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# HUMAN RIGHTS POSTSCRIPT

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## Another Casualty of War—Rethinking Armed Humanitarian Intervention

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Secretary of State Colin L. Powell recently commented that the 1998 NATO air-strikes in Kosovo, taken without UN Security Council authorization, offers precedence for the Bush administration's desire to invade Iraq. To reinforce the precedential value of the NATO air-strikes—strikes for humanitarian and strategic reasons—the Secretary further stressed Baghdad's decades of brutality against its Kurdish population as a rationale for the administration's attacking Iraq.

Powell and other administration members, by drawing attention to the Iraqi Kurds, highlighted the past half century's success in the development of human rights standards which has, since the 1945 creation of the UN Charter, successfully challenged the principal that government behavior toward its citizens is solely a domestic matter. Cases such as Somalia, Haiti, Bosnia, and Kosovo drew the world's moral attention to support military strikes, if necessary, to stop wide-spread atrocities that threatened imminent humanitarian catastrophes.

However, in the aftermath of September 11, tensions between protecting human rights, prosecuting the war on terror, and considering an invasion of Iraq for perceived national security reasons inevitably combined to demand that the U.S. more clearly distinguish between wars of aggression and cases in which force might legitimately be used for humanitarian reasons. What binds Kosovo and Iraq together is the issue of the legitimacy of the use of force without a clear legal mandate from the United

Nations. What distinguishes the two is that the controversial NATO air-strikes against Serb forces in Kosovo, although unauthorized by the Security Council, stopped the wide-spread atrocities in progress.

The Bush administration's unfolding rationale for invading Iraq has more recently focused on making Iraq a test case for constructing democracy in the Middle East. However, relying on the unauthorized, yet morally legitimate NATO air-strikes, does not serve as precedent for a second and larger-scale invasion in Iraq. Nor has the United States or NATO offered Kosovo as an example for the establishment of a new doctrine of armed intervention for humanitarian reasons. However, the White House equivocation has weakened its own position: the legitimacy of its policy and potentially the forum of the United Nations and international law.

Iraq's Kurdish situation presents a long-standing humanitarian nightmare. According to Human Rights Watch, Iraqi President Saddam Hussein designed the brutal *Anfal* campaign to eliminate the minority Kurdish population from northern Iraq in the 1980s. Baghdad's campaign against the Kurds—who compose some twenty percent of the Iraqi population—included: policies of forced relocation and deportation of tens of thousand of Kurds to southern Iraq; attacks on Halabja and some forty other Kurdish communities with chemical weapons; and a campaign of disappearances, torture and executions that created tens of thousands of refugees and internally displaced persons.

Human rights groups had successfully lobbied the Clinton administration, which offered the view that President Hussein had committed genocide against the Kurds. Yet, for strategic reasons, neither the U.S. government nor its European allies chose to intervene militarily into the domestic affairs of a State they supported, or file a case in the International Court of Justice to hold Baghdad accountable for its alleged atrocities.<sup>1</sup>

It would be hard pressed—after a delay of more than a decade that included a withdrawal of American support for the Kurdish opposition—to now claim that an invasion of Iraq is driven by a desire to protect the Iraqi Kurds. Yet, it is also true that revitalized conditions under the umbrella of United States and British protection in the no-fly-zones has prevented any large-scale atrocities that defined the past decades.

It is vital that the Bush administration articulate standards that would govern any future cases that might require the non-defensive uses of force to curb state-sanctioned atrocities against civilians. Whether or not the Bush administration ultimately decides to invade Iraq, the bar must be set high for an invasion against another nation to be described in humanitarian terms.

In the next humanitarian crisis, the UN Security Council, the United States and the world's citizenry must produce a systematic and sustained commitment to stop the humanitarian catastrophe. Given the ongoing tensions in Afghanistan and North Korea and deadly wars that continue in Kashmir, Sudan or Indonesia, it is far too likely that reports will again emerge of wide-spread massacres or other crimes against humanity.

As for Kurdish aspirations, they might be far better served by a well organized multi-national political and economic initiative to stimulate the Kurdish economy rather than as a side-show to an invasion.

The heated debates in the Security Council regarding the use of force in Iraq just might provide the basis for the United States and a polarizing world to consider a principled framework that would separate wars that serve perceived national interests from recognized responsibilities to protect the world's most vul-

nerable. As we move forward, there must be no more *Anfal* campaigns.

