

HUMANITARIAN INTERVENTION AND THE 'RESPONSIBILITY TO PROTECT': RHETORICAL EXERCISES WITHOUT IMPLEMENTATION?¹

JANNE HAALAND MATLARY

*There can be little doubt that this unprecedented international attention to the internal governing structures of states has significant implications for the current content and future direction of international law'.
The recent wave of democratization (...) has had ramifications the conduct of international organizations, and consequently, for international law'.
Fox & Roth (2000: 4)*

Humanitarian intervention is not a new phenomenon. It is simply not correct to assume, as many realists do, that geo-strategic interests remained the motivation for the use of force until the decade of 'humanitarianism' of the 1990s. As also Finnemore points out, several wars in the 19th century had strong humanitarian elements – among them the Greek War for Independence, the Lebanese-Syrian conflict, the British interest in the Bulgarian case of Ottoman persecution of Bulgarian Christians, and the Armenian case of being the object of repeated Turk genocides from 1894 onwards (Finnemore 1996: 162-169). She concludes that humanitarian interventions did occur, but only when they happened to accord with geo-strategic long-term interests. The two variables worked in tandem, so to speak – and this is different from assuming away the humanitarian motive altogether, which is what traditional realism does.

The discussion about 'just war', referring to the criteria for intervention and warfare, is as old as political philosophy and international law itself. The 'just war' tradition was based on natural law argumentation as developed in the Middle Ages and before that. St. Thomas Aquinas is known for

¹ This paper draws on my book *Values and Weapons: From Humanitarian Intervention to Regime Change*, Palgrave Macmillan, London, 2006.

his principles of *justum bellum*; and the 'father' of international law (*Völk-errecht*), Hugo Grotius (1583-1645), argued that, in extreme cases, the subjects of a ruler were entitled to revolt against tyrants.

The ancient tradition of 'just war' can fruitfully be seen as a precursor to what was later defined as the human right to security of person, or 'human security'. The core criterion was that of justice: an aggressor can and should be unarmed, but the use of force should be proportionate to the goal to be achieved. In such cases it was legitimate to be aided by another state, thus making for a 'value-based' type of intervention. Grotius' thesis about the right to a heavily conditioned intervention was employed by international jurists well into the 19th century; at that time, there were several interventions based on values, such as the violations of the individual right to religious freedom of Christians in Muslim countries.

The Post-War Period

The Cold War period was one of low-level activity by the UN Security Council. However, in at least two cases human rights violations were the main cause of Council action: in 1966 in *Southern Rhodesia* (Zimbabwe) the Security Council for the first time regarded breaches of human rights a threat to international peace. In 1965, the white minority had declared the independence of the territory, against the majority of blacks. In res. 217 (1965) the Council declared this situation to be a threat to international peace and security, and encouraged economic sanctions against the regime. When this had no effect, another resolution, 221 (1966) requested the UK to head the blockade of ships carrying oil to the regime, and in doing this, to use military force if necessary.

The second time the Council invoked human rights in the Cold War period was in 1977, against the apartheid regime in *South Africa*. In res. 418 (1977) the Council, after repeated condemnations of this policy, mandated a weapons embargo against the country.

There were thus some precursors to the Security Council practice in the 1990s in terms of reasoning about humanitarian factors, but there were few cases. Below I recapitulate the sequence of humanitarian intervention after the Cold War – some of which have been partially discussed from different angles in the previous chapters. Then I look at the justifications for these interventions and whether they carried legitimacy in an attempt to see which of my 'models' of legitimacy can best explain the dynamics of intervention.

Cases

The first major intervention mandated by the UNSC after the Cold War period was in *Iraq*. In res. 688 (1991) the Council decided that the regime's suppression of the Kurds in the north of the country represented a threat to international peace and security in the region. The Security Council demanded that humanitarian organizations be given free access to Iraq at once; on the basis of this resolution, many humanitarian organizations went to Iraq.

The next 'hot-spot' for the Council was *Bosnia*. Here the civil war was at its height from 1991 onwards, with the siege of Sarajevo and the massacres of civilians in so-called 'safe enclaves' of the UN from 1994. The worst imaginable examples of massive human rights violations were seen in Europe itself, when more than 7,000 boys and men were executed in the UN 'safe area' of Srebrenica.

