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Humanitarian Intervention and the War in Iraq: Norms, Discourse, and State Practice

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The failure to find weapons of mass destruction (WMD) in Iraq inevitably led to attempts by President George W. Bush and others in his Administration to use humanitarian justifications to defend the removal of Saddam Hussein's regime.¹ This argument has predictably triggered an intense debate among scholars, the media, and human rights advocacy groups as to whether the Iraq invasion constitutes a "humanitarian intervention,"² which means using military force in other states to halt human rights abuses or otherwise promote human rights. A particularly outspoken critic of this tactic has been the director of Human Rights Watch, Kenneth Roth, whose compelling essay in the 2004 *Human Rights Watch World Report* contends that the invasion of Iraq was not a legitimate humanitarian intervention, nor should it be considered such.³ It is true, as Roth and others argue, that the principal justifications originally given for the war in Iraq were Saddam's alleged possession of WMD—including his failure to reveal and discontinue relevant weapons programs as required by various Security Council resolutions—as well as the regime's purported ties to terrorists linked with al Qaeda. As of this writing, no weapons have been found and there has been no credible evidence presented of a link between Saddam Hussein and al Qaeda prior to the war.⁴ Herein lies the appeal to the United States of the humanitarian argument. As Alex Bellamy writes, "The 2003 war in Iraq is important because it represents the first time a group of intervening states have justified their actions by referring to

the humanitarian outcomes that were produced by acts primarily motivated by non-humanitarian concerns.”⁵

It is true that the United States has a history of using military force for various purposes and attempting to justify it (unconvincingly) in the name of advancing democracy, particularly in Central America during the 1980s.⁶ Recent trends in the conduct of and discourse on humanitarian intervention based on state practice during the Cold War and the 1990s, however, can be interpreted as lending credibility to the Bush Administration’s argument that the resort to force in Iraq can be justified on human rights grounds. In important ways, the war in Iraq conforms to many of the international norms (legal or otherwise) previously invoked by both scholars and governments to justify past humanitarian interventions. Thus, while ambiguous, the emerging normative legal framework relevant to humanitarian intervention serves to afford a certain amount of legitimacy, at least in the abstract, to the Iraq war as a justifiable humanitarian intervention. That the invasion of Iraq maintains a sort of “abstract normative acceptability” as a humanitarian intervention makes the concern by Human Rights Watch and others even more urgent, for it fundamentally affects what is perceived to be the legitimate use of military force in international relations.⁷

Before 9/11, norms on humanitarian intervention were developed and applied in an international security milieu in which there was less concern about the possibility that a humanitarian justification for military force could provide cover for nonhumanitarian military campaigns, such as those associated with the “war on terror.” As such, the normative development of the rules on humanitarian intervention—however informal these rules may be—emerged in a certain way, with a great deal of attention being given to what was learned from previous experience with humanitarian interventions.⁸ Until the Iraq war, the most contested instance of military force of the time was probably the 1999 Kosovo intervention, which subsequently colored discussions on how to best govern humanitarian intervention, and for finding ways for it to be undertaken in the event that the UN Security Council fails to act.⁹ Because of the urgency of getting states to act against perpetrators of gross human rights violations, much of the discourse on humanitarian intervention after Kosovo but before 9/11 became such that Security Council

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authorization was seen as less important, and mixed motives in armed intervention were deemed permissible (and according to others, motives were even discounted).¹⁰ It seemed apparent that unless the rules on the use of force were relaxed a bit, humanitarian intervention would never occur when and where it was most urgently needed. This was the lesson of Rwanda, where the Security Council was paralyzed, where no powerful state had a pressing security interest to intervene, and where, ultimately, nearly a million people were slaughtered.¹¹ But in the age of global terrorism, easing the requirements for what is considered the acceptable use of force—even if it is to accommodate well-intended humanitarian interventions—has consequences, and we are quite possibly witnessing them today in Iraq.

The uncertainty that followed the humanitarian interventions of the 1990s, particularly Kosovo, led to efforts at consensus-building to reach common ground on the conditions under which humanitarian intervention should be considered permissible. The most important of these efforts was the creation of the International Commission on Intervention and State Sovereignty (ICISS), an international commission of experts sponsored by the Canadian government under UN auspices that issued a report to the Secretary-General in 2001.¹² The influential and widely cited ICISS report suggests six principal criteria for what is to be considered a legitimate humanitarian intervention, which, according to critics, would rule out the 2003 Iraq war as such. In no particular order, these are: *right motives* (primacy of humanitarian purpose); *just cause* (the level of violence must be “large-scale”); force must be a *last resort*; *reasonable prospects for success*; *proportionality* (force must not do more harm than good and must comply with humanitarian law); and *right authority* (force must be legitimated by some multilateral framework).¹³ The purpose of this article is to consider whether and to what extent the principles advocated by the ICISS, together with other prevalent discourse on and past state practice of humanitarian intervention, lends any credibility to the argument that the Iraq war can be justified on humanitarian grounds as something approaching the legitimate use of military force.

