore, Carter, as the agent of the United States, was not, and likely could not be, empowered to promise and facilitate amnesty for those responsible for the egregious violation of the most fundamental human rights. That action was likely illegal, and undeniably works against the development of a pattern of enforcement of the law regarding human rights. Moreover, as will be detailed in a subsequent section, the Organization of American States (O.A.S.) and the United Nations spared no effort to make clear that the purpose of U.N. actions regarding Haiti was the enforcement of human rights.

It is difficult to imagine an interpretation of another Charter provision which permits violation of its Principles. In fact, the Charter provides that "In discharging [its] duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations."[39] This language establishes obligations that present a real dilemma. Few want to argue that the Charter might require member states to go to war. There can be little doubt that the Charter authorizes the use of force. It does not, however, *compel* member states to go to war to prevent the subversion of justice by blind reliance on peaceful means of dispute settlement.

The United Nations General Assembly

Whatever may have been the controversy when the Nuremberg trials began, the issue was resolved on 11 December 1946 when the U.N. General Assembly unanimously adopted resolution 95(I), "affirm[ing] the principles of international law recognized by the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal."[40] The General Assembly, in turn, directed the International Law Commission to "formulate those principles."[41] While General

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[38] U.N. Charter art. 2(3).

[39] U.N. Charter art. 24(2).

[40] 1 U.N. GAOR, 2d pt., Verbatim Rec., 1145, U.N. Doc. A/CN.4/5 (1946); Bishop, 101.

[41] Ibid.

Assembly resolutions are usually not considered to be law-making, they can, in certain circumstances, create legal obligations. And, while they generally are seen as political and not legal statements, when discussing an issue as pertinent as "principles of international law" they must constitute evidence of *opinio juris* insofar as agreement can be attained.[42] Therefore, these resolutions have undeniable legal influence if for nothing other than their value as "unilateral declarations" by the member states that voted for them.[43]

During this same period, the United Nations also authorized one of its principal organs, the Economic and Social Council, to establish the Commission on Human Rights for the promotion of human rights. On the basis of the text prepared by the Commission, the Universal Declaration of Human Rights (the Univeral Declaration) was adopted by the General Assembly on 10 December 1948.[44] The Universal Declaration marked the first effort to establish common standards for the achievement of human rights for all peoples of all nations. It has since come to be regarded as the touchstone for virtually all U.N. activities involving human rights.[45]

Universal Declaration of Human Rights

It is perhaps easier to say what the Universal Declaration is not: it is not a legal mandate. Violations of its provisions cannot be the basis for criminal prosecution. The Universal Declaration of Human Rights was created as a means of establishing norms of universal behavior. Those responsible for its creation hoped that the Universal Declaration would inspire a network of new international laws and regulations.[46] Such requirements, it was expected, would create legal obligations that would be binding upon states and their citizens. It was further anticipated that there would be an international system for ensuring implementation of those legal obligations.

With these thoughts in mind, between May 1949 and April 1954, the United Nations worked to create two multilateral covenants on human rights—the International Covenant on Economic, Social and Cultural Rights,[47] and the International Covenant on Civil and Political Rights.[48] These were to be the implementing legal obligations binding on the signatories. Both covenants were unanimously adopted by the General Assembly and recommended to the full U.N. membership in December 1966. By mid-1992, 114 governments, including the United States and Haiti, had ratified the Covenant on Civil and Political

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[42] See Leo Gross, "The United Nations and the Role of Law," 159-181 in Gross, *Essays*, 176-178.

[43] See Alfred P. Rubin, "The International Legal Effects of Unilateral Declarations," 71 Am. J. Int'l L. 1-30 (1977).

[44] G.A. Res. 217A, U.N. Doc. A/810 (1948).

[45] See Peter R. Baehr and Leon Gordenker, *The United Nations in the 1990s*, 2d ed., 99-115 (1994).

[46] Baehr and Gordenker, 103.

[47] Annex to General Assembly Res. 2200 (XXI), adopted Dec. 16, 1966 (U.N. Doc. A/RES/2200 (XXI)) 993 U.N.T.S. 3; 61 Am. J. Int'l L. 861 (1967).