The international community was slow and reluctant to intervene. Driven by events and media, there was a clear pressure that 'something must be done'. The first step was economic sanctions against Serbia and Montenegro, mandated by res. 757 (1992) and based on an assessment that the situation represented a threat to 'international peace and security'. A later resolution (770/92) the same year mandated a military intervention to protect convoys with humanitarian aid, while the UN called on NATO to protect its 'safe areas' in 1994. Finally, the Council established the war crimes tribunal, ICTY, in res. 827/93, for judging war criminals from the FRY. The mandates for military intervention in the FRY followed the pattern of embargoes first, and then assistance to protect the UN peace-keeping force UNPROFOR and the civilian population in UN 'safe areas'.

Another difficult case in the same year was *Somalia*. Here the UNSC again mandated a weapons embargo (res. 733/92), and later, a military intervention (794/92) because the humanitarian tragedy caused by civil war represented a threat to international peace and security. In this resolution the Security Council did not mention any border spillover of the security threat: it was simply *caused by and confined to the situation inside Somalia alone*. Thus, the international character of the conflict was non-existent, and the Security Council clearly opined that it was entitled to deal with internal conflicts. This is an important point, as it marks the end of the state-to-state defining characteristic of security policy in the official pronouncements of this body. As the Council's mandate is to react to 'a threat to *international* peace and security', we see here that the intervention in this case was mandated without any reference to this international context. In the case of

Somalia, however; the intervention was also a reluctant one, spurred in the end by the tremendous humanitarian tragedy caused by the civil war. As we saw in Chapter 5, the USA did not rush to intervene: quite the contrary.

The next case of humanitarian non-intervention was *Rwanda*, where the civil war reached huge proportions in 1994. Again the UNSC mandated a weapons embargo, based on a humanitarian situation that was diagnosed as a threat to international peace and security (res. 918/94). When the situation deteriorated, the Council mandated a military intervention to alleviate the humanitarian situation (res. 929/94), but the 21 states that were requested to contribute troops, failed to do so. The genocide took place without any attempt being made to stop it. 800,000 were killed in four months. Afterwards the Security Council established a tribunal for war crimes, crimes against humanity, and serious breaches of international humanitarian law (res. 955/94) – further recognition of the human rights basis of security policy.

In *Kosovo*, from 1998 onwards, the Security Council was engaged along with the 'Group of Six', the major states, the OSCE, and various diplomatic initiatives. Here it became clear that China and Russia would use their veto in the Council, making it impossible to achieve a mandate for an intervention. The UNSC came as close to this as possible, however – a point that may also, incidentally, be made in the case of Iraq 2003.

First, the Council passed a resolution, 1160/98, which condemned the use of force against civilians by both the Serbs and the Kosovars. Then it adopted a weapons embargo against the Former Republic of Yugoslavia, and also advised that the situation represented a threat to peace and security in the region (res. 1199/98). Finally the Council warned that further measures would be taken unless the demands set out in res. 1160 were implemented.

The next resolution on Kosovo was, however, not a mandate for intervention, but the settlement with the regime in Belgrade about peace implementation and the establishment of UNMIK in Kosovo (res. 1244/99). There had been no explicit mandate for intervention, but two resolutions had diagnosed a threat to international peace and security. NATO attacked in an air campaign that lasted from 26 March to 10 June 1999. The official reason given was that of 'halting a humanitarian catastrophe and restoring stability'. Again there was the provision of a UN mandate to use force to protect UNPROFOR, but it was quite unclear whether any state would send forces for this purpose. The West did not want to intervene with ground forces, and seemed prepared to let the war-

ring factions continue on their own. Sarajevo had been under siege for almost two years, and nothing had been done by the West apart from sanctions and humanitarian aid. Embarking on the actual use of hard power was not easy: any land force would involve large losses. Which democracy would willingly endorse that?

The moral debate about the injustice done to the Bosniaks and also the Croats continued in the Western press, with calls for hard-power intervention to assist them. US politicians led by Bob Dole wanted to arm these two groups and to lift the embargo, an initiative called 'lift and strike'. This eventually became the US position, but was resisted by the Europeans, who manned UNPROFOR. They naturally feared retaliations against peace-keepers, who had been taken as hostages by the Serbs on several occasions.