And if so, the world community must be prepared to act. The new law that is evolving argues for a principled framework that involves, clear standards that would trigger an armed intervention. Equally important is a definition regarding what behavior is required of the intervening forces while engaged in war. And, perhaps most significantly, would require a commitment by the intervening forces to a sustained program of post-conflict reconstruction.

### The United Nations Charter and the Use of Force

Secretary-General Kofi Annan forcefully addressed the inadequacies of the international response to the humanitarian catastrophe in Kosovo, by challenging the 54th session of the General Assembly to support coercive military interventions when "gross and systematic violations offend every precept of our humanity."<sup>2</sup> By appealing to the General Assembly to create a jurisprudential revolution built upon the steady climb of human rights standards, the Secretary General challenged the world forum to develop a more coherent approach to what he referred to as the "troubling inconsistency" of the international response to protect the world's most vulnerable.<sup>3</sup>

Yet, despite the unauthorized NATO airstrikes, "humanitarian intervention," having gained currency in the UN, remains without a common definition, thereby leaving an inherent subjectivity for a core of non-derogable rights.<sup>4</sup> Humanitarian intervention is generally viewed as "coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death."<sup>5</sup> Given that the main problem regarding the protection of human rights is political rather than legal, the strategic interests of intervening States typically offers the defining feature over jurisprudential concerns. The Independent International Commission on Kosovo expressed concern that for purposes of maintaining regional or global stability equal cases will continue to be treated unequally.<sup>6</sup>

Theorists of international law have challenged the use of armed force to restore rights in the most egregious situations. Given that

armed intervention tends to be employed by powerful States against the weak, this raises questions about the political legitimacy of the use of force. States and analysts who view the complex interventions in Somalia, East Timor, Bosnia and Kosovo as part of an era defined by a new balance between sovereignty and human rights, argue that the emergence of humanitarian standards in the post cold war era has created an obligation to intervene.

Yet, as the Bush administration has used Kosovo to justify an invasion of Iraq, critics express concern that future calls for intervention into matters of another State could transform the concept of armed humanitarian intervention into a new *jus ad bellum*—just war—that finds resonance in the administration's elevation of pre-emptive strike to a strategic doctrine.<sup>7</sup> This concern is heightened by the administration's intent to reshape the global order that emerged from the Second World War. Rather than a go-it-alone strategy, perhaps the U.S. could help reshape the composition of the Security Council that currently excludes populous and democratic nations such as Japan, India and South Africa from the world body's major deliberations.

Irrespective, the 1999 NATO air-strikes designed to drive the Serb army from Kosovo raises significant legal and political questions. The UN resolutions involving Kosovo alluded to an "impending humanitarian catastrophe" and utilized the requisite "threat to peace and stability" language, which suggested that lacking Serb compliance, the Security Council would authorize military action. However, with veto threats by Russian and China, the United States and NATO allies opted to forgo Security Council approval. The subsequent NATO air-strikes also raised issues of what mechanisms exist that would allow an intervention given a reluctant Security Council.

### **Balancing Politics and Law**

The NATO operation, although not strictly conducted for humanitarian reasons, was generally viewed as "legitimate" although not legal.<sup>8</sup> Serb patterns of ethnic cleansing of Muslims in Bosnia had not reached equivalent levels in Kosovo before the NATO bombings. Indeed far fewer atrocities occurred in Kosovo

than in Sudan, Rwanda or Chechnya where the UN had shown no interest in intervening militarily. However, the NATO action, taken in the context of ethnic cleansing in Bosnia, the presence of Serbian troops in Kosovo and the spectre of Belgrade's regional ambitions in the heart of Europe, provided legitimacy to the armed strikes. Additionally, given the vast improvement in American military capability, President Clinton's appeal to the American public to support what was essentially an American war, convincingly noted that the war would be fought from the air—that no U.S. troops would be sacrificed.

Perhaps paradoxically, the well documented Rwanda genocide that unfolded on April 6, 1994 with massive campaigns of ethnically motivated crimes and atrocities primarily against the Tutsi population, and Hutu moderates, left nearly one million dead within three months.

Yet, even after the scale of the Rwandan genocide became irrefutable, the Clinton administration and the bitterly divided UN Security Council declined to apply the term "genocide" to the Rwandan catastrophe. According to international law, the use of the term genocide would have required action. Although yielding to enormous pressure, the U.S. eventually did refer to the Rwandan crisis as "acts of genocide." However, the Clinton administration never seriously considered a military intervention. Following the three-month genocidal frenzy, perpetrators rearming in refugee camps, and an underfinanced International Criminal Tribunal for Rwanda in place, the United States, the European Union and the United Nations offered tepid support for post-conflict reconstruction.

