
The Kosovo Crisis: Humanitarian Imperative versus International Law

EMILY SCHROEDER

One of the consequences of the proliferation of intrastate wars since the end of the Cold War has been the increase in the number of multilateral military interventions, often in efforts to stop gross human rights and humanitarian atrocities. There has been a standard procedure for these interventions—such as in the cases of Somalia, Bosnia, and Rwanda—with the United Nations Security Council passing resolutions authorizing military action. On March 24, 1999, NATO began a 78-day military intervention in the conflict in Kosovo without a UN Security Council resolution authorizing this action. The aim of this intervention between the government of the Former Republic of Yugoslavia and the Kosovar Albanian rebels (Kosovo Liberation Army or KLA) was to compel the Milosevic regime to meet a set of political demands. Although three UN Security Council resolutions had been passed in 1998—Resolution 1160 (March),¹ Resolution 1199 (September),² and Resolution 1203 (October)³—none of the resolutions explicitly authorized the use of force. The bombing continued until June 19, 1999. On June 21, NATO and the KLA officials signed a disarmament agreement. On June 24, the Yugoslav parliament approved a government proposal to end the war.

The central research question to be explored in this paper is whether NATO's military intervention in Kosovo was justified. In determining the legitimacy of NATO's action, the Kosovo case will be examined from both legal and just-war perspectives. Arguments have been made both praising and condemning the intervention. It is a difficult question to ask whether or not the humanitarian imperative outweighed compliance with international law, especially if the system

Emily Schroeder is a master degree candidate at Monterey Institute of International Studies. Previously, she worked with the United Nations on disarmament issues and received her Bachelor of Arts in Political Science from McGill University.

of international law was not working to save the victims of a humanitarian catastrophe. This paper will lay out both sides of the argument, concluding that while the humanitarian imperative took primacy over international law and justified NATO's military intervention, the method of intervention—air bombing—was not a legitimate means and, in the end, set a dangerous precedent for the future of humanitarian intervention.

First, the Kosovo case will be examined from a legal perspective, in an attempt to determine the legality of the intervention under international law. In particular, the UN Charter, human rights law, and humanitarian law will be addressed. Second, a just-war analysis will be applied to the Kosovo case. Just-war theory evaluates the ethical nature of a war by examining two dimensions: the morality of the decision to wage war (*jus ad bellum*), and the morality of the means by which the war is conducted (*jus in bello*).⁴ Third, the precedential effect of this case for future cases of military intervention will be considered. The recent Operation Iraqi Freedom demonstrates the ramifications of this powerful precedent. In examining the development of norms related to humanitarian intervention, this article will consider whether or not there is a need to develop new international law on this issue and, if so, what possible approaches can be taken.

KOSOVO AND INTERNATIONAL LAW

NATO's use of force without UN Security Council authorization technically qualifies as a breach of international law as codified by the 1945 UN Charter, which governs the threat or use of force. Article 2(4) of the Charter reads:

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.⁵

The UN Charter provides for only two exceptions to this prohibition. The first is embodied in Article 51, which provides for the right to self-defense. This article constitutes the legal foundation of the Washington Treaty by which NATO was founded and serves as a basis for its Article 5. The second exception that allows for the use of force can be found in Article 42:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate,⁶ it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.

The Security Council is charged with primary responsibility over the maintenance of international peace and security, as specified in Article 39:

The Security Council shall determine the existence of any threat to peace, breach of peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Consequently, any threat or use of force that is neither justified as self-defense against an armed attack nor authorized by the Security Council is technically a breach of the UN Charter. However, since the drafting of the Charter, an interpretation of Article 51 has evolved that an armed attack ("clear aggression") as well as an imminent armed attack (justifying "anticipatory self-defense") may trigger an Article 51 response.⁷ Examples of clear aggression could include the use of force to seize territory, to attain political domination, and to commit genocide.⁸

Another paragraph of the UN Charter relevant to NATO's action in Kosovo is Article 103, which states that Charter regulations prevail over any other treaty or agreement. This is furthered by the preeminence of Article 2(3) of the Charter over any other source of international law, as enshrined in Article 30(1) of the 1969 Vienna Convention on the Law of the Treaties. All NATO members reiterated the obligations acquired under the UN Charter at a regional level in the 1975 Helsinki Act of the Conference on Security and Cooperation in Europe. Moreover, NATO members once again confirmed their commitment when they signed the organization's founding act, the Washington Treaty, in which Article 7 explicitly binds NATO countries to act within the UN Charter.

NATO's decision to intervene militarily in Kosovo without Security Council authorization was a break from the usual practice of international interventions.

NATO's decision to intervene militarily in Kosovo without Security Council authorization was a break from the usual practice of international interventions. In military interventions by the international community since the end of the Cold War, such as those in Somalia, the Balkans, and Rwanda, the Security Council authorized each in accordance with the UN Charter. Therefore, two questions arise: why was a Security Council resolution not pursued to authorize NATO's use of force? And, despite this breach, are other provisions found in international law that justify NATO's intervention?

One can understand why NATO did not seek explicit authorization from the Security Council, since the likelihood of consensus by the permanent members in support of military action (especially in the Balkans) was highly unlikely. Evidently, NATO decided that not asking for authorization was better than to have it frustrated by a veto, which might have complicated diplomatic efforts to

address the crisis and would have made subsequent military action politically more difficult.⁹ After the NATO action began, the representative of the Russian Federation proposed a resolution in the Security Council to declare the NATO action unlawful and to direct that it be terminated.¹⁰ In the subsequent vote, the resolution was supported by three states, including Russia and China, two of the permanent members of the Security Council. Therefore, NATO had reason to assume that Russia or China would have vetoed a resolution authorizing military intervention by NATO.

Despite NATO's breach of the UN Charter, could NATO intervention into Kosovo have been legally justified under international law? NATO and the states supporting the intervention gave three legally relevant justifications for the use of armed force. First, refugee flows, inter-ethnic violence, and human rights violations resulted from the actions of Milosevic's Serbian forces, placing Serbia directly in breach of the 1948 UN Universal Declaration of Human Rights and the 1949 Geneva Conventions.¹¹ NATO was merely enforcing compliance with these international norms. Second, NATO claimed to have lawful authority because of principles and norms that had progressively been adopted by the Organization for Security and Co-operation in Europe (OSCE), particularly those related to minority rights. Texts had been adopted suggesting that states in the OSCE area might allow a greater degree of mutual interference in each other's internal affairs.¹²

A third legal argument asserted that NATO intervened on behalf of principles of human rights and international order that were fully compatible with those of the UN Charter. Its claim was that NATO's action would strengthen

The legality of NATO's intervention seems, at worst, a breach of international law and, at best, questionably ambiguous.

those principles, rather than weaken them, as reflected in the Security Council Resolutions 1160, 1199, and 1203. Along this line of argument, NATO leaders framed the campaign against Serbia as taking place in the context of a history of defiance of UN resolutions by Milosevic. Over the years, the Security Council had become increasingly more specific in focusing on human rights violations by the Milosevic regime and increasingly coercive

in the use of language threatening an unspecified response by the international community.¹³ Although the UN did not explicitly authorize NATO action, it was an implicit evolution from UN resolutions, and it was certainly not prohibited by any UN resolution.