The decisive turn came with human rights atrocities shown on the world media. The Bosnia war received unique media coverage, especially the siege of Sarajevo. First came the move into the 'safe haven' to separate the boys and men from the population. They were escorted to their death outside the town. All this happened while the UN was still trying to stop the use of force to prevent the massacre: UN Special Representative Yasushi Akashi did his best to maintain the 'impartiality' of the UN to the end. When the NATO attack came, the worst massacre since the Second World War had already been carried out (Thune & Hansen, eds., 1998).

The Bosnia intervention was a non-intervention for four years while the war was going on. It became a reluctant and belated hard-power intervention only when the critical considerations impelling NATO to take action were those of humanity, with no possibility of identical national interests in the Balkans that they sought to pursue.

The political logic of the preparations for intervention naturally also played a role. Once the threat of hard power had been launched, NATO credibility was at stake. Now that intervention was on the political agenda, no Western leader was likely to back down. True, there was the possible danger of a massive exodus of refugees into neighbouring states, but this did not constitute a credible security threat to NATO states as such. The most likely explanation for the decision to threaten the use of force – the launching of ACTORD – was the escalation of internal displacement, harassment and violence in Kosovo. However, without the recent experience of non-action in the similar situation in Bosnia it is unlikely that the Kosovo intervention would have happened.

No intervention trend, no logical consistency

What can we conclude from this survey of Security Council action in the 1990s?

First, the *UNSC is a body for great-power politics, and is not a legal court of interpretation of a treaty*. It is clear that cases brought to the Security Council were put on the agenda by states themselves, and that the Council itself could not act without such state support. The Council is a political body which does not act without the will of its member states. Thus, some internal armed conflicts have received no or scant attention; others have been 'adorned' with military forces and peace-keeping operations. The Security Council is a political body, not a legal court. Thus, its agenda is determined by great-power politics: a veto (as expected from Russia and/or China) would have stopped a new resolution on Kosovo; and the record of Russian and US vetoes in the history of the Council is a long one, not counting the vetoes that are never cast because they are expected and thus many conflicts are never put on the Council agenda. Thus, for example, the war in Chechnya has not been on the agenda, as is the case with many other conflicts in Southern Caucasus.

Second, *there has been no consistency* in the Council's attention to conflicts: the ones in Europe – Bosnia and Kosovo – have received far more attention and action than the many still on-going wars in Africa. Also this underlines the essentially *political* character of the Council. Were it governed by law, one would expect a certain consistency in its behaviour, but there has been none. The conflicts most in need of such intervention – Rwanda, then Bosnia, etc. – did not get assistance. If there had been a substantial criterion of humanitarian need as the basis of intervention, reality would have been different.

However, it is clear that, despite this uneven practice, *all the major conflicts dealt with in the 1990s have had major humanitarian consequences*. The humanitarian situation has remained a constant cause for diagnosing a situation as being in accordance with Chapter VII's criteria for a threat to international peace and security. Every modern armed conflict does involve such threats; but in the interventions outlined above, it is a feature that there were no clear 'national security interests' at stake. We simply cannot find a traditional realist explanation of intervention here.

Wheeler, who has studied humanitarian intervention in his standard work *Saving Strangers?*, concludes that normative changes on the national level explain these interventions in *the few cases when they do occur*: 'Nor-

mative changes at the domestic level alter conceptions of national interests' (2000: 292).

Thus, we can assume that the *Realpolitik* of human rights plays a key role, but what enables it to do so? Why no intervention in Rwanda, but one in Kosovo? Here we immediately enter into the debate about the role of media, which is central; as Wheeler has noted, 'in the cases of northern Iraq and Somalia, media coverage played a critical role in cajoling Western policy-makers into intervention' (Wheeler 2000: 238).

There is agreement in the literature on the media factor as a driver for intervention to help the Kurds in Northern Iraq in 1991. The most common explanation is that media were the cause of UK and US intervention, yet this is confusing an enabling condition with cause. In the case of Iraq, Wheeler makes the point that UNSC Res 688 enabled the intervention, by bestowing legitimacy on it. This was true in both the USA and in the UK. We are thus left with a political dynamic that probably works in stages: the media attention is a necessary condition for public opinion to be formed on a possible intervention, whereas a Security Council mandate greatly enhances the legitimacy for such.