[48] Annex to General Assembly Res. 2200 (XXI), adopted Dec. 16, 1966 (U.N. Doc. A/RES/2200 (XXI)) 999 U.N.T.S. 172.

Rights. The other covenant has not yet been ratified by the United States or Haiti, although it has been ratified by 116 other nations.[49]

United Nations Convention Against Torture

A particularly significant consequence of the Nuremberg trials is the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.[50] This convention was adopted by the United Nations on 10 December 1984 after a gestation period of approximately seven years. Most of the work of negotiating a broadly acceptable text was done by the U.N. Human Rights Commission. The convention is important not only because it outlaws torture and other cruel, inhuman, or degrading acts, but also because it was viewed as adding to existing customary law prohibiting state torture.[51] Among its provisions, the Convention Against Torture requires each state party to ensure that competent authorities conduct a prompt and impartial investigation whenever reasonable grounds exist to believe that acts of cruel, inhuman, or degrading treatment have occurred. State parties are also obligated to keep under "systematic review" interrogation rules, methods, and practices for persons under arrest, detention, or imprisonment. State parties are further required to ensure that acts of torture, attempts to commit torture, or acts constituting complicity in torture are punishable under state criminal law with "appropriate penalties which take into account their grave nature."[52]

It should be noted that torture is a crime for which universal jurisdiction is commonly held to apply.[53] Although the United States is not a party to the U.N. Convention Against Torture, customary human rights law is to be applied by Federal Courts.[54] That is, the United States could have exercised jurisdiction over members of the Cédras regime who fell under its control. During military occupation, civilians fall under the jurisdiction of the occupying power.[55]

Customary International Law

Case Law

Seldom do U.S. circuit courts become involved in determining the dimensions of international law as they pertain to human rights. One of the most interesting cases in this regard is *Filartiga* v. *Peña-Irala*.[56] In that case, Doctor Filartiga and his daughter brought a civil suit, seeking monetary damages,

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[49] Baehr and Gordenker, 106.

[50] U.N. Doc. A/39/708, 6.

[51] Bergers and Danelius, *The United Nations Convention against Torture, A Handbook on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1 (1988).

[52] Bergers and Danelius, 2-3.

[53] American Law Institute, *Restatement (Third) of the Foreign Relations Law of the United States*, 2v., §§404, 423, 701, and 702 (1987).

[54] Ibid.

[55] See *Department of the Army Field Manual 27-10 (FM27-10) The Law of Land Warfare*, Ch. 6, (containing an explanation of the full scope of these responsibilities annotated to treaty sources).

[56] 630 F.2d 876 (1980).

against Americo Peña-Irala for causing the death of Dr. Filartiga's seventeen-year-old son in Paraguay. The district court dismissed the case for lack of subject matter jurisdiction, and the appellants (Dr. Filartiga and his daughter) appealed the decision to the Second Circuit Court of Appeals. The case is significant because Circuit Judge Irving R. Kaufman, writing for a three-judge panel including the chief judge, spent a good portion of his opinion discussing the history of the U.N. Charter and the obligations of the United States to enforce universally accepted norms of international law with regard to human rights.[57]

Judge Kaufman began his analysis with Article 55 of the U.N. Charter which states, in part, that "the United Nations shall promote . . . universal respect for, and observance of, human rights. . . ."[58] While Judge Kaufman conceded there is no universal agreement as to the precise extent of human rights and fundamental freedoms guaranteed to all by the Charter, he held: "there is no dissent from the view that the guaranties [sic] include, at a bare minimum, the right to be free from torture. This prohibition has become part of customary international law, as evidenced by and defined by the Universal Declaration of Human Rights."[59]

Judge Kaufman then cited General Assembly resolution 3452[60]—the Declaration on the Protection of All Persons from Being Subjected to Torture, which was adopted by the United Nations without dissent and is substantively identical to the Convention Against Torture—as an obligation of member nations under the U.N. Charter. In Judge Kaufman's words, "Members can no longer contend that they do not know what human rights they promised in the Charter to promote."[61] These U.N. pronouncements, when considered together with the Universal Declaration of Human Rights, enabled Judge Kaufman to conclude that "official [i.e., government sanctioned] torture is now prohibited by the laws of nations."[62]

The case is significant because the decision was not appealed. Thus, it is considered, and is often cited, as controlling case law regarding the applicability of international human rights law within the United States.