The legality of NATO's intervention seems, at worst, a breach of international law and, at best, questionably ambiguous. Several experts have refuted NATO's claim that it had legal legitimacy for its intervention in Kosovo. One

argument is that the 1948 UN Universal Declaration of Human Rights and the 1949 Geneva Conventions, unfortunately, are “silent on preventative measures.”¹⁴ Another argument is that the OSCE is a “regional arrangement” under Chapter VIII of the UN Charter, unlike NATO; therefore, enforcement action would require Security Council authorization.¹⁵ In addition, regarding NATO’s actions as taking place within reference of the UN framework, NATO’s proposals for using force and sanctions were not introduced at the time of the passing of the UN resolutions. The reference to “additional measures” in the resolutions was generally understood to mean that the Security Council would have to authorize any further action.¹⁶

In effect, NATO did not make much effort to justify its intervention by international law references. Only Belgium even mentioned humanitarian intervention, and then merely as a possible legal justification.¹⁷ As the argument has been made that NATO’s actions were not clearly justified by legal means, one must look to other conceptual frameworks to consider the legitimacy of the intervention into Kosovo. One such framework is the just-war theory.

KOSOVO AND THE JUST-WAR TRADITION

While just-war theory may not be able to tell us decisively if NATO was right or wrong in its intervention, the theory may clarify the issues that demand attention in order to reach some conclusions. Just-war theory assesses the ethical nature of the decision to wage war and the means by which the war was conducted.¹⁸ The second element, “just-strategy,” can be broken down into four parts: likelihood of achieving main goals, sponsorship by a legitimate authority, use of force as a last resort, and proportionate use of force.¹⁹ In examining each of these elements, I will argue that while the cause for military intervention was just, the strategy chosen by which to conduct the war was not justified.

Just-Cause

Was the situation of such severity that NATO had the right to intervene in the internal affairs of a sovereign nation? Those in favor of NATO’s actions believe there is no doubt that the Albanian majority population of Kosovo was placed in severe jeopardy by actions taken under the authority of Milosevic, who incited Serbian acts of violence with the intention of intimidating and coercing an Albanian mass exit.²⁰ It was glaringly clear that something had to be done, and quickly, “or else the Bosnian ordeal would be catastrophically reproduced” with damaging consequences for the future of Europe and the credibility of NATO.²¹ Therefore, in this case, proponents claim that the humanitarian imperative did indeed outweigh the legal constraints.

Critics of the just-cause camp do not believe that the level of violence justified NATO military action, since the extent of the human rights violations in Kosovo prior to the withdrawal of the OSCE's observer force (prompted by NATO's air-bombing) was not yet massive and widespread.²² The Independent International Commission on Kosovo assessed the atrocities from February 1998 to March 1999 and found the casualty level to be relatively low—around 1,000 civilians.²³ Critics further assert that under no circumstances would NATO be justified in violating international law, since such action would set a precedent of

Despite the controversy surrounding NATO's military operation, the international community had a moral duty to respond in the face of a "supreme humanitarian emergency," and NATO did act when the UN was unable to respond.

humanitarian intervention with a huge risk of justifying future military interventions without UN authorization—eroding the very foundation of trust and order in the international community.

Another issue related to just-cause is the debate over NATO's selectivity of the Kosovo case for humanitarian intervention. Critics claim that NATO seems to believe that the human rights of some people are worth protecting more than those of others, and that the hypocrisy in such selectivity undermined NATO's moral authority.²⁴ Evidence of selectivity in countering human rights abuses, critics assert, can be found in NATO's inaction in Sudan and Ethiopia.

However, supporters of the Kosovo intervention would assert that this selectivity has been justified in the context of NATO as a regional organization. These proponents claim Serbian policies in Kosovo, as they did earlier in Bosnia, threatened the stability, welfare, and values of European states in a way that is not the case for Sudan or Ethiopia, for example. Only those "in the immediate neighborhood" have both the interest and the ability to right the wrongs that are in fact universal.²⁵

In weighing both sides of the argument, the moral imperative of responding to impending humanitarian disaster and the need to relieve and prevent further human suffering did outweigh any other reason for inaction.²⁶ While the selectivity question is bothersome, it may be argued that action anywhere in the face of gross human rights violations can at least set a precedent for the need for action in future humanitarian crises. Serbs were systematically persecuting the Albanian Kosovars in pursuit of a "preconceived plan to terrorize and deport Albanians."²⁷ Despite the controversy surrounding NATO's military operation, the international community had a moral duty to respond in the face of a "supreme humanitarian emergency,"²⁸ and NATO did act when the UN was unable to respond. It is unfortunate that the genuine moral duty to protect

human rights is not felt in more cases. It is also unfortunate that NATO did not set a better example in this case for future interventions by acting on the just cause with a just strategy.

Just-Strategy

It has been determined that the cause was just. Therefore, the question of whether to act has been addressed. The question of how to act is entirely another matter. The four parts of the just-strategy concept are considered below and applied to NATO's intervention.

Likelihood of achieving NATO's main goals. NATO's ability to defeat Milosevic's forces militarily was never doubted. Rather, the question was whether NATO would achieve its political objectives at a reasonable cost. These objectives were to stop the ongoing human rights violations, end all violence in Kosovo, and facilitate a settlement of the conflict along the lines of the Rambouillet Conference.²⁹

Critics do not believe that NATO plans prior to invasion reflected the desire to achieve these goals.³⁰ Rather, the high command was "divided, blundering, and in many ways unprepared."³¹ There is evidence that NATO believed it would be a short war, lasting only a few days; however, the "destructive war" lasted 78 days, ending only when the Alliance agreed to dilute the Rambouillet Agreement, including the provision that Kosovo would remain part of Serbia.³² NATO "had no game plan for this war, other than the naïve belief that the bombs would quickly work, as they had at Dayton, to bring Serbia to its senses."³³ Critics add that NATO's intervention did not include plans to prepare for the huge flood of refugees, protection of civilians on the ground, or means to mitigate huge economic losses of neighboring states related to tourism and trade.³⁴ Therefore, the likelihood of achieving its goals merely by bombing from 15,000 feet would set the stage for disastrous consequences once the intervention began.