Motives of the Intervener

The criterion taken by critics of the humanitarian argument to be the most obvious and powerful reason that the Iraq war is not a humanitarian intervention is that it was not justified as such, or at least that such justification was secondary.¹⁴ This is entirely true. Based on the rhetoric leading up to the war, it is sufficiently clear that bringing democracy to Iraq was considered to be of “derivative importance” to the Bush Administration, at least rhetorically. When former Secretary of State Colin Powell made the case for war to the UN Security Council in February 2003, his remarks were principally focused on Iraq’s alleged possession of WMD, referring only tangentially to Saddam’s

“Recent trends . . . can be interpreted as lending credibility to the Bush Administration’s argument that the resort to force in Iraq can be justified on human rights grounds.”

cruelty toward his own people.¹⁵ The rhetoric, of course, shifted after the failure to find evidence of such weapons.

In past practice of humanitarian intervention, however, the “motive” criterion has been, at best, inconsistently applied. For example, India’s intervention into East Pakistan during the Bangladesh war of 1971 has often been cited by legal scholars as an instance of legitimate humanitarian intervention, even though India’s primary justification for the use of force was the prevention of Bengali refugees from entering India.¹⁶ It just so happened that in this case, India’s military defeat of Pakistan helped put an end to Pakistan’s brutality against the Bengalis. Similar arguments have been made concerning Vietnam’s overthrow of Pol Pot’s murderous Khmer Rouge regime in Cambodia in 1979. In explaining its actions, Vietnam defended its use of force against Cambodia as self-defense and maintained that Pol Pot had been overthrown by an internal uprising.¹⁷ Even though Vietnam at no time invoked a humanitarian justification for its use of force, many scholars have written that the intervention was defensible on both self-defense and humanitarian grounds.¹⁸ Tanzania is another state that used force, ostensibly to repel an invasion by Uganda in 1978-79, which ultimately resulted in the overthrow of the brutal dictator Idi Amin. As in the previous cases, many analysts point to this intervention as one that was objectively justified on humanitarian grounds despite the fact that it was motivated by nonhumanitarian concerns.¹⁹

As a result of the confusion over the question of having the “right motive” in the practice of humanitarian intervention, scholars began to increasingly perceive this criterion to be less relevant. A scholarly debate has ensued on this question, with the conventional view requiring that humanitarian concerns be the primary, though not exclusive, justification for intervening.²⁰ In an influential study on humanitarian intervention, however, Nicholas Wheeler cogently put forth the argument that we need not consider the motives of the interveners in judging the legitimacy of an intervention, but rather whether or not the intervention achieved a positive humanitarian outcome.²¹ Wheeler suggests that preoccupation with the motives of the interveners “takes the inter-

vening state as the referent object for analysis rather than the victims who are rescued as a consequence of the use of force.”²² According to this thinking, placing the victims at the center of the analysis, as opposed to the interveners, “leads to a different emphasis on the importance of motives in judging the humanitarian credentials of the interveners.”²³ What matters, then, is whether the intervention in fact promotes human rights, not whether the resort to force was motivated out of a desire to do so. Legal scholar Fernando Tesón similarly seeks to extend the legitimating function of the humanitarian argument to include interventions whose primary justifications are nonhumanitarian, but which still produce positive humanitarian outcomes.²⁴

Enter 9/11 and the US war on terror, beginning in Afghanistan. The war on terrorism now opens up the real possibility that military interventions could be used to promote both counterterrorism and human rights. The threat of global terror seems to have provided what was missing in the humanitarian interventions that took place (or should have) in the 1990s: a persuasive security interest to motivate states to take repression of the sort perpetrated by the Taliban in Afghanistan (and Saddam Hussein in Iraq) seriously.²⁵ Using this analytical framework to appraise the Iraq invasion thus serves to lend credibility to Bush Administration claims that the war in Iraq was justified on humanitarian grounds, despite the fact that its primary motive was nonhumanitarian. Under this formulation of the motive criterion—which scholars like Wheeler have employed to legitimate interventions by India, Vietnam, and Tanzania—the Iraq war can similarly be regarded as a legitimate humanitarian intervention since it effectively removed the main obstacle to the realization of genuine human rights in Iraq: the Baathist regime. Even though human rights enjoyment is far from being a part of everyday life in Iraq today, certain accomplishments, such as the establishment of a free press, democratic elections, and the drafting of a constitution by a representative convention, suggest that the war in Iraq is in fact contributing to improved human rights conditions.

