

- (vi) At the conclusion of the military operation the UN Security Council effectively endorsed NATO's action by providing a mandate for it to effect the restoration of law and order in the province. If the legitimacy of non-UN Security Council endorsed humanitarian intervention was in doubt prior to Kosovo, it must be less so today.
- (vii) One might argue therefore, that NATO's intervention was strictly contrary to UN law but legitimate – even lawful – nevertheless. The assumption that UN law and international law are synonymous in relation to the use of force is a common one but it does require challenge. The *UN Charter* is a treaty, albeit one of a very special status. It exists because the principal subjects of international law (sovereign states) brought it into existence. They did so in order to institutionalise the international community's response to threats to its own peace and security but, in doing so, they did not abdicate ultimate responsibility for their own legal obligations.
- (viii) If there is indeed an obligation exceeding that of non-intervention then it is likely to rest on the international community as a whole, not merely on a single member state. For this reason it is not unreasonable to expect the UN to be the principal focus for decision-making and to determine the existence of an obligation over-riding the principle of non-intervention. It is probably fair to say that this sort of consideration would have been in the minds of those who created the UN over half a century ago. It seems very likely also that this was one of the reasons why the UN was given both deterrent and coercive abilities, with the application of coercive military sanctions being the ultimate manifestation of the organization's ability to meet its obligations in that respect.
- (ix) However, the UN's failure to act certainly does not mean that the international community is necessarily under a legal obligation not to take action. What it could well mean is that the institution that ought to have acted on their collective behalf failed when it mattered. Given a breach of the *Genocide Convention*, and given an acceptance of the international community's obligations to prevent and punish that crime, is it the UN or the states party to the *Convention* that are under the obligation? Ultimately, it must be the states party. One way that they may see of exercising that obligation is, of course, through the mechanisms of the *UN Charter*. However, as we have argued above, the states themselves are not relieved of their obligations in the event that the UN's mechanisms fail to deliver or are thought most unlikely to do so. They retain an obligation to react, including to consider the possibility of military intervention.