Sponsorship by a legitimate authority. Proponents of NATO's intervention believe that NATO can claim the legitimacy of a nineteen-nation decision process and the normative commitments of a democratic Europe.³⁵ It has been suggested that NATO was forced "to substitute itself for the UN Security Council," which was legitimate since many of the countries were involved in the same settings, shifting "their decision-making from the one they preferred to believe in, to the one they trusted would get things done."³⁶ NATO intervention was therefore not "unilateral," but was rather "collective," pursuant to a decision by a responsible body, including three of the five permanent members of the Security Council entrusted by the UN Charter to respond to threats to international peace and security. Furthermore, one can argue that by never actually condemning NATO's intervention, the Security Council was in fact implicitly authorizing the action. On the

third day of the air campaign, the Security Council refused a request to condemn NATO's military action in a resolution put forward by Russia.³⁷ In addition, UN Secretary-General Annan issued a written statement on the second day of the NATO campaign stating: "It is indeed tragic that diplomacy has failed, but there are times when the use of force may be legitimate in the pursuit of peace."³⁸ He reminded the inactive Security Council and NATO that the Council "has primary responsibility for maintaining international peace and security" and "should be involved in any decision to resort to the use of force."³⁹ However, in his opening address to the Fifty-Fourth UN General Assembly, he commented that "the imperative of effectively halting gross and systematic violations of human rights with grave humanitarian consequences" is an "equally compelling interest."⁴⁰

On the other hand, critics believe that nothing short of explicit authorization by a UN Security Council resolution for military interventions is legitimate cause for intervention, not only in terms of legality, but also in regard to the UN's "collective legitimization" function. This, they claim, is because NATO represents less than the "common interest."⁴¹ Non-NATO powers might see NATO's rationale with suspicion given the precedent being set for future military action outside of UN authority.

In weighing both sides, the "collective legitimacy"⁴² was significantly higher through a multilateral intervention under the umbrella of NATO than a unilateral intervention or none at all.⁴³ In this case, the urgency for action to prevent ethnic cleansing may make it different from an ordinary decision. Therefore, as in the case of the question of legality, it can be determined that NATO had enough legitimate authority to intervene since key normative principles were at stake and because the UN security mechanism failed to work.

Use of force as a last resort. The diplomatic effort throughout 1998 culminated in the Rambouillet Agreement. The pro-intervention side maintains that diplomatic options were exhausted prior to military action. Richard Holbrooke had visited Belgrade several times in 1998 and early 1999 to induce Milosevic to accept a diplomatic solution as a "non-negotiable set of demands."⁴⁴ When these demands were rejected by Belgrade and reluctantly accepted by the KLA at Rambouillet, Serbia's rejection provided the political and legal basis for NATO military action.⁴⁵ Milosevic had miscalculated NATO's resolve to use force and decided he could ignore NATO's non-military measures, suggesting that Milosevic's "authoritarian personality, his inability to assess realistically his chances, and the closed nature of his regime" may have left NATO no reasonable alternative by early 1999 but to go to war.⁴⁶

Critics, on the other hand, believe that the diplomatic effort was characterized by "confusion and mixed signals."⁴⁷ The diplomatic stance of the U.S. Secretary of State, Madeleine Albright, was to oppose any sort of flexibility in deal-

ing with Belgrade in the lead-up to the war and to oppose seeking seriously to engage the United Nations in the process of offering protection to the people of Kosovo.⁴⁸ Some observers even speculate that the Western powers intentionally provoked the conflict by making unacceptable demands on the Yugoslav government.⁴⁹ Throughout this process, the U.S. threat to use force caused a “slippery slope,” leading to the questioning of NATO’s credibility in the world media.⁵⁰ Therefore, taking action in Kosovo became a question of redeeming NATO’s credibility.

While critics insist that NATO acted too rashly, NATO’s defenders argue that the Alliance had exhausted all realistic options short of force to achieve its humanitarian and security objectives. However, it does seem that there are some grounds that a more flexible approach might have achieved acceptable results without necessarily going to war. In addition, and most importantly, whether or not flexible diplomacy would have succeeded, which we cannot know at this point, the “failure to attempt it casts a dark shadow across the NATO initiative.”⁵¹

Proportionate use of force. Did NATO use the right means in the conduct of its war? There are two key elements in Western tradition to determine “just-strategy:” proportionality and discrimination. Albert R. Coll defines both elements for reference in the case of NATO’s intervention in Kosovo.⁵²

Proportionality requires that “the means used, and violence they generate, be roughly proportional to the evils the war sets out to eradicate.” Discrimination requires that military forces refrain from targeting civilians. NATO’s choice of air power strategy alone was a serious flaw of the intervention, as it was a disproportionate attack. To this end, NATO’s strategy was not justified, making it difficult to reconcile with the humanitarian claims made by NATO spokespersons.

Those in favor of NATO’s choice to use only air power claim that in the context of the recent U.S. role in the intervention in Somalia, there was no domestic tolerance for American soldiers to return in body bags, and intervention may not have had any domestic support unless minimal Allied casualties were assured.⁵³ Secondly, the argument was that a show of force from the air would limit the war to only a few days. Supreme Allied Commander General Wesley K. Clark claims that from the outset NATO developed four measures of merit to assure that NATO’s air bombings “would meet its political will”:

- 1) avoid Allied losses, enabling the campaign to persist as long as required;
- 2) focus NATO’s efforts on the Serb forces committing the atrocities;

[W]hether or not flexible diplomacy would have succeeded, which we cannot know at this point, the “failure to attempt it casts a dark shadow across the NATO initiative.”

- 3) aim for minimum collateral damage, requiring detailed risk analyses and use of precision munitions to avoid injury to innocent civilians; and,
- 4) maintain Alliance cohesion.⁵⁴

General Clark claims that the air campaign was “effective enough” in achieving NATO’s goals: “the Serbs are out, NATO is in, and most of the refugees are back,”⁵⁵ thereby justifying the method of NATO’s air campaign.