Just Cause (Level of Human Suffering)

Critics of the humanitarian argument further contend that under most criteria for a legitimate humanitarian intervention, the use of force for humanitarian purposes may be used only in the most extreme and exceptional cases of genocide or mass slaughter.²⁶ The reasoning here is twofold. First, we would not want military force used in cases of minor or small-scale abuses for the simple fact that the harm caused by the intervention would eclipse the harm that it sought to avert. Second, we want to reserve the military option for only those extreme and exceptional cases (such as genocide or mass slaughter), so as to avoid creating an excuse for waging war every time there is a nasty regime that demonstrates something less than the ideal complement of

human rights.²⁷ Under this criterion, intervention in Iraq would not be deemed permissible since the scope of the Iraqi government's killing as of March 2003 was not of this magnitude. In short, it did not meet the "threshold" of human suffering that would be sufficient to trigger a humanitarian intervention. While such large-scale atrocities were perpetrated at various times under Saddam Hussein's rule—for example, the 1988 Anfal campaign against the Kurds—humanitarian intervention is not a tool for *post facto* punishment, as Human Rights Watch's Kenneth Roth argues, but for prevention, and would thus be unjustified in the case of Iraq.²⁸

Critics such as Roth correctly note that humanitarian interventions are, at some level, intended to be anticipatory.²⁹ That is, they endeavor to halt or avert atrocities that are either ongoing or imminent. Since nobody has perfect knowledge of the future, anticipatory humanitarian interventions are necessarily based on speculation and the likelihood that a large-scale atrocity is imminent. The 1999 intervention in Kosovo was such an event. Based on the fact that Slobodan Milosevic deeply resented the Kosovars, had abused them in the past, and had previously carried out large-scale atrocities against Muslims living in other parts of the former Yugoslavia, NATO was betting on a large-scale atrocity in Kosovo unless it acted.³⁰ In fact, the event that triggered NATO's decision to threaten force against Serbia, which ultimately led to the bombing campaign, was the murder of some 45 Albanians in the village of Racak in January 1999³¹—atrocious, to be sure, but probably not genocide and (sadly) certainly not exceptional by today's standards. Likewise in Iraq, Saddam was not engaging in genocide or mass killing in March 2003, but he was highly suspicious of the Kurdish and Shiite populations, had a history of committing large-scale atrocities against them, and frequently carried out pogroms against them. As such, one can reasonably make the argument that sooner or later his regime would have carried out similar large-scale atrocities against them, just as NATO foresaw in the case of Milosevic vis-à-vis the Kosovar Albanians. Genocide or mass slaughter was not imminent in March 2003, but neither were such similar atrocities imminent in places like Haiti in 1994 or Kosovo in 1999.

International precedent and legal opinion thus provide some notable evidence that the level of abuse need not be approaching genocidal before military intervention may be legitimately undertaken. The 1994 humanitarian intervention in Haiti authorized by the UN Security Council was in response to a human rights situation that few reasonably contended had the makings of what is understood to be genocide or equivalent abuse.³² The intervention in Somalia in 1993-94, also endorsed by the Security Council, was likewise not in response to genocide or ethnic cleansing, commonly construed.³³ Nevertheless, if the UN-sanctioned intervention in Haiti supplies a

“The war on terrorism now opens up the real possibility that military interventions could be used to promote both counterterrorism and human rights.”

standard for humanitarian intervention, then the lack of a democratically elected government and the everyday brutalities that accompany it are sufficient to warrant the transboundary use of force. Like the debate over motives, the concept of the “triggering conditions” for humanitarian intervention is the subject of intense academic debate. Law Professor Michael Reisman of Yale University is among many who argue that there is a right under international law to use armed force to overthrow despotic governments in other countries.³⁴ If this is so, the Iraq war potentially finds normative legal support as a pro-democratic humanitarian intervention.

Force as a Last Resort

That military force must be used as a last resort finds scant legal codification or evidence of consistent state practice, though international norms flowing from the Just War tradition and the laws of war are reasonably unequivocal in stating that military force is to be a last option—in humanitarian intervention as well as other military interventions.³⁵ The Report of the ICISS has spoken convincingly on this subject and concluded that while the use of force should be a last resort when contemplating humanitarian intervention, every option need not have been literally tried and failed before the resort to force is pursued.³⁶ That is, there must be reasonable grounds for believing that if a certain noncoercive measure had been attempted, it would have failed.

The war in Iraq arguably meets this criterion, though it is important that we make important distinctions among outcomes that various noncoercive efforts toward Iraq sought to achieve. In other words, the goal of the noncoercive efforts immediately prior to the 2003 invasion (weapons inspectors, various Security Council Resolutions, saber-rattling by the United States) was not the cessation of human rights violations, per se. Resolution 1441, for example, must not be considered a diplomatic effort to coerce Saddam Hussein to cease human rights violations or to hold elections, for this resolution was intended to achieve other purposes related to WMD,³⁷ as was the ultimatum given to him by the United States to either cede power and live in exile

or face invasion. Nevertheless, since the first Gulf War, economic sanctions imposed on Iraq for its invasion of Kuwait had remained in place as leverage to press for change within Iraq, while no-fly zones were imposed immediately after that war to prevent Saddam Hussein's violent repression of Kurdish and Shiite populations.³⁸ Despite these measures, however, Hussein's flagrant violation of human rights standards persisted during the dozen or so years these measures were in place. Given Saddam's refusal to cede power even under the threat of military invasion in March 2003, there was a more than reasonable chance that other efforts to convince him to capitulate—either for purposes of relinquishing WMD or ceasing flagrant human rights violations—would have failed.