The Most Highly Qualified Publicists

That these principles have now come to be regarded as customary international law can also be seen in the writings of various human rights scholars over the years. In his consideration of the Universal Declaration, John Humphrey, the first director of the U.N. Human Rights division, stated: "The Declaration is now part of the customary law of nations and is therefore binding on all states. The Declaration has become what some nations wished it to be in 1948: the univer-

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[57] Ibid.

[58] Ibid., 883.

[59] Ibid.

[60] Declaration on the Protection of All Persons from Being Subjected to Torture, General Assembly Resolution 3452, 30 U.N. GAOR Supp. (No. 34) 91, U.N. Doc. A/1034 (1975).

[61] Ibid., 884.

[62] Ibid.

sally accepted interpretation and definition of human rights left undefined by the Charter."[63]

Similarly, in his 1988 book, *International Human Rights Law*, Thomas Buergenthal asserted, "Today, few international lawyers would deny that the Declaration [of Human Rights] is a normative instrument that creates legal obligations for the member states of the U.N."[64] Indeed, few would dissent from the legal conclusion that "The Universal Declaration of Human Rights, a document . . . describing itself as 'a common standard of achievement' . . . [is] now accepted as declaratory of customary international law."[65]

That said, the entire Universal Declaration is not accepted as law. The sections prohibiting the types of abuses committed under the Cédras regime, however, are accepted without reservation. Certainly, those actions proscribed in U.N. Security Council resolution 917[66] were obligations for Haiti. Furthermore, all member states—including the United States—are bound by their acceptance of Article 2(5)[67] and Article 25.[68] That is, enforcement of the standards of human rights called for in U.N. Security Council resolution 917 under the broad and specific authority of U.N. Security Council resolution 940 did not include the authority to ignore or forgive violations of the human rights of Haitian citizens.

Relevance of Nuremberg to Haiti

Crimes Against Peace

The situation in Haiti at the time of the Carter mission bears a striking similarity to that confronted by the Nuremberg Tribunal. As explained above, crimes against the peace were seen as novel, or a legal innovation, by commentators as diverse as Leo Gross and the U.N. War Crimes Commission. Leo Gross argued that failed law expressed in treaties could not logically be cited as confirming international principles of law or "as evidence of a general practice accepted as law."[69]

The crimes against peace that the Nuremberg Tribunal addressed involved waging aggressive war. Justice Jackson, by power of principle, influence, and determination, made his view prevail. Whether the novelty of his view damaged

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[63] John Humphrey, "The International Bill of Rights: Scope and Implementation," 17 Wm. & Mary L. Rev. 529 (1976).

[64] Thomas Buergenthal, *International Human Rights Law* 29 (1988).

[65] Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law," 84 Am. J. Int'l L. 866,867 (1990).

[66] In addition to S/RES/940 cited above, S/RES/917 (1994) of 6 May 1994 condemns "the numerous instances of extrajudicial killings, arbitrary arrests, illegal detentions, abductions, rape and enforced disappearances, the continued denial of freedom of expression, and the impunity with which armed civilians have been able to operate and continue operating" at para. 10 of the preamble.

[67] U.N. Charter art. 2(5) ("All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.").

[68] U.N. Charter art. 25 ("The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.").

[69] Gross, *Essays*, 324.

the legal influence of the Nuremberg Judgment by reducing it to a "victors' tribunal" is still debated. Questions arose due to the lack of any general principles of law clearly enjoying *opinio juris* or treaties that were accompanied by compliance with, or enforcement of, the principle.

In the present case an analogous legal situation exists. The Charter of the Organization of American States[70] was recently amended by the "Protocol of Managua,"[71] which deals with strengthening democracy through development, and the "Protocol of Washington,"[72] which makes it illegal for a member state to overthrow its government by coup d'état.[73] These amendments, in their essence, extend the prohibition on aggressive war in international politics—pressed home by Justice Jackson and now enshrined in Article 2(4) of the U.N. Charter—to internal politics within the Americas. That is, no political group may use or threaten force against the political independence of the legitimate government of an OAS member state with impunity.