During the 78-day air war, not a single American soldier or pilot died. One American pilot was shot down, and three soldiers were taken prisoner. However, critics disagree that the cost of maintaining no Allied casualties was worth the death and destruction of Kosovo resulting from NATO’s actions.⁵⁶ The conflict left tens of thousands of homes, businesses, and schools burned, and it resulted in attacks on power stations, oil refineries, factories, roads, bridges, television stations, water supplies, and sewage treatment plants.⁵⁷ Accidents resulted in serious damage to 20 hospitals, 190 schools, a refugee camp, a refugee convoy, public housing projects, and the Chinese embassy in Belgrade.⁵⁸ In addition, in spite of NATO’s effort to avoid civilian casualties, some 500 civilian deaths are documented as directly resulting from NATO bombing.⁵⁹ Critics also condemn NATO’s use of cluster bombs, the environmental damage caused by the use of depleted-uranium-tipped armor-piercing shells and missiles, and the toxic leaks caused by the bombing of industrial and petroleum complexes in several cities.⁶⁰

These practices seem highly questionable in a “humanitarian campaign” designed to “protect” civilians. During the NATO bombing campaign, the then-UN High Commissioner for Human Rights at the time, Mary Robinson, voiced concern that NATO’s actions may qualify as war crimes.⁶¹

An even graver accusation is that NATO’s bombings gave Milosevic the “green light”⁶² to begin massacring the Kosovar Albanians. There is evidence that a source secretly gave the Serbs, in advance, NATO’s plans for its first 10 days of bombing targets.⁶³ Serbian ethnic cleansing of the Kosovar Albanians occurred only after NATO began bombing in Kosovo. In other words, the NATO bombing triggered the acceleration of Serbian acts of violence. A number of consequences of NATO bombings from the period of March 24 to June 19, 1999, were reported: the number of killings were estimated to be near 10,000, with the vast majority of the victims being Kosovar Albanians killed by Serbian forces; approximately 863,000 civilians sought or were forced into refuge outside Kosovo; and an additional 590,000 were internally displaced.⁶⁴ There is also evidence of widespread rape and torture, as well as looting, pillaging, and extortion.⁶⁵ Whether or not the NATO air campaign provoked the attacks on the civilian Kosovar population, critics assert that the bombing created an environment that gave the Serbian forces enough cover and confusion to make such an attack feasible.

Therefore, when evaluating NATO’s intervention into Kosovo through just-war theory, one is faced with a paradox. While NATO arguably had just

cause to intervene, the protracted NATO air-bombing campaign seemed a disproportionate response, and with a significant cost to civilian life. The morality of the cause for intervention does not seem to justify the actual use of air bombing. The strategy was deeply flawed from the beginning, as the likelihood was minimal that NATO could achieve its political goals from an altitude of 15,000 feet. While NATO may have been the legitimate authority to undertake such an intervention, it does not seem that NATO exhausted all other non-military options prior to deciding to resort to war. Compounding these issues, NATO's refusal from the start to even consider the use of ground troops to protect civilians from ethnic cleansing and to target the actual Serbian forces committing the atrocities proved that the leaders of these states are unwilling to risk lives of their nationals for the humanitarian cause, even if such costs would be required to make the entire mission more effective.⁶⁶ It seems questionable that the method chosen to fight this humanitarian war was not necessarily that which would avoid the most deaths of innocent civilians.

PRECEDENTIAL EFFECT AND NEW INTERNATIONAL LAW

Though not authorized by the Security Council as required by Article 53 of the UN Charter, the Kosovo action could be described as a precedent for the legitimacy of humanitarian intervention after a process of collective decision making. One could take the view that NATO's action suggests that it can "reinterpret, on a case-by-case basis, the UN's prerogative to sanction the international use of force."⁶⁷ For example, the rhetoric used by U.S. President George W. Bush on the recent

U.S. invasion into Iraq could be interpreted as following this example—that while desirable to increase legitimacy, UN Security Council authorization is not necessary, especially when those who intervene are "coalition forces" comprised of more than one member of the Security Council.⁶⁸ This suggests a utilitarian attitude toward international law on the part of these powerful states—that it is "valuable only so long as it is usable."⁶⁹ NATO's action in Kosovo, regard-

less of how well-intentioned, does provide an unfortunate precedent, as it left the door open for hegemonic states to use force for purposes clearly incompatible with international law. Operation Iraqi Freedom, undertaken by the United States and the United Kingdom in Iraq, beginning March 20, 2003, demonstrates how the precedent of Kosovo potentially paved the way for abuse of international law under the pretext of humanitarian intervention. The Iraq example emphasizes today's

The Iraq example emphasizes today's urgent need for internationally agreed criteria to define when such intervention is appropriate.

urgent need for internationally agreed criteria to define when such intervention is appropriate.

FOLLOWING THE PRECEDENT: OPERATION IRAQI FREEDOM

In evaluating the precedential effect of the Kosovo case, the same question posed regarding NATO's war in Kosovo can be applied to the "Second Gulf War:" was the U.S. and UK military intervention in Iraq justified? In evaluating the legitimacy of the Iraq case, it is useful to analyze once again from legal and just-war perspectives. The primary reasons for war given to the public were: 1) to disarm Saddam Hussein of weapons of mass destruction, 2) to lessen the threat of international terrorism, and 3) to promote democracy in Iraq and the surrounding areas.⁷⁰ Although in making the case for war President Bush referred to the Iraqi government's massive violations of human rights,⁷¹ this justification was subsidiary to the three main arguments. The fact that Bush did use this rhetoric, however, makes the case worthy of analysis in this context.

Legal Analysis

As with the Kosovo case, Operation Iraqi Freedom proceeded without authorization of the UN Security Council; therefore, it technically constituted a violation of international law. However, two significant contextual differences between the cases can be identified.

The first difference is the context provided by the devastating terrorist attacks of September 11, 2001, on the United States. Flaunting the vulnerability of the strongest political, economic, and military leader of the Free World, the 9/11 attacks caused a fundamental shift in American foreign policy, as seen in what has come to be known as "the Bush doctrine." Articulated in the 2002 National Security Strategy, this doctrine states that the Administration is prepared to act preemptively rather than simply in response to an actual or imminent armed attack.⁷² Following the 9/11 attacks, U.S. action in the war on terrorism has been justified in terms of "anticipatory self-defense." This is the notion that when there is certain knowledge that an attack by an adversary is imminent a preemptive attack out of self-defense is considered to be legitimate and legal. One could thus ask if the U.S. actions in Iraq are legally justified, as the concept of self-defense is enshrined in Article 51 of the UN Charter.⁷³ However, Article 51 clearly does not apply to the case of Iraq, as there was neither an armed attack by Iraq on the United States, nor does there appear to have been clear evidence that an attack by Iraq on the United States was in fact imminent. The second notable difference between the cases of Kosovo and Iraq is that a UN Security Council resolution was more actively and vigorously pursued in

the case of Iraq. The first such resolution was Security Council Resolution 1441, adopted about four months prior to the beginning of the war.⁷⁴ This U.S. resolution generated international support for a high level of compliance from Iraq, but it did not explicitly provide for the use of force. Despite the lack of a “trigger” mechanism in which a violation of the resolution would justify the use of force, the United States deemed Iraq to be in “material breach” of Resolution 1441, and to have systematically violated 16 previous Security Council resolutions on Iraqi compliance dating back to 1990. According to the U.S. argument, this non-compliance provided the “quasi-legal”⁷⁵ justification for the United States to enforce the will of the UN on its behalf.⁷⁶

The second attempt by the United States to secure the legal consent of the UN Security Council occurred two months after the beginning of military operations in Iraq. Security Council Resolution 1483,⁷⁷ adopted on May 22, 2003, was enacted under Chapter VII of the UN Charter.⁷⁸ Noticeably absent from this resolution is any condemnation of the use of force by the United States and the United Kingdom. The resolution foresaw the gradual transfer of the administration of the “oil-for-food” program to the American and British authorities in Iraq, thereby legitimizing in a sense their roles as the responsible authorities to govern Iraq.