One effort not attempted, which some have argued should have been, was criminal prosecutions. Again, though, it is highly unlikely that an indictment of Saddam Hussein or his henchmen for crimes against humanity or other atrocities would have had any effect on Iraq's human rights performance. Prior experiences with using prosecution (or the threat thereof) as a way to stop ongoing human rights abuses does not bode well for this option, as evidenced by Slobodan Milosevic's failure to stop his ethnic cleansing campaign against the Kosovars, even after the ad hoc Yugoslav Tribunal had indicted him.³⁹ While a heated debate on the utility of prosecutions toward bringing about human rights compliance has raged since the creation of the Yugoslav Tribunal, it is quite far from settled that criminal indictments or prosecutions strike fear in the hearts of sitting dictators.⁴⁰

Reasonable Prospects for Success

That there must be a reasonable chance that the intervening force will militarily prevail and avert the atrocities or suffering that triggered the intervention in the first place is another criterion applied to humanitarian intervention that comes mainly from the Just War tradition.⁴¹ Concerning humanitarian intervention, if the interveners do not have the capabilities to prevail militarily and protect the imperiled population, then intervention must not be undertaken.⁴²

This criterion would not preclude the Iraq war as a humanitarian intervention. Nobody reasonably argued at the time that the US military did not have the capability to defeat Iraq militarily and rescue the Iraqi people from Saddam Hussein's brutality. As such, this criterion has not been the focus of criticisms of the US argument that Iraq was a humanitarian intervention. Two years of a fierce insurgency do cast doubt on how long it will take before the Iraqi population can finally be made safe from the suicide bombings, kidnappings, assassinations, and other abuses perpetrated by insurgents. Nevertheless, the capabilities issue has never been a real point of contention.

Proportionality

The criterion of “proportionality” is a difficult, though not impossible, one to gauge. Generally speaking, proportionality requires that the interveners avoid causing more destruction than is required to achieve the military objective and that such means are commensurate with the original provocation.⁴³ While it is certainly possible to obtain some estimation of the good that an intervention is likely to achieve and then weigh this against the harm it might potentially produce, even after an intervention one still cannot know with absolute certainty what would have happened had the intervention not taken place. With respect to Iraq, quite frankly, it is still too early to tell whether the war has done more to promote human rights than to imperil them. Nobody reasonably contests that it is a good thing that Saddam Hussein is no longer in power there, and this provides good reason for believing that a substantial amount of good will come from this war if a stable representative government takes hold in Iraq. Though there are any number of scenarios that could upset this hope, right now it is simply too soon to know if the ouster of Saddam Hussein and the war itself will leave Iraq better off than it was before in terms of human rights enjoyment.

It is nevertheless true that any use of force—be it humanitarian intervention or otherwise—must comply with relevant humanitarian law, most notably the Geneva Conventions of 1949. This is relatively uncontested in international law, as no organized state military seriously argues (publicly, at least) that the Geneva Conventions do not apply to their conduct in armed conflict with other state-parties. The initial combat phase of the invasion of Iraq meets this requirement by most standards, as US officials proudly extolled the virtues of the Geneva Conventions and their compliance with them, and derided the Iraqi forces’ violation of them.⁴⁴ US treatment of irregular combatants detained during the occupation is, of course, another matter. During the combat phase, Coalition forces took extraordinary care to avoid harming civilians when attacking selected targets. While civilian casualties were sustained, they were unintended and not part of a plan or policy implemented by the Coalition forces, which would have constituted a violation of humanitarian law under the Geneva Conventions. Every war in history, regardless of the justice or prudence of such wars, has resulted in civilian casualties, which rightly invites scrutiny as to the proper conduct of the use of force. NATO’s intervention in Kosovo invited such scrutiny for the use of cluster bombs and the bombing of dual-use targets such as power grids. In many ways, the war in Iraq was conducted with even more of a concern for humanitarian law than the Kosovo intervention. Since Kosovo, for example, Human Rights Watch has confirmed that the US Air Force has substantially cut back the use of clus-

ter bombs.⁴⁵ Nevertheless, unintended civilian casualties remain an inevitable, though regrettable, by-product of any armed conflict, regardless of the justice of the conflict.