### **Full Spectrum Dominance**

Some international NGOs and governments—particularly those in the Global South—criticized the U.S.-led military strikes against even admittedly repressive states. Law professors and authors such as the University of Buffalo's Makau Mutua argued that humanitarian intervention is a form of "humanitarian colonialism"—the revival of a *jus ad bellum* in the current unipolar environment where presidential advisors refer to a U.S. goal of achieving global dominance.<sup>9</sup>

In his 2003 West Point commencement address, President George W. Bush clarified his administration's goal to dominate other major states militarily and develop technological advantages, so that no State or coalition could challenge American global leadership.<sup>10</sup> America's growing dependence on the military to manage its foreign policy in the complex challenges ahead (well documented in Dana Priest's, *The Mission*) reinforces the necessity to distinguish U.S. strategic interests from the related quandary of when to deploy armed forces to stop humanitarian catastrophe.

Strategic interests certainly influenced decisions to intervene: Kosovo threatened to spill over into Macedonia, Greece and beyond; Somalia's failed State left a vacuum on the strategically crucial Horn of Africa; the Haiti intervention curbed what could have become a large-scale refugee crisis in the United States; and in East Timor, a rapid restoration of U.S., Canadian and Australian ties to Jakarta followed UN support for the deployment of a multinational military force to restore peace caused by violence abetted by the Indonesian military.

Armed interventions tend to occur in weak or failed States, unable to resist the intervention of a larger power. As Harvard author Michael Ignatieff points out in his support for a triage approach to military intervention, the UN stops neither the Chinese occupation of Tibet nor the Russian bombardment of Chechnya. Yet, even the inequities and inconsistencies inherent in intervening in domestic matters of State is not justification for not intervening.<sup>11</sup>

However, the Bush administration's inclination to use its considerable military might against Iraq to serve its perceived national security interests without Security Council authorization could jeopardize future calls for force when lives are at stake. The Security Council did authorize interventions in Haiti, Somalia, and Bosnia where the US played a prominent role. Although the Kosovo intervention lacked Security Council authorization, its support for peace-keeping and reconstruction initiatives perhaps offered inferential support for the air-strikes. However, with the UN's pre-eminent body opposed to an unauthorized preemptive invasion by the U.S. against Iraq,

would the Security Council again quickly turn to a global power that flouts international law?

The mosaic of reasons for armed strikes is compounded by operational realities. Few countries worldwide have the financial and military assets needed to successfully implement a mandate to intervene. Short of the unlikelihood that any nation would relinquish command and control of its military, national interest figures in as significantly as the moral outrage side of the equation.<sup>12</sup> Author Michael O'Hanlon argues in favor of expanding the global capacity to field intervening forces so that some 200,000 can be fielded at any time to support humanitarian intervention.<sup>13</sup> I think not. If the task is to reduce war and suffering, then more capable armies will inevitably mean more war.

Although each claim for the use of force must be considered on its own merit on a case by case basis, without clear legal standards, a large and growing doctrinal gap in international law makes it likely that strategic interests would continue to dominate, leaving the most impoverished and marginalized nations in the world's outback unprotected from the most egregious of war crimes—thereby guaranteeing continued marginalization. To the extent that failed States and brutal dictatorships States are frequently defined by wide-spread impoverishment and systematically terrorized populations, failure to intervene condemns entire populations—and therefore nations—to a lifetime of responding to aggression rather than acting on individual, collective or national aspiration.

#### The UN Charter and the Permissible Use of Force

The UN Charter discourages international military responses to intra-State conflicts, finding them within the domestic jurisdiction of States, unless defined as "threats to peace and security."<sup>14</sup> The Charter is specific with respect to the permissible scope for the use of force by its member States.<sup>15</sup> The injunction against the use of war to settle disputes is found in the Charter at Article 1(1) which enshrines the purpose of the UN to "maintain international peace and security."

The threat or use of force by member States is prohibited with rare exceptions. During the wars of decolonization in the 1950s and 1960s, rebel forces argued that colonial regimes and

the continued denial of self-determination amounted to a state of "permanent aggression" and therefore argued that Articles 2(3) and 2(4) had been breached by an ongoing and systematic deprivation of peace and security. However, a movement that uses force to overthrow a colonial or otherwise repressive regime would run afoul of Article 2(4).<sup>16</sup>

Article 2(7) reinforced the Westphalian approach to State sovereignty by forbidding external—or internal—intervention in matters that fall within the "domestic jurisdiction" of the State. Therefore, any claim to intervene on human rights grounds—even for serious and systematic abuses—would not offer grounds for the external use of force.