A further legitimization of the current U.S. and British roles in Iraq was provided in the most recent UN Security Council Resolution 1511, adopted on October 16, 2003. This resolution is the closest the Security Council has come to justifying a humanitarian intervention under U.S. and UK command *ex post facto*, authorizing a “multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq” and requesting “the United States, on behalf of the multinational force...to report to the Security Council on the efforts and progress of this force as appropriate and not less than every six months.”⁷⁹ There is irony in this language, as the UN Security Council, whose integrity has been directly contravened, appears acquiescent and aware of its inadequacy, but attempts to maintain some level of authority by requiring the United States report to the Council.

Unlike in the Kosovo case, UN Secretary-General Annan did not concede that this case might have been one in which use of force was permissible. Rather, the secretary-general scolded the United States for attacking Iraq without the Security Council’s blessing. “My concern is that...it could set precedents that resulted in a proliferation of the unilateral and lawless use of force, with or without justification.”⁸⁰ Indeed, the Bush doctrine erodes the very essence of the Charter by dismissing the significance of the equality of all states and the notion of sovereignty. Therefore, it is evident that the United States and United Kingdom intervention into Iraq directly undermined the UN Charter’s provisions, constituting a violation of international law.

IRAQ AND THE JUST-WAR TRADITION

As with the Kosovo case, the Iraq war does not fall neatly under legal justification; therefore, just-war analysis is also useful to assess this case.

Just-Cause

Did the brutality of the Iraqi regime toward its own people justify humanitarian intervention to overthrow it, even if Iraq posed no threat to other countries? It has already been noted that humanitarian reasons were subsidiary to the United States' main arguments for intervention. The closest the United States came to using humanitarian goals as justification was in the argument that the overthrow of Saddam Hussein's regime would lead to the promotion of democracy in Iraq and surrounding areas. According to the United States, Iraqis would be "liberated" by ending years of oppression and by putting the political process and rule of law into the hands of Iraqis themselves. The true test of the U.S. commitment to these goals will be when free and fair elections in Iraq take place. Casting doubt on this commitment is the United States' strong ties to various other non-democratic states in the region, such as Egypt, Saudi Arabia, Azerbaijan, Kazakhstan, and Uzbekistan.⁸¹

While Saddam Hussein's regime was widely known to be repressive, there was not evidence of imminent genocide or widespread crimes against humanity. Rather, 1988 would have been an appropriate time for such intervention when Saddam Hussein gassed his own Kurdish citizens in the Anfal genocide, killing more than 100,000 Kurds.⁸² In the face of this atrocity, the West and the United States continued to support Saddam Hussein.⁸³ A more pressing humanitarian intervention in the present would be in the Democratic Republic of Congo, where more than 3.3 million people have been killed in the conflict during the past four and a half years.⁸⁴ Thus, as with the legal case, the choice of Iraq for military intervention does not meet the standard in just-war theory to be a morally justifiable decision.

Just-Strategy

As in the case of Kosovo, the four components of just-strategy can be applied to the case of Iraq to further evaluate its legitimacy.

Likelihood of achieving goals. As with NATO in Kosovo, the U.S. ability to defeat Iraq was never doubted. Rather, the question was whether the United States could achieve its objectives at a reasonable cost. Yet, there is evidence that there has been "a singular lack of advanced planning by the coalition," which has

been responsible for the inability to address the lack of rule of law now prevalent in Iraq.⁸⁵ Top Bush administration officials have acknowledged that their post-Saddam Hussein plan for rebuilding Iraq has been substantially flawed on the security front. Richard Perle, a member of the Pentagon's Defense Policy Board, commented that the postwar plan failed to provide for the Iraqis themselves to take control as soon as possible.⁸⁶ This claim is difficult to evaluate at this point, as the goals do not appear to be clearly defined.

Sponsorship by a legitimate authority. The U.S.-led "coalition of the willing," in the absence of a Security Council mandate, did not even amount to the "quasi-totality" of NATO.⁸⁷ In fact, it was quite the opposite—several NATO countries, led by France, Germany, and Belgium, directly opposed this military action. This has led to great erosion in the credibility of American commitment to its allies, as well as trust and confidence in the U.S. ability to be responsible with its hegemonic power.

A legitimate authority was in fact charged to oversee the Iraqi situation, under the United Nations Monitoring, Verification, and Inspection Committee (UNMOVIC) and the International Atomic Energy Agency (IAEA), two nearly universal multilateral entities that underpin the international nonproliferation regime. The U.S. decision to invade before the inspections were complete undermined the UN inspectors and led to a de facto removal of this UN authority, replacing the rule of law with the rule of the most powerful.

Use of force as a last resort. There are indications that not all options prior to the use of force were fully exhausted. One such indication is that the UNMOVIC mission, under the direction of Dr. Hans Blix and IAEA Director-General Mohamed ElBaradei, was unable to complete its inspections in Iraq to determine the status of Iraq's programs for weapons of mass destruction. At a Security Council briefing two weeks prior to the invasion, Dr. Blix stated that while "there had been a period of reluctant cooperation" from Iraq, "there had been an acceleration of initiatives by Iraq since the end of January, including an acceptance that its Al-Samoud 2 missiles must be destroyed" and he pleaded for a few more months to complete their work.⁸⁸ However, top U.S. officials such as Donald Rumsfeld indicated that "they will never be satisfied by inspections—only the voluntary disclosure by Iraq of prohibited weapons said to be in its possession by Washington will convince them and the president."⁸⁹ UNMOVIC inspectors left Iraq when U.S.-led military action was imminent, ending the mission that may have led to a peaceful resolution.⁹⁰

An additional indicator that all other options may not have been pursued is evidence that in days prior to the U.S. invasion, Saddam Hussein communicated with the Pentagon through a Lebanese-American businessman that he was willing to offer various options to avoid the U.S. invasion, including an independent U.S. weapons inspection.⁹¹ This "back channel to Baghdad" was dismissed by U.S.

officials as unworthy of pursuit, and as a result, its plausibility and potential to avert war will never be known.