While the extent to which the US and Coalition forces have conformed to the requirements of the Geneva Conventions since the end of major combat operations is certainly debatable, as evidenced by the Abu Ghraib abuses, one must be careful not to confuse *jus ad bellum* (justice of the resort to war) with *jus in bello* (justice in the conduct of the war).⁴⁶ In contemporary Just War discourse, this means that the resort to war could theoretically be justified even if the means employed in the conduct of the war are not. As such, even if the US and allied forces have been, in fact, in breach of the Geneva Conventions in Iraq, this fact theoretically does not affect the status of the initial resort to force itself, though it would affect the legitimacy of the overall war effort. Politically, of course, it is difficult to justify a war on humanitarian grounds if the war is conducted with disregard for the welfare and dignity of noncombatants. Nevertheless, one can again point to the Kosovo intervention as an example in which the resort to force was considered by most democratic governments to be justified, but the conduct of the intervention was perhaps not, or at least was extremely controversial due to the bombing of dual-use targets, the use of cluster bombs, and the exclusive use of high-altitude bombing.⁴⁷ It is thus conceded that the overall legitimacy of a war will be judged not only on the moral and legal case for the resort to war, but also on the extent to which the war adheres to the principles of the laws of war, even though the *jus ad bellum* and *jus in bello* framework endeavors to distinguish them in a more analytical sense.

Right Authority

The international authority under whose mandate military interventions take place is an important legitimating component of any transboundary use of military force. According to the ICISS, the UN Security Council ideally would be the appropriate body to provide legitimacy to a humanitarian intervention since it entails the use of military force outside of self-defense, though the ICISS report suggests that this is preferred and not necessarily required.⁴⁸ As a technical legal matter, the invasion of Iraq was illegal since the Security Council did not explicitly approve it—whether it was a “humanitarian intervention” or not.⁴⁹ By this same token, however, so was NATO’s intervention in Kosovo. But that intervention was perceived by most democratic governments and numerous scholars to be a legitimate humanitarian intervention, even if it was illegal as a technical matter since it was not authorized by the Security Council.⁵⁰ Thus, to the extent that the Kosovo intervention is evidence of state

practice toward the creation of a customary legal norm that permits humanitarian intervention without UN approval,⁵¹ then the Iraq war might also constitute such state practice on its way to becoming something resembling lawful international conduct.

What helped make the case for the Kosovo intervention was the fact that it was a truly multilateral intervention conducted by a reasonably cohesive coalition of democracies allied in a formal multilateral organization. While a report commissioned by the Danish government states that humanitarian intervention by one state may still be considered legitimate “if the humanitarian emergency is apparent, but no other states than the neighboring states want to make the effort,”⁵² the preference of the ICISS is that intervention be multilateral so as to act as a check on the unilateral pursuit of a single state’s self-serving interests.⁵³ While it may be a stretch to suggest that the Iraq war was multilateral in the same sense that the Kosovo intervention was, it is also untrue that it was completely unilateral. Britain was the only other state which made a significant military contribution to the war (and Australia to a lesser degree), but the war itself was nevertheless endorsed by a broad coalition of liberal democratic states, including Japan, South Korea, Spain, Poland, Denmark, the Netherlands, and many others. No regional organization formally endorsed the war, but since the war effort included troops from other states often under the command of their officers (though ultimately answering to the US Central Command) it maintains a certain multilateral appeal. It also could be argued that the Kosovo intervention was in fact no more multilateral than the Iraq war, since a vast majority of combat sorties against Serbia were conducted with US assets and under US, not NATO, command.⁵⁴ Indeed, under the military rules of the organization, the Supreme Commander of NATO’s military forces is always a US general.⁵⁵

Conclusion

To summarize, of the six criteria put forth by the ICISS to determine when humanitarian intervention is justified (which have been in some form put forth by numerous authors cited in this essay), four have invited scrutiny with respect to the Iraq invasion qualifying as a legitimate humanitarian intervention: right motive, just cause, proportionality, and right authority. For better or worse, there is evidence in the discourse on and practice of intervention that suggest these criteria do not necessarily preclude Iraq as a humanitarian intervention.

With respect to “right motives,” while much of the scholarly literature agrees that humanitarian motives ought to be primary (though not necessarily exclusive), humanitarian interventions during the Cold War suggest a gap between prevailing scholarly opinion and state practice. Furthermore, there is far

from a consensus in the literature concerning the primacy of humanitarian motives, as evidenced by downplaying of “mixed motives” in important studies on humanitarian intervention.⁵⁶ Likewise, with respect to the “just cause” criterion, most scholars believe that humanitarian intervention *ought* to be permissible only in cases of genocide or mass killings, but this conflicts with important legal opinion regarding pro-democratic intervention, as well as precedents established by UN-sanctioned humanitarian interventions in Haiti and Somalia. The “proportionality” criterion is also contested in the case of Iraq, as it is currently unknowable whether the invasion will result in “more good than harm.” And while adherence to the Geneva Conventions by US and allied forces is the subject of debate, one must concede that the abuses at Abu Ghraib and other potentially unlawful acts do profoundly undermine the legitimacy of the humanitarian argument. But owing to the conceptual distinction between *jus ad bellum* and *jus in bello*, such abuses do not preclude the war’s legitimacy from the point of view of *jus ad bellum*. Finally, the “Kosovo precedent” and much scholarly opinion suggest that even when the use of military force is not formally authorized by the UN, it can still be considered legitimate (though technically illegal).