The principle exception to the use of force is described in the Charter at Article 51 which permits the "inherent right" of self defense. However, only at the moment of attack are forcible countermeasures legitimate. Although in practice, what constitutes an opening shot can be deceptive if, for example, forces—or the equivalent—move *en masse* to a border but hold their fire. In this case, some legal analysts argue that military action taken by the targeted State would count as a permissible act of preemptive self defense insofar as it responds to an immediate and demonstrable threat.

While Article 51 is silent on the topic of the permissible scope and scale of military actions, including self defense, a majority on the International Court of Justice noted in 1986 in *Nicaragua v USA*<sup>17</sup> that the exercise of self defense is acceptable, as long as the conditions precedent of necessity, proportionality and immediacy are satisfied.

The Charter provides for two options regarding the use of force other than for self defense. One is contained in Chapter VIII in which regional organizations would require Security Council authorization to maintain peace and security. The other, Chapter VII—unlike the Chapter VI provision for peace-keeping operations—allows for the use of force when, as in the Chapter VIII situations, the Security Council reserves the right to resort to armed force if international security is at stake.<sup>18</sup>

Although the UN Charter allowed the Security Council to authorize interventions in the domestic affairs of a State or failed State to

safeguard against "threats to peace and international security," the collective use of force cannot be undertaken if the specific purpose is human rights enforcement. Article 39 of the Charter restricts the use of force to threats to the peace, breaches of the peace and acts of aggression. Gross breaches of human rights factor in indirectly, only if viewed as threatening the peace.

The Security Council has never referred to Charter Articles 55 and 56—the Articles that require the advancement of human rights—as providing a basis for military action. The Genocide Convention, entered into force in 1948, has yet to supply a reason for military intervention. As yet, no decision from the International Court of Justice regarding the evolution of international law has ruled on the non-defensive use of force strictly to protect human rights.<sup>19</sup>

Given both the impending invasion of Iraq, combined with the war on terror against non-State actors based in marginalized states, an entire new category for military intervention is unfolding. The Bush policy to use force to reverse the chaos of failed States or overturn regimes with regional ambition could raise yet more the political ire in the Security Council. Whether the Security Council would act to censure the United States or refuse to authorize its agencies to engage in post-conflict reconstruction illuminates the necessity for a principled framework that would condition armed intervention on an agreement to support a sustained program of post conflict reconstruction.

The Bush administration's hair trigger view on Iraq may not have permanently damaged transatlantic, Middle East or global relations, but it certainly has provoked coalitions that would serve as a challenge or counterweight to U.S. power. Given the true threats of acts of terror from weak States located in the world's outback—where networks such as that of Osama bin Laden's Al-Qaeda have found safe haven to plan, recruit, train or appropriate territory and exercise political control—it is also conceivable that the "war on terror" could confuse situations that call for armed humanitarian intervention.<sup>20</sup>

Yet, perhaps the more profound serious consequences of the Bush administration's impatience with diplomacy, dismissal of containment

and willingness to use the awesome American arsenal is that it augers badly for a future that would find U.S. resources stretched, temperatures of longstanding allies rising, and the potential for an irreparable loss of world respect for a "hyper-power" that fails—post-war—to broker a sustained commitment to rebuild Iraq, as the President said, "from many nations—including our own."

We stand at a precipice. By basing his rationale for invading Iraq in human rights terms, President George W. Bush—proceeding under the "serious consequences" language of Resolution 1441, without explicit Security Council authorization to strike—has effectively appropriated human rights language to wage a war of aggression. With selective attention to international law to serve his domestic agenda, the President has charted a course that contains the potential to diminish the authority of human rights, yet paradoxically, could stimulate the Security Council's permanent members—France, Russia and China—to use the powerful international body to more effectively operate in a political environment where asymmetrical warfare is pitted against what some diplomats and critics have referred to as an "American imperium."<sup>21</sup>

It is crucial that the United States and the world community take this chaotic moment to define far more carefully not only when military strikes might be required to stop human suffering, but even more urgently to consider what norms must be upheld both during and after the war is over. For example, the failure to support a fully financed program of sustainable post-war reconstruction in Afghanistan stretches credulity, when States far less crucial to U.S. national security interests sustain military force—or the threat of force—with hopes that economic recovery fits into the post-war equation.

