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# A Commentary on David Scheffer's Concepts of Genocide and Atrocity Crimes

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David Scheffer's article is extremely rich and provides cause for thought concerning the concepts of genocide and atrocity crimes. His two proposals—liberating the use of the term “genocide” from manipulation by governments and international organizations and, more generally, substituting the new concepts of “atrocity crimes” and “atrocity law” for the actual legal, political, and public terminology used regarding the crime of genocide, crimes against humanity, and war crimes—call for some observations.

In his first proposal, Scheffer means to distinguish between the legal and the political application of the concept of genocide in order to enable a better prevention of the crime through faster action. If the legal application of the concept of genocide is indeed constrained by specific and rigorous requirements,<sup>1</sup> the political application should be, according to Scheffer, larger and more flexible, thus permitting intervention as soon as precursors of genocide are identified. This idea of separating the criminal character of genocide from its political reality is appealing, and the focus on the need for a more effective international action to intervene is definitely important.

It is, nevertheless, possible to look at this issue from a different angle, thus reversing Scheffer's proposal: focusing on the *legal application of intervention*—as a tool for prevention, since this is the ultimate goal here—rather than on a political application of genocide. As a matter of fact, I feel uneasy with the distinction made between a legal and a political application of the concept of genocide. According to Scheffer, the former is meant for the purpose of repression by prosecutors and courts, as opposed to the latter, which is meant for the purpose of intervention by governments and international organizations (particularly the United Nations). In my view, the legal definition of genocide is, and should remain, applicable in all cases. Of course, criminal repression, on the one hand, and diplomatic, economic, or (in the worst case) military intervention, on the other, are two different type of actions that do not involve identical stakes, nor do they have identical consequences. But both are based on legal definitions and provided for in legal frameworks. Therefore, my suggestion is that an effective and rapid action to intervene in an “atrocity zone” should be determined not necessarily by a liberal understanding of genocide but, rather, by a sharper legal understanding of intervention.

This approach would have three main advantages. First, it would permit the avoidance of a simplified use of “genocide” that might lead to more confusion between this concept and those of “crimes against humanity” and “war crimes,” or end up trivializing what is meant to be the “crime of crimes.”<sup>2</sup> Second, it would provide an occasion to clear up the fuzziness surrounding the terms “prevention” and “intervention” from a legal point of view. Third, it would actually liberate the international community from the need for any legal qualification attesting to or

certifying the existence of genocide as an exclusive precondition of intervention<sup>3</sup> and would give even more strength—as we will see—to Scheffer’s second proposal.

In this second proposal, Scheffer sets out to render the description of genocide and other atrocities meriting effective governmental and organizational responses (crimes against humanity, including ethnic cleansing, war crimes, and aggression) more accurate. He therefore suggests the use of a new concept of “atrocity crimes” as violations of “atrocity law” (a mix of international criminal law, international human-rights law, international humanitarian law, and the law of war). There are two main reasons to support this proposal. From a practical point of view, the terms “atrocity crimes” and “atrocity law” have the great merit of addressing a complex corpus of different criminal acts described in multiple norms of international law, thus providing a unified and simplified (rather than accurate) description or denomination—in other words, a useful “conceptual short cut.” Just as the word “feline” refers to many animals, the words “atrocity crimes” and “atrocity law” respectively refer, in a strongly expressive (almost “visual”) way, to diverse acts and norms related to the most serious international crimes. From a legal point of view, Scheffer’s second proposal is very attractive, since it reflects the spirit underlying the work of codification<sup>4</sup> done by both the International Law Commission (ILC) and the drafters of the Rome Statute of the International Criminal Court (ICC). This is manifested in four key ways:

- (1) Scheffer’s “atrocity crimes” as violations of “atrocity law” are actually nothing more than the “crimes against the peace and security of mankind” mentioned in the 1996 ILC Draft Code<sup>5</sup> (crimes against UN and associated personnel excluded)<sup>6</sup> or the “most serious crimes of concern to the international community as a whole” of the 1998 ICC Rome Statute.<sup>7</sup> Moreover, this corpus of international crimes, which Scheffer refers to as “atrocity crimes,” initially formed part of the subject-matter jurisdiction of the ad hoc International Criminal Tribunals for the Former Yugoslavia (ICTY)<sup>8</sup> and for Rwanda (ICTR).<sup>9</sup> Scheffer’s definition of each of these crimes is based on the two tribunals’ case law. This choice is coherent and appropriate because the aforesaid case law is itself grounded on international customary law, notably interpreted in the light of the 1996 ILC Draft Code,<sup>10</sup> and also greatly influenced the drafting of the 1998 ICC Statute.<sup>11</sup>
- (2) The idea that “atrocity crimes” have in common the fact of being particularly heinous acts of an orchestrated character, significant magnitude, and severe gravity, committed in time of war or in time of peace, summarizes perfectly the approach expressed in the work of the ILC, the ad hoc international judges, and the drafters of the Rome Statute, as well as the work of major legal scholars: genocide, crimes against humanity, and war crimes are perceived as being “core crimes” of international law, constituting violations of imperative international customary norms—or *jus cogens* norms<sup>12</sup>—that protect human dignity and concerning the international community of sovereign states as a whole.<sup>13</sup>
- (3) As noted by Scheffer, the term “atrocity law” offers an opportunity to correct the inaccurate general reference to “international humanitarian law” (i.e., the law of armed conflicts, which does not concern genocide or crimes against humanity committed outside the ambit of armed conflict) as the field of international law covering the crimes in question. More precisely, it actually acknowledges the international criminal tribunals’ broad interpretation

of this body of law, which goes beyond both the text of their statutes<sup>14</sup> and the recommendations of the UN secretary-general,<sup>15</sup> in accordance with the ILC Draft Code and with the Rome Statute.

- (4) Finally, Scheffer's second proposal allows for the description of "what a state appears responsible for committing"<sup>16</sup> and not only what individuals are internationally held accountable for. Thus, in his estimation, "atrocity crimes" generate individual as well as state international responsibility. As sensitive as the issue of state responsibility is, such a suggestion does build a bridge connecting the ILC Draft Code and the ICTY, ICTR, and ICC statutes (all related to individual criminal responsibility)<sup>17</sup> with the 2001 ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts.<sup>18</sup> It is particularly interesting at this point to remember that, in its first works on state responsibility, the ILC distinguished international "delicts" and "crimes"—the latter referring to violations of "superior norms" of international law, which implicitly meant peremptory norms of *jus cogens*.<sup>19</sup> Even though the very controversial term "international state crimes" has since been abandoned, the ILC Draft Articles adopts a close distinction between "internationally wrongful acts" and "serious breaches of obligations under peremptory norms of general international law."<sup>20</sup> It would, accordingly, be possible to understand the latter as including breaches of obligations under atrocity law—in other words, including atrocity crimes.<sup>21</sup> This possibility is confirmed by the ILC Draft Articles' commentary on art. 40, which defines the scope of application of those "serious breaches": after noting that "it is not appropriate to set out examples of the peremptory norms referred to in the text of article 40 itself, any more than it was in the text of article 53 of the Vienna Convention,"<sup>22</sup> the drafters affirm that basic rules of international humanitarian law and prohibitions on aggression, genocide, and crimes against humanity are to be regarded as such.<sup>23</sup>

For all these reasons, I not only support Scheffer's second proposal but also believe that, looking back to the initial goal of this discussion (that is, to think out more effective actions to intervene and protect civilian populations), his concept of "atrocity crimes"—as violations of atrocity law binding on individuals and states—should be taken into consideration for a better legal understanding of intervention.

Scheffer seems to associate the terms "intervention" and "prevention"—the latter being used in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (UNCG).<sup>24</sup> He therefore presupposes that international intervention is determined by the existence of acts of genocide—hence his first proposal to liberate the use of the term "genocide" from strict legal requirements in order to stimulate the international community to act more quickly. In my opinion, this presupposition is nevertheless questionable, for two reasons. First, intervention and prevention are not necessarily interchangeable: on the one hand, international intervention may be punitive (notably in the case of judicial intervention, such as the creation of the international criminal tribunals by the UN Security Council); on the other, prevention may be independent from any international intervention (in the case of national preventive measures such as, for example, the prohibition of genocide in domestic law). Second, the use of the term "prevention" in the UNCG is actually unclear,<sup>25</sup> and "nowhere does the Genocide Convention recognize that individual States or the international community acting in concert may or must intervene in order to prevent

the crime.”<sup>26</sup> Article 1 of the UNCG definitely sets out an *erga omnes* obligation to prevent (and to punish),<sup>27</sup> but whether the scope of this obligation includes a duty of humanitarian intervention is uncertain and controversial.<sup>28</sup> David Scheffer himself, as the US ambassador for war crimes at the time, expressed in late 1998 the view that there is no such legal obligation in the strict sense of the term.<sup>29</sup>