The purpose of the arguments laid out above is not to provide political support for the Bush Administration’s claims that the war in Iraq can or should be justified as a humanitarian intervention. In fact, such arguments have a significant downside, because they potentially render any use of force “legitimate” if the intervener leaves the target state better off than it was before. This, in effect, would nullify most existing legal and normative restraints on the resort to force. Rather, the point is that the argument suggesting that the invasion of Iraq was not a legitimate humanitarian intervention is actually more nuanced than some may think. It was the attitude molded during the interventions in the 1990s, and that grew out of dissatisfaction with the Kosovo intervention and the Rwanda genocide, that are in no small part why the Bush Administration is now able to supply a “back-up humanitarian justification” for the war in Iraq.

Some believe that there is such a thing as a “doctrine” of humanitarian intervention, though it is admittedly rather vague and informal.⁵⁷ Nevertheless, interventions during the Cold War and the 1990s allowed this inchoate doctrine to accumulate viability and a certain amount of credibility in international relations. It has become obvious, however, that this doctrine, for all its virtues, is flawed. This is mostly because of its lack of clarity, which has allowed the current US Administration to exploit it in order to sanction something it was not intended to justify. The problem, therefore, lies not only in America’s attempt to appeal to these norms to justify the Iraq invasion, but in the content of the norms themselves.

One way of alleviating this problem, though admittedly heretofore unobtainable, is to pursue some sort of a universal declaration on humanitarian intervention that would work toward the eventual creation of a legally binding convention. But such a solution hardly seems likely. With the Security Council, and the UN more generally, weakened as a result of the Iraq war, it might be more prudent to work toward allowing regional organizations—such as the Organization of American States, the African Union, and the European Union—to sanction humanitarian military operations in the territories of their respective member-states. If a loose normative consensus on humanitarian military intervention was adequate during the 1990s, it is quite far from adequate in the age of global terror and in the context of the war on terror. In the 1990s, some believed the use of military force had been transformed, whereby states would use their militaries to do little more than promote human rights and democracy around the world. While the post-9/11 world now necessitates a new role for the world's militaries, humanitarian military intervention must remain a tool at the disposal of the community of states if we wish to halt and avert the ever persistent threat of gross human rights violations around the world. But if humanitarian intervention is conflated with the war on terror, even genuine humanitarian interventions will be viewed with the same suspicion and contempt with which much of the world currently views the US-led global war on terror. This could potentially prevent the projection of US and other democracies' military capabilities in situations like Darfur, Sudan, where such capabilities could potentially do some good. If the idea of humanitarian intervention falls from grace because of its association with the war on terror, then a valuable instrument in the tool kit of human rights strategies may be rendered undeservedly useless.

NOTES

1. Terry M. Neal, "Bush Reverts to Liberal Rationale for Iraq War; Critics Still Oppose War Despite Hussein's Human Rights Record," *The Washington Post*, 9 July 2003.

2. See especially Kenneth Roth, "War in Iraq: Not a Humanitarian Intervention," in *Human Rights Watch World Report 2004: Human Rights and Armed Conflict* (New York: Human Rights Watch 2004), pp. 13-33. For the views of Richard Falk, Samantha Power, David Reiff, Ramesh Thakur, and other leading scholars on this issue, see "Humanitarian Intervention: A Forum," *The Nation*, 14 July 2003. See also Michael Walzer, "No Strikes: Inspectors Yes, War No," *The New Republic*, 30 September 2002, p. 21; and Michael Ignatieff, "Why Are We in Iraq? (And Liberia? And Afghanistan?)," *The New York Times*, 7 September 2003, p. 38.

3. Roth, pp. 13-33.

4. See especially *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington: GPO, 2004), pp. 334-38.

5. Alex J. Bellamy, "Motives, Outcomes, Intent and the Legitimacy of Humanitarian Intervention," *Journal of Military Ethics*, 3 (November 2004), 217.

6. See generally Mark Peceny, *Democracy at the Point of Bayonets* (University Park: Pennsylvania State Univ. Press, 1999). See also Louis Henkin et al., *Right versus Might: International Law and the Use of Force* (New York: Council on Foreign Relations Press, 1991).

7. See Mark A. Drumbl, "Self-Defense and the Use of Force: Breaking the Rules, Making the Rules, or Both?" *International Studies Perspectives*, 4 (November 2003), 409-31. See also Charles W. Kegley and Greg-

ory A. Raymond, "Preventive War and Permissive Normative Order," *International Studies Perspectives*, 4 (November 2003), 385-94.