While Justice Jackson could not claim the existence of *opinio juris* or efforts at enforcement in 1945, the action which led to Carter's mission in Haiti was marked by a series of efforts at enforcement whose legal justification traces back to the Organization of American States. The authority cited in U.N. Security Council resolution 917 is Chapter VIII of the U.N. Charter, which describes the relationship with and authority of regional organizations. The resolution established an embargo tantamount to a blockade under the authority of the Security Council, declaring that the Security Council "calls upon Member States . . . in particular to halt outward as well as inward maritime shipping as necessary in order to inspect and verify their cargoes and destinations."[74] The resolution is unquestionably meant to enforce and to give effect to the goals of the Organization of American States. As stated by the Security Council, "the goal of the international community remain[ed] the restoration of democracy in Haiti and the prompt return of the legitimately elected President, Jean-Bertrand Aristide."[75] The same resolution calls upon Chapter VII of the U.N. Charter for authority[76] as well, leaving no question that "enforcement" is intended. The Security Council determined that:

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[70] Charter of the Organization of American States, signed at Bogota April 30, 1948, 2 UST 2394, 119 UNTS 3. Haiti is a member state.

[71] Protocol of Managua adopted by the Nineteenth Special Session of the OAS General Assembly on June 10, 1993, reprinted in 33 I.L.M. 1009 (1994).

[72] Protocol of Washington adopted by the Sixteenth Special Session of the OAS General Assembly on December 14, 1992, reprinted in 33 I.L.M. 1005 (1994).

[73] Aristide was still the recognized head of state—the de facto situation had not been made perfect by recognition and the Protocol was, in effect, an order by an international organization to comply. The Haitian military clearly continued to use and threaten force against Aristide and his supporters.

[74] U.N. Doc. S/RES/917, operative para. 10, (1994) (citing its authority under Chapter VIII of the U.N. Charter, and "call[ing] upon Member States cooperating with the legitimate Government of Haiti, acting nationally or through regional agencies or arrangements, to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to ensure strict implementation of the provisions of the present resolution and earlier relevant resolutions, and in particular to halt outward as well as inward maritime shipping as necessary in order to inspect and verify their cargoes and destinations").

[75] Ibid.

[76] Ibid.

> in these unique and exceptional circumstances, the situation created by the failure of the military authorities in Haiti to fulfill their obligations under the Governors Island Agreement and to comply with relevant Security Council resolutions constitutes *a threat to peace and security in the region. . . .*[77]

Thus, when Carter arrived in Haiti the situation under international law was affected by the following facts and considerations: (1) the Security Council had decided that the Cédras regime constituted a threat to international peace and security; (2) the Organization of American States considered the coup d'état an illegal use of force within the Americas; (3) the Security Council had decided to take enforcement action in support of the Organization of American States, including the exercise of belligerent rights through an embargo tantamount to blockade enforced by naval forces.[78]

The Carter mission attempted to gain compliance with an ultimatum which required the Haitian forces to submit to military occupation by the multinational force, or else the military occupation would be established by force. There is no distinction between these options and an ultimatum of war. This is especially clear because the political will to give effect to this ultimatum was manifest in U.N. Security Council resolution 940, the forces at sea approaching and patrolling the Haitian littoral, and the forces that were airborne during the final negotiations.

Therefore, the agreement had the same character and influence as an imposed treaty[79] surrendering control over military forces and territory—in compliance with the ultimatum—and given effect by the imposition of a military occupation that has abided by the Geneva Conventions of 1949[80] in so determined a fashion

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[77] Ibid., preamble, para. 13 (emphasis added).

[78] While the enforcement of the belligerent right of board and search to give effect to the embargo did not engage the full scope of the *jus ad bellum*—that is, Haiti did not respond with open and broad international hostilities—the exercise of board and search rights was necessarily bound by the *jus in bello* so the laws of war were already being applied to the exercise of belligerent rights by one side in the dispute.

[79] For a discussion of the complexities of what is called the law against imposed treaties, see Stuart S. Malawer, *Imposed Treaties and International Law* (1977). Since the agreement was imposed pursuant to a Security Council decision, the standard objections do not pertain.