The fact remains that art. 8 of the UNCG authorizes the contracting parties to “call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention...of acts of genocide.” The reference to the UN Charter is a key element in better understanding intervention (putting aside the question of whether it is a right or an obligation implicitly provided for in the UNCG), since its legal basis is, after all, chapter 7 of that charter. As an exception to the general principles of sovereign equality (art. 2, §1)<sup>30</sup> and non-intervention (art. 2, §4, §7),<sup>31</sup> the second sentence of art. 2, §7<sup>32</sup> of the UN Charter enables the application of enforcement measures under chapter 7 related to action with respect to threats to the peace, breaches of the peace, and acts of aggression. International intervention is indeed justified under the law of the United Nations as soon as, in the Security Council’s discretionary estimation,<sup>33</sup> peace and security are threatened. Now, on this particular point, both the Security Council<sup>34</sup> and the ad hoc international criminal tribunals<sup>35</sup> consider that the “serious violations of international humanitarian law” committed in the former Yugoslavia and in Rwanda—that is, genocide, crimes against humanity, and war crimes, which together constitute Scheffer’s category of “atrocities crimes”—constitute such a threat. As a result, “[t]he implicit philosophy is that gross human rights violations anywhere are a threat to peace and security everywhere”<sup>36</sup> and justify (just as breaches of peace and aggression do) an action to intervene on the grounds of chapter 7.

More specifically, in the light of the preceding developments, it is possible to understand intervention, legally speaking, as a collective action authorized by the Security Council<sup>37</sup> and determined by the occurrence of atrocity crimes (or violations of atrocity law) that are deemed a threat to international peace and security, within the meaning of chapter 7 of the UN Charter. This apprehension of intervention, connected with Scheffer’s concept of atrocity crimes on the basis of the normative developments notably generated by the crises in the former Yugoslavia and in Rwanda, can lead to a more effective action of the international community in an “atrocities zone,” thus extending the legal scope of intervention to the most serious international crimes against fundamental human values, for the protection of civilians and in the interest of the whole international community.

Of course, that said, and as pointed out by others, support for the international implementation of minimum human rights in the face of severe governmental abuses and criminality should not disguise the risk of a postcolonial revival of interventionary diplomacy.<sup>38</sup> The key is finding a “proper balance in particular situations as between sovereign rights and humanitarian intervention”<sup>39</sup>—a balance that depends, in the last instance, on the motives behind the political will of the Security Council to use—or not to use—its discretionary power, or on the scale of the interventionary operation required and its evaluation, not to mention the decision-making process within the principal organ of the United Nations often criticized for the hegemony of the United States.<sup>40</sup> All these elements relate to the important and ongoing debate over the forms of legality review of Security Council decisions, “subject to respect for peremptory norms of international law.”<sup>41</sup>