### Recommendations

With the mounting American agenda for an invasion of Iraq along with the Bush administration's open-ended war on terror, it is yet more urgent to develop what the International Independent Commission on Kosovo called in its *Kosovo Report* a "principled framework" to guide future responses in the face of

an imminent or unfolding humanitarian catastrophe.<sup>22</sup>

The *Kosovo Report*, along with the other authoritative source, *The Responsibility to Protect*, (the Report of the New York based Independent Commission on Intervention and State Sovereignty), noted that the UN Charter requires all States to protect their citizenry. In cases where States can not or will not offer protection when atrocities occur, then other States—with UN authorization—may step in.<sup>23</sup> Gareth Evans and Mohammed Sahnoun argue in *The Responsibility to Protect* that<sup>24</sup> the Chapter VII right to intervene be reversed to create an international obligation to protect. While shifting the burden to the right of victims to be protected, both Evans and Sahnoun and the Kosovo Commission offer the beginnings of a prescription for the most vexing questions that undergird action—what obligations attenuate during an intervention, and, as Afghanistan sadly reflects, what requirements for post-war reconstruction.

The *Kosovo Report* notes that powerful States have been reluctant to move the concept of humanitarian intervention from the "realm of *ad hoc* diplomacy" for fear of building expectations when brutal atrocities occurs. Additionally, neither the United States, other powers nor other regional bodies such as NATO are willing to intervene except at a time and place of their choosing.

Creating a principled framework is a controversial step. Yet, just as the NATO response to Kosovo presented a defining moment for ending catastrophe in motion, American aggression in Iraq demands that presidential views of national interests be separated from the related but fundamentally distinct question of human rights.

The Kosovo Commission suggested a revision of the Charter that would not require the Security Council to stretch reality to invoke the legal standard of "threat to the peace." It also argues to effectively elevate economic and social rights so that post-conflict reconstruction be incorporated into the intervention equation. The Kosovo Commission's recommended standards, viewing military action only as a last resort, is divided into three parts:

### Threshold

- The first part suggests threshold principles that would trigger armed humanitarian intervention—recommending that the bar be set very high, drawing from a combination of the Genocide Convention with respect to intent and norms drawn from crimes against humanity to develop a definition that would cover the destruction of any group defined by the perpetrators at the highest level of government—or non State actors;

- If the Security Council fails to authorize an armed intervention through the exercise of a veto and an appeal to the General Assembly is not practical, then the Kosovo Report recommends that the Security Council veto right be superceded by a two-thirds majority;

- Any threat or use of force should not be unilateral, enjoying both established collective support expressed both by a multilateral process of authorization and the participation of nations in the undertaking;

- Preparation should be made in advance for a fully deployed relief program during the war and for a program of post conflict reconstruction that builds from the program of humanitarian assistance—perhaps using a approach similar to that taken by UNHCR in its tri-partite programs that include the new government, the invading forces and the appropriate UN agencies.

### Military Theater

- Critics of the use of force for humanitarian purposes, such as the International Committee of the Red Cross, regularly produce evidence that the cure is often worse than the disease. Strict adherence to the laws of war and international humanitarian law would apply to all aspects of a military operation—from the operational gray areas of international relief up to the exit strategies;

- Adherence to the normative standards described in the Geneva Conventions and Protocols regarding the use of force, to ensure that the ground rules, rules of engagement and protection of civilians and civilian installations are adhered to.<sup>25</sup>

### Post-Conflict Reconstruction

- The *Kosovo Report* recommends that armed intervention be conditioned with the development of a sustained program of post-conflict re-

construction rather than with the *ad hoc* bases that have inadequate follow through and is combined with ‘donor fatigue;’

- Security both during and after the war to avoid banditry or a state of lawlessness involving multiple use of troops combined with humanitarian organizations to stabilize lawlessness, while both cooperating and distancing itself from relief and reconstruction operations working under a UN mandate.

**Conclusion:** It is essential at this stage in world history to produce normative standards for armed intervention when humanitarian catastrophe spins out of control. The mounting evidence of atrocities—combined with the global war on terror—the potential for the proliferation of nuclear weapons, an imminent “preventive” invasion of Iraq and its unforeseen consequences raises the possibility that more—rather than less—war might serve as the defining feature of the early stages of the 21st century. If so, then the development of principled rules of law is crucial not only to define how armed humanitarian intervention is to be conducted, but also to restrain any State, as the Kennedy School’s Joseph S. Nye cautioned, from becoming judge, jury and executioner.