Proportionate use of force: proportionality and discrimination. Did the United States use the right means in the conduct of its war? On May 1, 2003, President Bush declared, "Major combat operations in Iraq have ended" and that they "[were] carried out with a combination of precision, speed and boldness the enemy did not expect—and the world had not seen before. With new tactics and precision weapons, we can achieve military objectives without directing violence against civilians."⁹²

This statement has been countered by human rights organizations, which have accused the Allied forces of using cluster bombs in populated areas of Baghdad and "caring more about protecting oil reserves than the welfare of the Iraqi people."⁹³ It has been estimated that as a direct result of the Iraq war, there have been 7,800 civilian Iraqi deaths, 20,000 injured civilians, and limited access to clean water and sanitation.⁹⁴ With the death toll of American soldiers increasing, there have been allegations that the U.S. military is failing to conduct proper investigations into Iraqi civilian deaths resulting from the excessive or indiscriminate use of force by U.S. forces in Baghdad.⁹⁵ It is unclear whether the proportionate use of force is fully applied, but how the U.S. forces deal with insurgent terrorists' targeting of U.S. soldiers remains to be seen.

It can be predicted that history will not reflect kindly on Operation Iraqi Freedom, as it has been judged to be neither legal, nor just. It can be ascertained that the U.S. decision to go to war, despite the international community's disagreement, will have a long-term impact on the role of the UN. It remains to be seen whether this impact will be negative or positive. The coalition's extended campaign at the UN to secure a resolution authorizing the use of force reinforces the normative importance in the eyes of the international community of Security Council authority regarding military interventions.

NEW INTERNATIONAL LAW ON HUMANITARIAN INTERVENTION

It has been argued in this paper that the NATO intervention in Kosovo and the U.S.-led Operation Iraqi Freedom violated the UN Charter and international law. As a result, these interventions risk undermining the international rule of law that prohibits military intervention in other states for reasons other than self-defense and in the absence of UN Security Council authorization. The Security Council must close this gap between legality and legitimacy. Clearer rules would also clarify the ambiguity of international law surrounding the current notion of humanitarian intervention.

Prior to introducing possible ways of developing new law on humanitarian intervention, it is useful to ask whether doing so is desirable. Humanitarian

intervention presents very real risks of abuse, such as justifying the use of force for less than noble reasons. Once established, such a law would be difficult to verify and enforce compliance. NATO decision makers most likely did not intend for their actions to legitimize a disregard for the provisions in the UN Charter or to promote the right of states or regional organizations to use military force to pursue their own national interests without UN Security Council approval.⁹⁶ It follows that every nation would have an interest in NATO's actions being classified as the exception, not the rule. One could suggest that keeping such intervention illegal and requiring states to break the law in extreme circumstances may be the best and most likely way to limit abuse.

Humanitarian intervention presents very real risks of abuse, such as justifying the use of force for less than noble reasons.

Regardless of the risk of abuse, it seems that support for a doctrine of humanitarian intervention is growing. While a new international treaty on humanitarian intervention or UN Charter amendment may not be politically feasible for the near future, it is useful to discuss ways a new law could develop. In a report by the International Commission on Intervention and State Sovereignty, four basic objectives are recommended for a new approach to intervention on the grounds of human protection:

- establish clearer rules, procedures, and criteria for determining whether, when, and how to intervene;
- establish the legitimacy of military intervention when necessary and after all other approaches have failed;
- ensure that military intervention, when it occurs, is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimize the human costs and institutional damage that will result; and,
- help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace.⁹⁷

Several experts have developed criteria for new law on humanitarian intervention.⁹⁸ The following framework has been drawn from the criteria that such experts tend to agree could form the basis for an appropriately balanced regime.

Evidence and notice.⁹⁹ Publicly available proof must establish that widespread and grave international crimes, as defined in the Rome Statute of the International Criminal Court,¹⁰⁰ are being committed in a state that supports these criminal activities, allows them to continue, or cannot control them. A regional intergovernmental organization in the same area as the state where the crimes are being committed must call upon that state to take action itself or with the help of others to stop those crimes, but they continue to be committed.

Exhaustion of alternatives. The regional group must have exhausted all reasonably available means to stop the criminal behavior, including negotiations, political initiatives, and non-coercive countermeasures (such as economic sanctions) without success.

United Nations' role. If these measures fail to produce the necessary results, the regional organization, acting through its UN member states, must formally bring the matter to the attention of the General Assembly and the Security Council on an emergency basis. It should seek Chapter VII authorization from the Security Council to take appropriate action to stop the crimes. If the Council authorizes such action, the matter must remain under its control. However, if the Security Council fails to approve such action and if neither it nor the General Assembly adopts a resolution expressly forbidding further action by the regional organization, other options outside of the UN could be explored.¹⁰¹

Regional action. In very rare cases of extreme urgency, emergency, and imminent genocide, a regional organization could then lawfully take forcible action to stop the continuing widespread grave violations of international criminal law in the target state. In such cases, the following limitations would apply:

Warning. The state must be notified in advance that the use of force is under consideration.

Court jurisdiction. Action outside of UN approval would have to be authorized by international courts such as the International Court of Justice and the International Criminal Court to prevent hegemonic states from abusing provisions allowing for action outside of the UN.

Purpose and means. Force must be used only to stop the widespread and massive violations of international criminal law and international humanitarian law strictly observed. Once the use of force has accomplished the appropriate objectives and the future is secured, the foreign forces must withdraw, unless the target state has requested them to remain or unless the Security Council adopts a resolution under Chapter VII.

PENDING NEW LAW: CREDIBILITY OF THE UN SECURITY COUNCIL

Until new procedures, such as those outlined above, are institutionalized, no state or group of states should be encouraged to intervene on its own authority, without Security Council approval. In reality, it is likely that states will continue to intervene regardless of Council approval, as happened in Kosovo and more recently in Iraq, unless the Security Council—and the permanent members in particular—are prepared to adapt their procedures. There are two suggestions in this regard:

- The members of the Security Council should reach an agreement on a set
-

of guidelines to govern their responses to claims for military intervention for human rights protection and humanitarian purposes.

- In cases where their vital state interests are involved, the permanent five members of the Security Council should reach an agreement not to invoke their veto power to block the passage of resolutions authorizing military intervention for human protection purposes in cases where majority support otherwise exists.¹⁰²

Such modifications would put pressure on the Security Council and also allow it to enforce violations of human rights and humanitarian law. Consequently, the Council would no longer have to “stretch reality” to appeal to the notion of a threat to international peace in every case and would also have greater difficulty in “standing by and doing nothing.”¹⁰³

CONCLUSION

NATO's intervention in 1999 set a precedent as the first multilateral intervention for the purposes of humanitarian reasons without Security Council authorization. If the UN Charter is to continue to have relevance as binding international law, rather than merely as a political tool to be wielded when convenient, development of binding humanitarian intervention norms will be the ultimate test. The Kosovo case, and now the recent intervention in Iraq, should add impetus to the international community's political resolve to clarify the normative and legal terms for when humanitarian intervention is indeed justified, and further, mandatory. ■

NOTES

1 In Security Council Resolution 1160 (1998) of March 31, 1998, the Council acted under Chapter VII to impose an arms embargo on Yugoslavia until Belgrade should “withdraw the special police units and cease action by the security forces affecting the civilian population,” and allow international access to Kosovo for the contact group, the Organization for Security and Co-operation in Europe (OSCE), the UN High Commissioner for Human Rights, and humanitarian organizations.