## Notes

1. For the record, art. 2 of the *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277, defines genocide as follows: “genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.” This first international legal definition of the crime of genocide is reproduced verbatim in the International Law Commission’s 1996 Draft Code (art. 17) and in the statutes of the ad hoc international criminal tribunals for the former Yugoslavia (art. 4) and for Rwanda (art. 2), as well as in the statute of the International Criminal Court (art. 6).
2. On this expression, see William A. Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge: Cambridge University Press, 2006), 162. Such an expression should be understood as referring to the specific legal requirements provided for the qualification of genocide (in particular, the special “intent to destroy” a group), not as referring to a hierarchy of crimes that would imply differences in the sentencing of genocide, crimes against humanity, and war crimes. After much hesitation and ambiguity on this issue, the ad hoc International Criminal Tribunals ultimately rejected the idea that there is a hierarchy among those crimes in terms of seriousness or gravity. *Ibid.*, 561–62.
3. A precondition whose perverse consequences we have recently seen in the case of Darfur: see “Darfur,” special issue, *Genocide Studies and Prevention* 1, 1 (2006).
4. See Edward M. Wise, “Perspectives and Approaches,” in *International Criminal Law*, 2nd ed., ed. Cherif Bassiouni, 283–92 (New York: Transnational Publishers, 1999).
5. The text was adopted by the ILC during its forty-eighth session; cf. Cherif Bassiouni, “The Draft Code of Crimes against the Peace and Security of Mankind,” in *International Criminal Law*, 2nd ed., ed. Cherif Bassiouni, 293–310 (New York: Transnational Publishers, 1999). See arts. 16 (aggression), 17 (genocide), 18 (crimes against humanity), and 20 (war crimes) of the Draft Code of Crimes against the Peace and Security of Mankind (26 July 1996) [Draft Code].
6. Draft Code, art. 19.
7. See *Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/9 (17 July 1998), art. 5 (crimes within the jurisdiction of the Court) and arts. 6 (genocide), 7 (crimes against humanity), and 8 (war crimes). Article 5, §2, establishes that “the Court shall exercise jurisdiction over the crime of aggression once a provision is adopted . . . defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.”
8. See *Statute of the International Criminal Tribunal for the Former Yugoslavia* (1993), arts. 2 (grave breaches of the Geneva Conventions of 1949), 3 (violations of the laws or customs of war), 4 (genocide), and 5 (crimes against humanity).
9. See *Statute of the International Criminal Tribunal for Rwanda* (1994), arts. 2 (genocide), 3 (crimes against humanity), and 4 (violations of art. 3 common to the Geneva Conventions and of Additional Protocol II).
10. But also in the light of the UN Charter, several international conventions, national law, general principles of law, or judicial decisions and academic writings as subsidiary sources. For developments, see Schabas, *UN International Criminal Tribunals*, 74–120.
11. On this matter see Machteld Boot, *Genocide, Crimes against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court* (Antwerp: Intersentia, 2002).

12. The concept of *jus cogens* (peremptory norms) was first used in the *Vienna Convention on the Law of Treaties*, 12 August 1949, 1155 U.N.T.S. 331, [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (accessed 3 January 2007), arts. 53 and 64. These provisions recognize the existence of substantive norms of a fundamental character, such that no derogation from them is permitted even by treaty. Based on art. 53's commentary, it appears that, at the time of its drafting, serious violations of international criminal law and international human rights were already considered acts against *jus cogens*: see, notably, Alfred Verdross, "Jus Dispositivum and Jus Cogens in International Law," *American Journal of International Law* 60 (1966): 55–63, 57 ff.; Theodor Meron, "On a Hierarchy of International Human Rights," *American Journal of International Law* 80 (1986): 1–23, 14 ff.; Li Haopei, "*Jus cogens* and International Law," in *International Law in the Post-Cold War World: Essays in Memory of Li Haopei*, ed. Yee Sienho and Tieya Wang, 499–522 (London: Routledge, 2001), 508 ff.
13. See, e.g., Cherif Bassiouni, "The Sources and Content of International Criminal Law: A Theoretical Framework," in *International Criminal Law*, 2nd ed., ed. Cherif Bassiouni, 3–125 (New York: Transnational Publishers, 1999), 67 ff.; Rafael Nieto-Navia, "International Peremptory Norms (*jus cogens*) and International Humanitarian Law," in *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, ed. Lal Chand Vohrah, Fausto Pocar, Yvonne Featherstone, et al., 595–640 (The Hague: Kluwer Law International, 2003). On the rejection of the idea that there is a hierarchy of seriousness among these international crimes (according to the International Criminal Tribunals), see note 2 above.
14. See Preamble and art. 1 of the ICTY and ICTR Statutes. The reference to international humanitarian law was initially a limitation of the tribunals' competence *ratione materiae*, justifying their establishment by the UN Security Council as an enforcement measure, under chapter 7 of the UN Charter, for the restoration and maintenance of international peace and security.
15. UN Security Council, *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808* (1993), UN Doc. S/25704 (3 May 1993), §§ 29 and 31 ff.
16. David Scheffer, "Genocide and Atrocity Crimes," *Genocide Studies and Prevention* 1 (2006): 229–50, 246.
17. See art. 2 of the ILC Draft Code (art. 4 specifies that "the fact that the present Code provides for the responsibility of individuals . . . is without prejudice to any question of the responsibility of States under international law"); art. 7 of the ICTY Statute; art. 6 of the ICTR Statute; and art. 25 of the Rome Statute (the same article specifies that no provision of the statute "relating to individual criminal responsibility shall affect the responsibility of States under international law").
18. This text was adopted by the ILC during its fifty-third session [ILC Draft Articles]. For an analysis of the text see James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge: Cambridge University Press, 2002); Alain Pellet, "Le nouveau projet de la CDI sur la responsabilité de l'État pour fait internationalement illicite : requiem pour le crime ?" in *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, ed. Lal Chand Vohrah et al., 655–83 (The Hague: Kluwer Law International, 2003).
19. E.g., John Dugard, "Criminal Responsibility of States," in *International Criminal Law*, 2nd ed., ed. Cherif Bassiouni, 239–55 (New York: Transnational Publishers, 1999), 241 ff. Dinh Nguyen Quoc, Patrick Daillier, and Alain Pellet, *Droit International Public*, 6th ed. (Paris: LGDJ, 1999), 205; Julio Barboza, "State Crimes: A Decaffeinated Coffee," in *The International Legal System in Quest of Equity and Universality: Liber Amicorum Georges Abi-Saab*, ed. Laurence Boisson de Chazournes and Vera Gowlland-Debbas, 357–75 (The Hague: Martinus Nijhoff, 2001).
20. Provided for in the 2001 ILC Draft Articles on the Responsibility of States, part 2, chapter 3. Chapter 3 contains two articles: art. 40, which defines its scope of application,