[80] Convention I: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, 12 Aug. 1949, 6 U.S.T. 3114, T.I.A.S. 3362; Convention II: Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 12 Aug. 1949, 6 U.S.T. 3217, T.I.A.S. 3363; Convention III: Geneva Convention Relative to the Treatment of Prisoners of War, 12 Aug. 1949, 6 U.S.T. 3316, T.I.A.S. 3364; Convention IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1949, 6 U.S.T. 3516, T.I.A.S. 3365 (hereinafter "Geneva Conventions"). Also in Schindler and Toman, 305-331, 333-354, 355-425, and 427-488 respectively and 299-523 inclusive for the attendant documents and listings of reservations by the parties.

In Article 2, which is identical in each Convention, the parties agree that: "In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

that the International Committee of the Red Cross was requested to observe and assist.[81]

Further, as the Cédras regime was not recognized or accepted as a legitimate government by the Organization of American States or the United Nations, it can be said to have established, by virtue of the coup d'état, the moral, political, and perhaps legal equivalent of a domestic belligerent occupation—as anticipated by the parties which concluded the Geneva Conventions—of the territory of a sovereign member state of both organizations. Thus, the use of force by the Cédras regime was regulated by international law as described by the treaties to which Haiti is a party and to which the Cédras regime claimed to be the successor government.

As such, there should be little question that, even if the humanitarian requirements of general international law are not persuasive, the Cédras regime remains answerable to the humanitarian requirements of the laws of war. The Hague IV Convention was in effect, and Haiti and the United States, as the agent of the Organization of American States and the United Nations which had used its sovereign authority to send Carter's negotiating team, are both parties. The "General Participation Clause" of Article 2 thus presents no obstacle. Further, the coup d'état, because of its manner of execution, was likely a violation of the Geneva Conventions. If the Cédras regime was a belligerent occupation force and the human rights violations it is accused of are valid, it clearly committed grave breaches under all four conventions' common Article 3.[82]

Even though the Cédras regime remained unrecognized, it claimed to be the successor to the rights of the sovereign in Haiti. Consequently, it assumed the responsibilities of a successor government. Thus, the Cédras regime could arguably be responsible under the law whether the laws of war or the laws of peace were applicable.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

[81] Unclassified non-attribution session at the National War College. The non-attribution policy at the National War College seeks to elicit more candid commentary by protecting the identity of both invited and resident speakers.

[82] Geneva Conventions, Article 3, which is common to all of the Conventions, extends their provisions (at least to a fairly comprehensive minimum level) even "[i]n the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties." Those provisions include: "(1) . . . the following acts are and shall remain prohibited at any time and in any place whatsoever. . . .

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are recognized as indispensable by civilized peoples."

Haiti acceded to the Conventions on 11 April 1957. Note again the similarity to the list in the 1945 London Charter and U.N. Security Council resolution 917, supra note 67.

Crimes Against Humanity

As has been addressed in some detail, the precepts which were characterized as "novel" when the 1945 London Charter first held the Nazis accountable are now clearly law in war and peace. For the most part, they are accepted as the responsibility of all states to obey and, when appropriate, enforce. Clearly, if it was ever appropriate to enforce these principles it was in the case of Haiti under the authority of U.N. Security Council resolutions 917 and 940. The Carter-Cédras pact did not fulfill this enforcement obligation.

Was the Carter-Cédras Agreement Legal?

Given the extensive history and development of international human rights laws, there would seem to be no question at this point that the United States government is required not only to adhere to the Nuremberg principles and customary and conventional law, but to enforce those legal obligations as well. None of this has been lost on the Human Rights Watch/Americas Organization. The introduction to that organization's April 1994 report on Haiti merits quotation:

> President Clinton's policy of disregarding fundamental human rights issues to resolve Haiti's political crisis . . . has contributed to a human rights disaster that has tarnished his presidency and discredited its stated commitment to democracy and human rights around the world. Constant concession to the Haitian military by the President's Special Envoy [Ambassador Pezzullo], and the refusal to support President Aristide's position that members of the army must be held accountable for human rights abuses . . . have strengthened the army's hold on Haiti and prolonged its reign of terror. . . .
>
> The human rights issue at the core of Haiti's crisis is the army's responsibility for continuing widespread abuses against the Haitian people and its demand for impunity for those violations. To its shame, the Clinton administration supports a broad amnesty that would ensure that thousands of murders committed since the 1991 coup would go unpunished. . . .
>
> The Administration has failed to support a purge of the murderers in the Haitian army or to oppose a blanket amnesty for these killers . . . [I]t has embraced a murderous armed force as a counterweight to a populist president it distrusts. This inexcusable compromise has encouraged the army to sit back and wait while the administration itself presses Aristide to abandon the principle of accountability which international law . . . compel[s] him to uphold.[83]

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[83] "Terror Prevails in Haiti, Human Rights Violations and Failed Democracy," *Human Rights Watch/Americas National Coalition For Haitian Refugees*, v.6, n.5, (1994).