This was also the case in the USA with regard to the intervention in Somalia – where one is hard pressed to find any kind of traditional security interest. Henry Kissinger voiced the realist's assessment when he wrote:

The (new) approach in Somalia claims an extension in the reach of morality. 'Humanitarian intervention' asserts that moral and human concerns are so much a part of American life that not only treasure but lives must be risked to vindicate them; in their absence, American life would have lost some meaning. No other nation has ever put forward such a set of propositions. (Kissinger 1992).

However, media made for political mobilization also in this case, and Bush Sr. needed a UN resolution (794) because he wanted the UN to take over Operation Restore Hope in Somalia. The resolution as well as the media coverage were enabling conditions for the intervention, and the resolution was also necessary in order to have an exit strategy. As Wheeler concludes:

The media's power to stir the conscience of US public opinion was a key determinant of US action – but this was not motive, which was Bush' strong moral sense that he should act, his desire to end his presidency on a glittering high note, and most importantly, the belief of Bush and his senior advisors that there was a clear exit strategy and no great risk of losing soldiers' lives. (2000: 201).

Media attention to an internal conflict thus seems to be a necessary, but not sufficient condition, for an intervention to take place:

The fact is that no Western government has intervened to defend human rights in the 1990s unless it has been very confident that the risks of casualties were almost zero. This suggests that there are clear limits to the CNN effect – media coverage of the humanitarian emergencies in Northern Iraq and Somalia was an important enabling condition, though not a determining one; in making intervention possible. (Wheeler 2000: 300).

Thus, Rwanda really stood no chance of being assisted, as there was little media coverage; and the coverage that was, did not urge action of imply a Western responsibility, according to Wheeler.

The realism of traditional security policy is misguided in assuming that territorial interests are always relevant to modern security policy. Sometimes they are, but not like in the Cold War period. Wheeler makes the very salient point that the realist view does not distinguish between power based on dominance and power based on shared norms that is legitimate because of this (2000: 290). In this study, I have argued that it is the importance of shared norms – immaterial power – that constitutes the *Realpolitik* of human rights. The term *Realpolitik* has been chosen to underline that there is real power to move governments towards even military intervention *if* the cause is strong enough in public opinion. This was not the result of manipulation of public opinion by the foreign policy elite in these cases – governments were not keen to intervene.

On the contrary, 'state leaders will accept anything other than minimal casualties only if they believe national interests are at stake' (Wheeler 2000: 301). Thus, the government or elite reaction is typically a very conservative one – when no traditionally realist security interest is at stake, there will be no intervention. We saw that this was the case with regard to Somalia, Bosnia and Kosovo, although the genocide in Srebrenica probably made the intervention threshold in Kosovo far lower than usual.

If this is correct, we are left with the following picture: In most cases, there is little or no willingness to intervene, as this entails own losses, uncertain and even no exit, and high-level political controversy. Resorting to military force is a very serious matter with considerable risk of unanticipated consequences, so state leaders refrain from using it as much as possible.

However, the pressure to use force now comes from two quarters: the Security Council if a mandate is forthcoming and the Secretary-General requests troops; and domestic public opinion, if it is created in a medialized

situation where a demand to 'do something' arises. The domestic and the UN process usually run in parallel. In Europe, a mandate creates definitive legitimacy for intervention, but plays much less of a role in the USA.

However, as we have seen, the desire to intervene is small indeed. Governments prefer not to; and only if public pressure is very strong will there be intervention – also without a mandate in exceptional cases, such as Kosovo. The power that makes for legitimacy is that of moral or ethical conviction in such a case, not one of traditional security threat. This is where the realists are in error. The power of human rights, if we put it thus, is the *Realpolitik* of the very few cases that engage public opinion enough to constitute a call for armed intervention.

Wheeler makes the interesting point that such truly humanitarian intervention is compatible with classical realism, which never denied the importance of ethics. We are simply speaking about a totally different use of military force in these cases, as compared to the territorial security policy that has always dominated the state system always, and may still be the dominant type of security policy on the whole.

'This is the key point, which is compatible with realism – no jeopardy of national security interests, and no "body bags" expected' (Forde 1991: 81-82), underlining that when there is no expectation of own losses – as was the US case in Somalia – and there is no risk to own territorial security, states may intervene for purely humanitarian reasons.