- and art. 41, which spells out the legal consequences entailed by serious breaches of obligations under peremptory norms of general international law.
21. The use of the term “serious” would be redundant in case of violations of atrocity law (or commission of atrocity crimes) by a state, since the elements defining the “serious” character of the breaches—as that appear in art. 40’s commentary—are already implied in the cases in point (“It must also be borne in mind that some of the peremptory norms in question, most notably the prohibitions of aggression and genocide, by their very nature require an intentional violation on a large scale”). Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (International Law Commission, 2001) [ILC Draft Articles], [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf) (accessed 3 January 2007), 285.
  22. See note 12 above.
  23. ILC Draft Articles, 283.
  24. Article 1 of the 1948 convention reads, “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.” Article 8 authorizes states parties to “call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and the suppression of acts of genocide or any of the other acts enumerated in article III.”
  25. On the rare occurrence and the imprecision of the term “prevention” in international conventions, see Linos-Alexandre Sicilianos, “La responsabilité de l’État pour absence de prévention et de répression des crimes internationaux,” in *Droit international pénal*, ed. Hervé Ascensio, Emmanuel Decaux, and Alain Pellet, 115–28 (Paris: Pedone, 2000), 119 ff.
  26. William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), 491, where the author also reminds that “the matter was only addressed tangentially, in the debate concerning article 8, a provision watered down in the final version to remove specific mention of the Security Council, the logical candidate for such activity.” For details on the drafting of art. 8 see *ibid.*, 448 ff.
  27. Application of the *Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Further Requests for the Indication of Provisional Measures (13 September 1993), International Court of Justice Reports 325; Application of the *Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Preliminary Objections (11 July 1996), *ICJ Reports* 595, §31, Dissenting Reasons of Judge ad hoc Kreca, §101. See also Reservations to the *Convention on Genocide*, Advisory Opinion (1951), *ICJ Reports* 14, 24, and *Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain)* (1970), *ICJ Reports* 3, 32.
  28. For developments see Schabas, *Genocide in International Law*, 492 ff.
  29. See David Scheffer, address at the Conference on Genocide and Crimes against Humanity: Early Warning and Prevention (Holocaust Museum, Washington, DC, 10 December 1998), extract reproduced in Schabas, *Genocide in International Law*, 496.
  30. Art. 2, §1: “The Organization is based on the principle of the sovereign equality of all its Members.”
  31. Art. 2, §4: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” The first sentence of art. 2, §7, reads, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter. . . .”
  32. Art. 2, §7 (second sentence): “but this principle shall not prejudice the application of enforcement measures under Chapter VII.”
  33. See art. 39 of the UN Charter. On the discretionary character of the Security Council’s power to qualify a situation as being a “threat to the peace” see Hans Kelsen,