Perhaps as significant as a *causus belli* is the necessity to condition armed humanitarian intervention with an agreement by the moving parties to plan, finance and support a sustainable program of post-conflict reconstruction. Willingness to support meaningful reconstruction could prevent a return to the conditions that spawned the humanitarian catastrophe; thereby diminishing, not enlarging, the necessity for war.

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Events are changing so rapidly that it is impossible to keep up before going to press. Suffice it to say that this is a defining moment for America and for international law as the post world war two order is being reshaped, while an ignited world’s citizenry contains the potential to serve, once again, as the world’s “other superpower.”

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<sup>1</sup> SAMANTHA POWER, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE* (Basic Books, 2002).

<sup>2</sup> UN Secretary General Kofi Annan reported to the UN Commission on Human Rights that "No government has the right to hide behind national sovereignty in order to violate the human rights or fundamental freedoms of its peoples." Executive Summary, *We the People: the Role of the UN in the 21st Century*. UN Doc.A/54/2000, March 27, 2000.

<sup>3</sup> GARETH EVANS and MOHAMED SAHNOUN, *THE RESPONSIBILITY TO PROTECT*. Report of the International Commission on Intervention and State Sovereignty, (ICISS) 2001.

<sup>4</sup> SEAN D. MURPHY, *HUMANITARIAN INTERVENTION: THE UNITED NATIONS IN AN EVOLVING WORLD ORDER* (University of Pennsylvania Press, 2000).

<sup>5</sup> ICISS, Book 2, *id.*

<sup>6</sup> KOSOVO REPORT, *INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO* (Oxford University Press, 2000).

<sup>7</sup> Hans Kochler, *Humanitarian Intervention in the Context of Modern Power Politics*, International Progress Organization, Vienna 2001

<sup>8</sup> Kosovo Report, *supra* note 6.

<sup>9</sup> Makau Mutua, *Savages, Victims and Saviours: The Metaphor for Human Rights*, HARVARD INTERNATIONAL LAW JOURNAL 42, 2001.

<sup>10</sup> C. John Ikenberry, *America's Imperial Ambition*, FOREIGN AFFAIRS, September/October 2002.

<sup>11</sup> Michael Ignatieff, *Intervention and State Failure*, THE NEW KILLING FIELDS, Nicolaus Mills and Kira Brunner, eds. (Basic Books, 2002).

<sup>12</sup> Evans, Sahnoun, *supra*, note 3, p.109

<sup>13</sup> MICHAEL E. O'HANLON, *EXPANDING GLOBAL MILITARY CAPACITY FOR HUMANITARIAN INTERVENTION* (Brookings Institution Press, Washington, D.C., 2003).

<sup>14</sup> Charter of the United Nations, (as amended), June 26, 1945, 59 Stat. 1031, amendments at 24 U.S.T 2225

<sup>15</sup> Weissbrodt, et.al. *infra*, note 19.

<sup>16</sup> KEITH SUTER, *AN INTERNATIONAL LAW OF GUERRILLA WARFARE*, (St. Martins Press, 1984).

<sup>17</sup> Nicaragua v. USA, ICJ Rep. 1984, 392

<sup>18</sup> MICHAEL HOWARD, GEORGE J. ANDREOPOLOUS, MARK R. SHULMAN, *THE LAWS OF WAR* (Yale University Press, 1994).

<sup>19</sup> Richard Lillich, *A United States Policy of Humanitarian Intervention and Intercessio*, in HUMAN RIGHTS AND AMERICAN FOREIGN POLICY, Donald P. Kommers and Gilbert D. Loescher, eds. 1979. Noted in (FRANK NEWMAN and DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS*), (1996). *See also*: KRIANGSAK KITTICHAISAREE, *INTERNATIONAL CRIMINAL LAW*, (Oxford University Press, 2001).

<sup>20</sup> Tom Farer, *American Society of International Law*, 2002.

<sup>21</sup> *See generally*, Hurst Hannum, *Bellum Americanum*, The Fletcher Forum of World Affairs, Winter/Spring, 2003.

<sup>22</sup> The Kosovo Report, *supra*, note 6.

<sup>23</sup> Ignatieff, *supra*, note 1.

<sup>24</sup> Evans and Sahnoun, *supra*, note 3.

<sup>25</sup> FRITS KALSHOVEN and YVES SANDOZ, *IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW* (Martinus Nijhoff Publishers, 1989).