2 In Security Council Resolution 1199 (1998) of September 23, 1998, the Security Council warned that it was “[g]ravelly concerned” at “the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army” and the resulting displacement of over 230,000 persons from their homes and “flow of refugees into northern Albania, Bosnia and Herzegovina and other European countries.” The Council “demand[ed]” an immediate cease-fire, once again acting under Chapter VII.

3 In Security Council Resolution 1203 (1998) of October 24, 1998, the agreements for withdrawal of most Yugoslav forces, entered into between Belgrade and the OSCE and NATO, gained the Council's “[endorsement] and support” and the Security Council “[d]emanded” that Belgrade cooperate with the NATO and OSCE efforts to verify compliance, including the establishment of a NATO air verification mission over Kosovo.

4 Albert R. Coll, “Kosovo and the Moral Burdens of Power,” in *War Over Kosovo*, ed. Andrew J. Bacevich and Eliot A. Cohen (New York: Columbia University Press, 2001), 129.

5 The full text of the United Nations Charter can be found online on the United Nations website at <http://www.un.org/aboutun/charter/index.html>.

6 Article 41 of the United Nations Charter refers to “measures not involving the use of armed force.”

-
- 7 Anthony Clark Arend, "International Law and the Recourse to Force: A Shift in Paradigms," *Stanford Journal of International Law* 27:1 (Fall 1990), 24.
 - 8 *Ibid.*, 26.
 - 9 Louis Henkin, "Kosovo and the Law of "Humanitarian Intervention," in "Editorial Comments: NATO's Kosovo Intervention," *American Journal of International Law* 93: 4 (October 1999), 825.
 - 10 See "Security Council Rejects Demand for Cessation of Use of Force against Federal Republic of Yugoslavia," *UN Press Release SC/6659* (March 26, 1999).
 - 11 W. Michael Reisman, "Kosovo's Antinomies," in "Editorial Comments: NATO's Kosovo Intervention," *The American Journal of International Law* 93:4 (October 1999), 860.
 - 12 Ivo H. Daalder and Michael O'Hanlon, *Winning Ugly: NATO's War to Save Kosovo* (Washington, DC: The Brookings Institution, 2000), 251.
 - 13 "Statement by British Prime Minister Blair, March 23, 1999, before the House of Commons, London, United Kingdom," in Auerswald and Auerswald 2000, 688-690.
 - 14 Alan Henrikson, "The Constraint of Legitimacy: The Legal and Institutional Framework of Euro-Atlantic Security," in *Alliance Politics, Kosovo, and NATO's War: Allied Force or Forced Allies*, eds. Pierre Martin and Mark R. Brawley (New York: Palgrave, 2000), 48.
 - 15 Article 53 of Chapter III explicitly forbids military intervention by regional agencies without Security Council mandate.
 - 16 Daalder and O'Hanlon, 251.
 - 17 Joseph I. Charney, "Anticipatory Humanitarian Intervention," *Panel on the Legality of Humanitarian Intervention in Kosovo—A Case Study* (Cambridge: Canada Institute for Advanced Legal Studies, July 14, 1999).
 - 18 *Coll*, 129.
 - 19 For further description of "Just War Theory," see Haas, 9; Geoffrey Roberson, *Crimes Against Humanity* (New York: The New Press, 1999), 448; and Stephen A. Garrett, *Doing Good and Doing Well: An Examination of Humanitarian Intervention* (Westport: Praeger, 1999), 24, 118.
 - 20 Richard A. Falk, "Kosovo, World Order, and the Future of International Law," in "Editorial Comments: NATO's Kosovo Intervention," *The American Journal of International Law* 93:4 (October 1999), 849.
 - 21 *Ibid.*
 - 22 Charney.
 - 23 Independent International Commission on Kosovo, *Kosovo Report*, 2.
 - 24 Christine M. Chinkin, "Kosovo: A 'Good' or 'Bad' War?" in "Editorial Comments: NATO's Kosovo Intervention," *The American Journal of International Law* 93:4 (October 1999), 847.
 - 25 James Mayall, "The concept of humanitarian intervention revisited," in *Kosovo and the Challenge of Humanitarian Intervention*, eds. Albrecht Schnabel and Ramesh Thakur (Tokyo: United Nations University Press, 2000), 331.
 - 26 For a comprehensive overview of the evolution of the concept of humanitarian intervention, assumptions underlying it, and historical context, see Garrett, *Doing Well and Doing Good*, 3-20.
 - 27 Roberson, 449.
 - 28 Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 13.
 - 29 *Coll*, 139.
 - 30 Such critics include William Arkin, Ted Galen Carpenter and the Independent International Commissions on Kosovo.
 - 31 William M. Arkin, "Operation Allied Force: The Most Precise Application of Air Power in History," in Bacevich and Cohen (2001), xi.
 - 32 Ted Galen Carpenter, *NATO's Empty Victory* (Washington, DC: The CATO Institute, 2000), 2.
 - 33 Robertson, 440.
 - 34 Carpenter, 3.
 - 35 Ruth Wedgwood, "NATO's Campaign in Yugoslavia" in "Editorial Comments: NATO's Kosovo Intervention," *The American Journal of International Law* 93:4 (October 1999), 833.
 - 36 Henrikson, 53.
 - 37 See "Belarus, India and Russian Federation: Draft Resolution," UN Doc. S/1999/328 (March 26, 1999), reprinted in "Security Council Rejects Demand for Cessation of Use of Force against Federal Republic of Yugoslavia," *UN Press Release SC/6659* (March 26, 1999) [Hereinafter *Press Release SC/6659*].
 - 38 "Secretary-General's statement on NATO military action against Yugoslavia," *M2 Presswire* (March 25, 1999).
 - 39 Wedgwood, 833.
-