8. Jane Stromseth, "Rethinking Humanitarian Intervention: The Case for Incremental Change," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe and Robert O. Keohane (Cambridge, Eng.: Cambridge Univ. Press, 2003), pp. 245-55. For a pro-interventionist take on the US experience with humanitarian intervention in the 1990s, see John Shattuck, *Freedom on Fire: Human Rights Wars and America's Response* (Cambridge, Mass.: Harvard Univ. Press, 2003).

9. See, for example, "Editorial Comments: NATO's Kosovo Intervention," *American Journal of International Law*, 93 (October 1999), 824-62. See also Holzgrefe and Keohane.

10. Clinton W. Alexander, "NATO's Intervention in Kosovo: The Legal Case for Violating Yugoslavia's National Sovereignty in the Absence of Security Council Approval," *Houston Journal of International Law*, 22 (No. 3, 2000), 403-49. Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford, Eng.: Oxford Univ. Press, 2000), pp. 37-38. See also Thomas M. Franck, "Interpretation and Change in the Law of Humanitarian Intervention," in Holzgrefe and Keohane, pp. 204-31.

11. Shattuck, chs. 1, 2.

12. The International Commission on Intervention and State Sovereignty (ICISS) was established by the Canadian government under UN auspices to establish a normative consensus on criteria for humanitarian intervention. Their report, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), is considered an authoritative source on norms of intervention. See also Danish Institute of International Affairs (DUPI), *Humanitarian Intervention: Legal and Political Aspects* (Copenhagen, Denmark: DUPI, 1999), hereinafter cited as "Danish Institute Report." Independent International Commission on Kosovo, *The Kosovo Report* (Oxford, Eng.: Oxford Univ. Press, 2000), hereinafter cited as "Kosovo Commission Report."

13. ICISS, *The Responsibility to Protect*, p. 32. These criteria are partially derived from the Just War tradition, as documented by Mona Fixdal and Dan Smith, "Humanitarian Intervention and Just War," *Mershon International Studies Review*, 42 (November 1998), 283-312. See also John J. Merriam, "Kosovo and the Law of Humanitarian Intervention," *Case Western Reserve Journal of International Law*, 33 (Winter 2001), 126-35.

14. See Roth, p. 20.

15. "US Secretary of State Colin Powell Addresses the UN Security Council," White House Press Release, 5 February 2003, <http://www.whitehouse.gov/news/releases/2003/02/20030205-1.html>.

16. Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Dobbs Ferry, N.Y.: Transnational Publishers, 1988), p. 185; Wheeler, *Saving Strangers*, ch. 2; see also Leo Kuper, *The Prevention of Genocide* (New Haven, Conn.: Yale Univ. Press, 1985).

17. Gary Klintworth, *Vietnam's Intervention in Cambodia in International Law* (Canberra: Australian Government Publishing Group, 1989), pp. 27-30.

18. *Ibid.*, p. 28; see also Wheeler, *Saving Strangers*, ch. 3.

19. Tom J. Farer, "Human Rights in Law's Empire: The Jurisprudence of War," *American Journal of International Law*, 85 (January 1991), 122; Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (Philadelphia: Univ. of Pennsylvania Press, 1996), p. 86; K. Mills, "Sovereignty Eclipsed? The Legitimacy of Humanitarian Access and Intervention," *Journal of Humanitarian Assistance*, 3 (June 2000), <http://www.jha.ac/articles/a019.htm>; Wheeler, *Saving Strangers*, p. 132.

20. Bellamy, pp. 221-25.

21. Wheeler, *Saving Strangers*, pp. 37-38. For an opposing view, see Bellamy.

22. Wheeler, *Saving Strangers*, p. 38.

23. *Ibid.*

24. Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (2d ed.; Dobbs Ferry, N.Y.: Transnational Publishers, 1997), p. 103.

25. See Nicholas J. Wheeler, "Humanitarian Intervention after September 11, 2001," in *Just Intervention*, ed. Anthony F. Lang, Jr. (Washington: Georgetown Univ. Press, 2003).

26. Roth, p. 21; Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), p. 106; Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International, 1998), p. 79; Murphy, p. 322; ICISS, *The Responsibility to Protect*, p. 31.

27. Eric A. Heinze, "The Moral Limits of Humanitarian Intervention: Reconciling Human Respect and Utility," *Polity*, 36 (July 2004), 543-58. See also Danish Institute Report, p. 106.

28. ICISS, *The Responsibility to Protect*, p. 31.

29. See Jonathan I. Charney, "Anticipatory Humanitarian Intervention in Kosovo," *American Journal of International Law*, 93 (October 1999), 834-41.

30. See generally Wesley Clark, *Waging Modern War: Bosnia, Kosovo and the Future of Combat* (New York: Public Affairs, 2001).