- The Law of the United Nations: A Critical Analysis of Its Fundamental Problems*, 2nd ed. (London: Stevens & Sons, 1951), 372 ff.; Keith Harper, “Does the United Nations Security Council Have the Competence to Act as a Court and Legislature?” *New York University Journal of International Law and Politics* 27 (1994): 103–57, 135 ff.; Jean-Pierre Cot, Alain Pellet, and Mathias Forteau, eds., *La Charte des Nations Unies. Commentaire article par article*, 3rd ed. (Paris: Economica, 2005), 1133 ff. See also, in the ICTY case law, *Prosecutor v. Tadic*, Decision, ICTY-94-1-A (2 October 1995), §§28–29 [Tadic Appeals Decision]; and in the ICTR case law, *Prosecutor v. Kanyabashi*, Judgment, ICTR-96-15-T (18 June 1997), §20 [Kanyabashi Trial Judgment II].
34. See UN Security Council Resolution 808, UN Doc. S/RES/808 (22 February 1993), §7; UN Security Council Resolution 827, UN Doc. S/RES/827 (25 May 1993), §4; UN Security Council Resolution 955, UN Doc. S/RES/955 (8 November 1994), §5.
  35. Tadic Appeals Decision, §30 ff.; Kanyabashi Trial Judgment II, §20 ff.
  36. Schabas, *Genocide in International Law*, 498–99.
  37. On the very critical question of whether humanitarian intervention without Security Council authorization could be legally permissible, see *ibid.*, 500 ff. William Schabas, whose opinion I strongly share, emphasizes that “tolerating individual initiatives in the absence of Security Council permission is a slippery slope that threatens chaos.” *Ibid.*, 502. Along the same lines, see, e.g., Antonio Cassese, “*Ex iniuria ius oritur*: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?” *European Journal of International Law* 10 (1999): 23–30; Alain Pellet, “La guerre du Kosovo. Le fait rattrapé par le droit,” *Forum du Droit international* 3 (1999): 160–65; Richard Falk, “Humanitarian Intervention after Kosovo,” in *The International Legal System in Quest of Equity and Universality: Liber Amicorum Georges Abi-Saab*, ed. Laurence Boisson de Chazournes and Vera Gowlland-Debbas, 177–98 (The Hague: Martinus Nijhoff, 2001), 188, where the author specifically refers to the “special role of the United States as a self-anointed guardian of international order, and as such exempt from any inhibiting constraints of international law”; Hubert Thierry, “Réflexions sur le ‘droit d’ingérence humanitaire,’” in *The International Legal System in Quest of Equity and Universality: Liber Amicorum Georges Abi-Saab*, ed. Laurence Boisson de Chazournes and Vera Gowlland-Debbas, 219–27 (The Hague: Martinus Nijhoff, 2001); Cot et al., *La Charte des Nations-Unies*, 464.
  38. Falk, “Humanitarian Intervention after Kosovo,” 178.
  39. *Ibid.*, 177. See also Vladimir-Djuro Degan, “Humanitarian Intervention (NATO Action against the Federal Republic of Yugoslavia in 1999),” in *Man’s Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, ed. Lal Chand Vohrah et al., 233–60 (The Hague: Kluwer Law International, 2003), 248 ff.; Ralph Zacklin, “Beyond Kosovo: The United Nations and Humanitarian Intervention,” in *Man’s Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, ed. Lal Chand Vohrah et al., 935–52 (The Hague: Kluwer Law International, 2003), 948 ff.; Karl Zemanek, “Human Rights Protection vs. Non-Intervention: a Perennial Conflict?,” in *Man’s Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, ed. Lal Chand Vohrah et al., 953–75 (The Hague: Kluwer Law International, 2003).
  40. See, e.g., Monique Chemillier-Gendreau, *Droit international et démocratie mondiale. Les raisons d’un échec* (Paris: Textuel, 2002).
  41. *Prosecutor v. Tadic*, Judgment, ICTY-94-1-A (15 July 1999), §296. See also *Yusuf and Barakat International Foundation v. Council and Commission* and *Kadi v. Council and Commission*, Judgments of the Court of First Instance of the European Communities, T-306/01 and T-315/01 (21 September 2005).