

IV NON-UN MANDATED HUMANITARIAN INTERVENTION

- (i) It can be argued that in extreme exceptional circumstances the consequences of the UN's failure to act would be sufficient to warrant collective action nevertheless. There is a historical body of state practice that can be used to support intervention in such circumstances.⁵
- (ii) The deeply disturbing consequences of international inaction over Rwanda were an important backdrop to NATO's decision to intervene in Yugoslavia in 1999. When linked to considerations of national interest driven by the close proximity of Kosovo to the rest of Europe, international opinion, already hardened by the slaughter in Bosnia and Rwanda, was a factor that was borne in mind in many of the NATO capitals. The prospect of genocide being committed in Kosovo apparently convinced the nineteen member states of NATO that they had both a legitimate reason to act to prevent it and a clear national interest in so doing.
- (iii) National interest is regarded by many as a cynical rationale for state action, implying an approach to the conduct of international relations lacking in moral or ethical purpose. This ignores the important relationship between national interest and state practice. State practice reflects national interests. Since state practice is a vital component of customary law, the national interest of states must play an important role in the development of international law. The importance of state practice is fully recognised by the inclusion of customary law as one of the main sources of international law enshrined in the *Statute of the International Court of Justice*.
- (v) Of course, practice on its own is not sufficient; it has to be combined with *opinio juris* for it to contribute to the body of international law. However, it is not unreasonable to argue that an international obligation to prevent genocide, or other gross violations of human rights, should be regarded as providing the impetus necessary to convert mere state practice onto something approaching customary law. Given the power of opinion in the democratic politics that make up the Alliance, the NATO response represents powerful evidence to support the emergence of a customary norm. Three of the NATO states involved were Permanent Members of the Security Council, the full NATO membership represented a significant body of regional opinion, the NATO action was supported by many other states, and the intervention was at no time condemned by the UN Security Council.