-
- 40 "Secretary-General Presents His Annual Report to General Assembly," *UN Press Release SG/SM/7136, GA/9596* (September 29, 1999).
- 41 Henrikson, 44.
- 42 Ibid.
- 43 Ibid.
- 44 Falk, 854.
- 45 Ibid.
- 46 Coll, 141.
- 47 Independent International Commission on Kosovo, *Kosovo Report*, 3.
- 48 Falk, 854.
- 49 *Humanitarianism and Military Intervention: NATO in Kosovo*. The Gilder Lehrman Institute of American History, (2001).
- 50 Nicola Butler, "NATO: From Collective Defence to Peace Enforcement," in Schnabel and Thakur (2000), 278.
- 51 Ibid.
- 52 Coll, 141.
- 53 This is commonly referred to as "the Mogadishu factor."
- 54 General Wesley K. Clark, "The Strength of an Alliance," in Buckley 2000, 253.
- 55 Clark, "The Strength of an Alliance," 258.
- 56 Independent International Commission in Kosovo, *Kosovo Report*, 4.
- 57 The Gilder Lehrman Institute of American History, "Humanitarianism and Military Intervention: NATO in Kosovo," <<http://www.digitalhistory.uh.edu/historyonline/kosovo.cfm>> (accessed November 18, 2003).
- 58 Ibid.
- 59 Benjamin S. Lambeth. *NATO's Air War for Kosovo* (Pittsburgh: RAND, 2001), xx.
- 60 Ibid.
- 61 Robertson, 441.
- 62 Noam Chomsky, *A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West* (London and New York: Verso, 2000), 48.
- 63 Buckley, 3.
- 64 Independent International Commission on Kosovo, *Kosovo Report*, 3.
- 65 Ibid.
- 66 Martin L. Cook, "Two Roads Diverged, and We Took the One Less Traveled: Just Recourse to War and the Kosovo Intervention," in Buckley 2000, 271.
- 67 Marie-Janine Calic, "Kosovo in the Twentieth Century: a Historical Account," in Schnabel and Thakur 2000, 18.
- 68 Joseph Curl, "Public Opinion Rallies in Support of Iraq War," *The Washington Times*, March 24, 2003.
- 69 Henrikson, 49.
- 70 Michael Klare, "For Oil and Empire? Rethinking War with Iraq," *Current History* 102: 662 (March 2003), 130.
- 71 In President George W. Bush's statement to the UN General Assembly on 12 September 2002, he cited among his reasons to go to war that, "Last year, the U.N. Commission on Human Rights found that Iraq continues to commit extremely grave violations of human rights, and that the regime's repression is all pervasive."
- 72 Tom J. Farer, "Beyond the Charter Frame: Unilateralism or Condominium?" *The American Journal of International Law* 96:2 (April 2002), 359.
- 73 Article 51 of the UN Charter reads: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."
- 74 Security Council Resolution 1441 (2002) of November 8, 2002.
- 75 Michael Dunne, "The United States, the United Nations and Iraq: 'multilateralism of a kind'," *International Affairs* 79: 2 (2003), 273.
- 76 Ibid.
- 77 Security Council Resolution 1483 (2003) of May 22, 2003 decided to lift trade and financial sanctions on Iraq; extend the "oil-for-food" program for six months; revisit the mandates of the UNMOVIC and the IAEA at a later date; and request appointment of a Special Representative of the Secretary-General.
- 78 Ibid.
- 79 Security Council Resolution 1511 (2003) of October 16, 2003.
-

-
- 80 UN General Assembly General Debate, Secretary-General Kofi Annan Opening Statement, September 24, 2003.
- 81 Klare, 132.
- 82 Samantha Power, in "Humanitarian Intervention: A Forum," *The Nation* (July 14, 2003), <<http://www.thenation.com/doc.mhtml?i=20030714&c=4&s=forum>> (accessed November 20, 2003).
- 83 Mohammed Ayoub, "The War Against Iraq: Normative and Strategic Implications," *Middle East Policy* 10:2 (June 1, 2003), 30.
- 84 Mahmood Mamdani, in "Humanitarian Intervention: A Forum" *The Nation* (July 14, 2003), <<http://www.thenation.com/doc.mhtml?i=20030714&c=5&s=forum>> (accessed November 20, 2003).
- 85 Terry Kirby, "US said to 'care more about Iraqi oil than its people'," *The Independent*, April 17, 2003.
- 86 Rowan Scarborough, "US Miscalculated Security for Iraq," *The Washington Times*, August 28, 2003, <<http://washingtontimes.com/national/20030827-114516-5938r.htm>> (accessed November 7, 2003).
- 87 David Clark, "Iraq has Wrecked Our Case for Humanitarian Wars," *Guardian*, (August 12, 2003).
- 88 "United Nations Weapons Inspectors Report to Security Council on Progress in Disarmament of Iraq" *UN Press Release* SC/7682 (March 3, 2003).
- 89 Klare, Michael T. "For Oil and Empire? Rethinking the War with Iraq", 129.
- 90 "Secretary-General authorizes withdrawal of United Nations personnel from Iraq," *UN Press Release* SG/SM/8640, SC/7693, IK/330 (March 17, 2003).
- 91 James Risen, "Baghdad Scrambled to Offer Deal to US as War Loomed," *The New York Times* (November 5, 2003).
- 92 "President Bush Announces Combat Operations in Iraq Have Ended," (May 1, 2003), <<http://www.whitehouse.gov/news/releases/2003/05/20030501-6.html>> (accessed November 18, 2003).
- 93 Kirby.
- 94 "Continuing Collateral Damage: The Health and Environmental costs of War on Iraq 2003," *Medact, affiliate of International Physicians for the Prevention of Nuclear War* <<http://www.medact.org>> (accessed November 11, 2003).
- 95 "Civilian deaths need U.S. investigation," *Human Rights Watch*, October 21, 2003, <<http://www.reliefweb.int/w/rwb.nsf/0/d0fbc101a18c7ba449256dc60001d19?OpenDocument>> (accessed November 7, 2003).
- 96 Thomas M. Franck, "Lessons of Kosovo" in "Editorial Comments: NATO's Kosovo Intervention," *The American Journal of International Law* 93:4 (October 1999), 860.
- 97 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: ICISS, 2001), 11.
- 98 For example, recommendations found in Charney; Garrett, 169-190; Independent International Commission on Kosovo, *Kosovo Report*, 283-297; International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, 69-75; Anthony F. Lang, Jr., *Agency and Ethics* (New York: State University of New York Press, 2002), 187-205; and Roberson, 427-455.
- 99 This framework for new humanitarian international law is borrowed from Charney.
- 100 Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, July 17, 1998.
- 101 This is a suggestion for an approach until the UN authorizing procedure can be improved. While the author feels that the UN should be the only recourse to determine whether or not to intervene, in extreme cases where the UN fails (as currently structured) other options may be necessary, although this issue is immensely politically contentious.
- 102 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, 74.
- 103 Independent International Commission on Kosovo, *Kosovo Report*, 196.
-