These are strong words, but they are well-based in international law. Conversely, former President Carter's agreement, later adopted by President Clinton, which forgoes U.S. prosecution of human rights violations by members of the Haitian military government, is irreconcilable with international law.

An argument can be made that the language of U.N. resolution 940, adopted by the Security Council on 31 July 1994, is broad enough in its scope to have permitted U.S. officials to strike the agreement reached with General Cédras. In this regard, resolution 940 provides in pertinent part that "Acting under Chapter VII of the Charter of the United Nations, [the Security Council] authorizes Member States to form a multinational force under unified command and control and, in this framework, *to use all necessary means* to facilitate the departure from Haiti of the military leadership."[84] When viewed in this light, one can argue that compromising with alleged murderers and terrorists was a legal option among the "necessary means" required to restore a legitimate government in Haiti.

This argument is specious. First, U.N. resolution 940 was written in contemplation of the need for armed intervention in Haiti. Armed intervention was, at that juncture, the unique remedy which resolution 940 added to the measures previously considered and authorized, because all other efforts to persuade the de facto government to abide by the Governors Island Agreement had failed. Furthermore, accepting the notion that U.S. negotiators could, in effect, immunize the de facto government for its criminal acts, or create a scheme which has this foreseeable consequence, eliminates the need for intervention in the first place. In other words, if the administration, acting for the United Nations, is going to forgive the illegal seizure of power in Haiti, as well as the human rights violations committed by the Cédras regime—both of which were key criteria for U.N. forces intervening in Haiti—why bother to intervene at all?

Second, U.N. resolution 940 is replete with references to the de facto regime as "illegal." It necessarily follows that the leaders of the Cédras "government" have no standing to represent the Haitian people in any immunity bargain and certainly not in one involving themselves. Moreover, leaving it to a Haitian government installed by the regime to decide whether, in effect, to ratify the Carter-Cédras deal is somewhat akin to having asked members of the Nazi government if they would forgive Hitler the crimes of the Holocaust. Absurd legal and moral consequences such as these are the very reasons the Universal Declaration, the International Covenant on Economic, Social and Cultural Rights, and the Convention Against Torture, among others, came into being. States are expected to punish human rights violations, not negotiate them away.

Third, even assuming the Clinton administration was acting within the scope of U.N. resolution 940, the resolution represents selective action by the Security Council, which was considering a narrow range of possibilities. In this regard, it cannot be successfully argued that the Security Council intended—or had the

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[84] U.N. Doc. S/RES/940 (1994) (emphasis added).

power—to set aside the well-established customary international law contained in the Universal Declaration, the International Covenant on Economic, Social and Cultural Rights, or the Convention Against Torture.

The final test of the breadth of the "all necessary means" authority is the Charter itself. It is impossible for the Security Council to grant itself authority which violates the Purposes and Principles of the Charter.[85] For example, "all necessary means" would never be interpreted to mean that the forces of the United States, if they had taken direct military action against the Cédras regime in Haiti, could commit violations of the laws of war in executing their military operations. The precedent for subjective interpretation of the authority in similar circumstances would endanger a long-standing and carefully balanced regime of law. It would constitute a violation of international law which would endanger the law itself. The well-intentioned objective of the operations could not be expected to forgive in advance such a violation. This fact was so obvious that great pains have been taken by the United States to assure its compliance with the full obligations of an occupying power, with exemplary results.

It is equally obvious that it is unacceptable for a peaceful method of resolving the conflict to disregard the law in such a manner as to subvert justice. This is especially true when justice is clearly at hand. The options available to Cédras and his cronies were to either surrender or lose in short order. Either outcome would have assured justice. Only the *deus ex machina* of the agreement prevented this result.