31. *Ibid.*, p. 158. See also Tim Judah, *Kosovo: War and Revenge* (New Haven, Conn.: Yale Univ. Press, 2000), pp. 193-95.
32. Colin Granderson, "Military-Humanitarian Ambiguities in Haiti," in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, ed. Jonathan Moore (Oxford, Eng.: Rowman and Littlefield, 1998), pp. 99-118.
33. See generally Walter Clarke and Jeffrey Herbst, eds., *Learning From Somalia: The Lessons of Armed Humanitarian Intervention* (Boulder, Colo.: Westview, 1997).
34. W. Michael Reisman, "Coercion and Self-Determination: Construing Article 2(4)," *American Journal of International Law*, 78 (July 1984), 642-45; and Anthony D'Amato, "The Invasion of Panama was a Lawful Response to Tyranny," *American Journal of International Law*, 84 (April 1990), 516-24. See also Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford, Eng.: Oxford Univ. Press, 2001), pp. 88-111. For an opposing view, see Oscar Schachter, "The Legality of Pro-Democratic Invasion," *American Journal of International Law*, 78 (July 1984), 645-50.
35. Fixdal and Smith, pp. 302-03. See also Richard Falk, "Kosovo, World Order, and the Future of International Law," *American Journal of International Law*, 93 (October 1999), 855.
36. ICISS, *The Responsibility to Protect*, p. 36.
37. UN Security Council (UNSC) Resolution 1441, 8 November 2002, UN Doc. S/RES/1441.
38. UNSC Resolution 661, 6 August 1990, UN Doc. S/RES, 661; UNSC Resolution 688, 5 April 1991, UN Doc. S/RES/688.
39. See Paul Koring and Marcus Gee, "Closing in on Milosevic: Indictment of Yugoslav Leader Could Complicate Peace Process," *The Globe and Mail* (Toronto), 27 May 1999.
40. Aryeh Neier, "The New Double Standard," *Foreign Policy*, No. 105 (Winter 1996-1997), pp. 91-101; and Jeffrey E. Garten, "Comment: The Need for Pragmatism," *Foreign Policy*, No. 105 (1996-1997), pp. 103-06. See also Anthony D'Amato, "Peace vs. Accountability in Bosnia," *American Journal of International Law*, 88 (July 1994), 500-06; and Anonymous, "Human Rights in Peace Negotiations," *Human Rights Quarterly*, 18 (May 1996), 249-58.
41. Fixdal and Smith, pp. 303-05.
42. ICISS, *The Responsibility to Protect*, p. 37.
43. *Ibid.*; Fixdal and Smith, p. 303.
44. Gerry J. Gilmore, "Joint Chiefs Chairman 'Couldn't Be Prouder' of Troops," American Forces Press Service, 24 March 2003; US Department of Defense, "Deputy Secretary Wolfowitz Interview with KABC-TV," 23 March 2003, http://www.defenselink.mil/transcripts/2003/t03232003_t0323dla.html; US Department of Defense, "DOD News Briefing - ASD PA Clarke and Maj. Gen. McChrystal," 24 March 2003, http://www.defenselink.mil/transcripts/2003/t03242003_t0324asd.html.
45. Roth, p. 30.
46. Steven R. Ratner, "*Jus Ad Bellum* and *Jus in Bello* After September 11," *American Journal of International Law*, 96 (October 2002), 905-21.
47. Amnesty International, "*Collateral Damage*" or *Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, Document no. EUR 70/025, June 2000, <http://www.amnesty.org/ailib/intcam/kosovo/index.html>.
48. ICISS, *The Responsibility to Protect*, pp. 47-55.
49. This is the prevailing legal opinion. See "Agora: Future Implications of the Iraq Conflict," *American Journal of International Law*, 97 (July 2003); 553-642.
50. Kosovo Commission Report, p. 4.
51. This issue was extensively debated after the Kosovo intervention, with many contending that the Kosovo intervention was, in fact, indicative of a new norm on humanitarian intervention. Antonio Cassese, "*Ex iniuria jus oritur*: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?" *European Journal of International Law*, 10 (No. 1, 1999), 29; Merriam, p. 111. For an opposing view, see Bruno Simma, "NATO, the UN and the Use of Force: Legal Aspects," *European Journal of International Law*, 10 (No. 1, 1999), 1-22.
52. Danish Institute Report, p. 108.
53. ICISS, *The Responsibility to Protect*, pp. 32, 47-55. See also Cassese, p. 27.
54. John E. Peters et al., *European Contributions to Operation Allied Force: Implications for Transatlantic Cooperation* (Arlington, Va.: RAND, 2001).
55. NATO, *NATO Handbook*, p. 159, <http://www.nato.int/docu/handbook/2001/>.
56. See especially Wheeler, *Saving Strangers*; Tesón, *Humanitarian Intervention*; and ICISS, *The Responsibility to Protect*. See also Jean Daudelin, "Rethinking Humanitarian Intervention," (Ottawa: The North-South Institute, 2000), p. 17.
57. See, for example, T. Modibo Ocran, "The Doctrine of Humanitarian Intervention in Light of Robust Peacekeeping," *Boston College International and Comparative Law Review*, 25 (No. 1, 2002).