Therein lies the dilemma. The pursuit of justice would almost certainly have cost the lives of those sworn to uphold the Constitution of the United States. Article VI of the Constitution makes the O.A.S. and U.N. Charters, together with the other treaties mentioned herein, "the supreme Law of the Land."[86] A difficult issue arises when the act of preserving the lives of American soldiers undermines the very law which those soldiers have pledged to uphold. The question is further complicated by the possibility that saving lives today may lead to risking more lives tomorrow against another enemy who remains undeterred.

World War II was fought against such an enemy. The lessons of that war included the fact that it is necessary "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."[87]

Conclusions

No one questions the motives of the U.S. negotiators. Former President Carter, Senator Nunn, and General Powell all had in mind the preservation of human life. They wanted to arrive at an agreement—any agreement—which would enable the United States to avoid armed intervention in Haiti. That was, and remains, a worthy, significant goal. In doing so, however, they compro-

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[85] U.N. Charter ch. I.
[86] U.S. Const. art. VI.
[87] U.N. Charter preamble.

mised principles for which millions have died. Those who insisted that Nazi government officials must be held accountable for crimes against humanity did so believing the concept would pass, and must pass, from generation to generation without compromise. Compromising the Nuremberg precedents in itself creates a precedent which must not be tolerated.

What are the options for corrective action? Unfortunately, without strong U.S. support for criminal accountability, there is, at best, only limited potential for true accountability.[88] The 8 October 1994 edition of the *Washington Post* contained a news article which indicated that the Haitian parliament had agreed to amnesty for leaders of the coup that toppled President Aristide but had denied them the "sweeping pardon" they had sought with regard to charges of murder, rape, and corruption.[89] Speaking to reporters afterward, Deputy Edmond Mirold, the head of the parliament's Justice Commission stated, the amnesty "is very limited, very narrow and within the guidelines of the Haitian constitution. It addresses only political crimes, not crimes of a general nature. It does not protect anyone from *charges of human rights violations and other abuses*. That will be up to the courts to decide."[90]

Commenting on the action of the Haitian parliament, an unnamed senior U.S. official indicated: "it was too soon to say if the amnesty met the criteria established under the agreement brokered by Carter. That last minute deal said three senior military leaders must retire and leave office by Oct. 15 or after a 'general amnesty' was passed."[91]

The remarks of Deputy Edmond Mirold, if true, hold out the prospect that the Haitian government intends (and perhaps even desires) to conform to the requirements of international law. On the other hand, the remarks of the unnamed "senior U.S. official" only cloud the issue.[92] Mr. William Grey, III, whom President Clinton has chosen as his special advisor on Haiti, has indicated that he supports permitting General Cédras and senior members of his staff to leave Haiti. However, as Mr. Grey correctly noted, "without [an] amnesty provision, they could be arrested and prosecuted."[93] Indeed they could!

Given these circumstances, the best solution—perhaps the only solution in view of the fact that the U.S. Government has apparently decided not to take the lead in resolving the issue of human rights abuses in Haiti—would be to conduct criminal trials under U.N. auspices, as are now planned for Bosnia and Rwanda. This, of course, would require the United Nations to take the initiative in this matter.

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[88] See Baehr and Gordenker at 114-115.

[89] Booth, "Haiti Completes Limited Amnesty Bill for Aristide to Extend to Military," *Washington Post*, 8 October 1994, at A10:1.

[90] Ibid. (emphasis added).

[91] Ibid.

[92] That the motives and authority of the present Haitian parliament are suspect can best be appreciated from the comments of State Department spokesman Mike McCurry: "I don't want to be too strident about it, but that [legislature] has an air of illegitimacy about it. I can't imagine [a general amnesty] being acceptable to the legitimate government of Haiti." Barber, "State Dept. Decries Junta's Amnesty Move," *Washington Times*, 23 September 1992, at 1.

[93] Ibid.

U.N. action to prosecute the leaders of the de facto regime is unlikely in view of the U.S. role in their amnesty. Absent that remedy, the Nuremberg precedents have suffered serious damage at the hands of one of the world's greatest proponents of human rights, former President Carter. The consequences, albeit unintended, are at once real, and a definitive setback to human rights standards. The Carter action reduces enforcement to that in vogue at the time of the Treaties of Versailles and Lausanne.