If we are correct in saying that political factors decide on the intervention decision, but that the Security Council mandate matter very much for legitimacy – which in turn is the major political factor here – how are we to interpret the legal significance of the UNSC debate? Is there any importance allotted to the legal justifications themselves, as we surmised in the discussion in Chapters 2 and 3? Do the legal canons determine whether a mandate is forthcoming or not?

The Political Legitimacy of Legal Consistency

Inger Østerdahl, a jurist, has written her doctoral thesis on the UNSC interpretation of art. 39 (Østerdahl 1998). She makes the point that the very broad interpretation of 'threat to international peace and security' that the Security Council has adopted is far from advantageous from either a legal or a political point of view. Legally this widening of this key criterion for deploying force renders the law less powerful, as there are seemingly no limits to how it can be interpreted. The legal dilemma is that, whereas a

wide application of this key criterion makes the Security Council relevant and able to act in new situation, this openness makes for 'more politics' in the sense that the legal context of interpretation – what is considered legal canon – is made more *diffuse*. The legal professional cadre would seem to lose authority to the political actors in the Council.

One may of course add that necessity is the mother also of legal invention. The criterion for using force must be able to be interpreted in ever-new ways in order for a mandate to be given. Yet Østerdahl's final conclusion to her detailed examination of how 'threat to international peace and security' has in fact been interpreted in the 1990s does *not* strengthen the case for legal stringency:

The impression one gets from studying the way the UNSC has interpreted 'threat to the peace' is that its interpretation is rather arbitrary. The criteria which make a particular situation a 'threat to the peace'...seem fluid, especially when one takes into account also all the situations in which the UNSC did not intervene... (Østerdahl 1998: 104).

This general conclusion concurs with the thesis of this study, viz. that the legal issue regarding a mandate cannot be isolated from the political power play that surrounds each mandate debate. As we have seen, there are differences in terms of legitimacy between the US lawyers who not only interpret the norm of self-defence in a pre-UN manner, disregarding the peremptory character of the latter, but who also argue that only state practice on war and not policy statements can effect a change in international customary law; and the mainstream of international lawyers, who generally hold a strict view of the exclusive role of the UNSC as actor in this area, and who also uphold the non-intervention norm as the major one in terms of *ad bellum* rules. Thus, canons of interpretation of this norm do exist – some legal positions are more legitimate, some are less legitimate.

To this comes the fact that all political juggling about a mandate at the Security Council must be cast in terms of legal arguments. The debate is about art. 39, about previous resolutions, about what constitutes material breach, and about how to interpret the vital terms 'severest consequences', etc. Thus, all interest-driven discourse must be 'translated' into legal arguments and presented as such – bargaining must become justification, and justification is not bargaining where sheer power can impose its preferred solution. For example, the USA can act as a superpower in a bargaining situation, but it cannot impose a legal interpretation unless this is consistent with legal canon. The difference between bargaining and justification as modes of decision-making are important.

This gives a major and powerful role to the legal experts. The force of arguments as such must also be assumed to matter. In this study we have pointed out that security interests in the humanitarian and democracy field are not givens. They are not geo-strategic at a systemic level, as in the Cold War period. Finnemore makes the very important point that there are often no such 'neo-realist' interests to be found: 'The US action in Somalia is a clear case of intervention without obvious interests' (1996: 156). In fact, the problem has not been too much interventionism, but too little. In Rwanda there was a mandate but only France committed troops, and throughout the 1990s, the USA was extremely reluctant to intervene in armed internal conflict. Daalder (1996) points out that the US military preferred 'real wars' with 'real' interests where one could fight with overwhelming force. Humanitarian intervention has been, and still is, the stepchild of security policy.

As for 'democracy' – building or 'nation-building, the enthusiasm has not been greater. The US policy has been to win wars with decisive force and not to linger on to create democracies: 'The US consistently refused to take on the state-building and democratization mission in Somalia' (Finnemore 1996: 157). There has been no rush to intervene on the whole, neither in Europe nor in the USA.

However, concerning those interventions that have taken place, Finnemore is right to make the point that there are no traditional geo-political interests, at least none that alone would make an intervention logical. In this study I have not analysed the motivations for the various interventions, but looked for justifications provided and for the political drivers for a general development of both 'humanitarian' and 'democratic' intervention. As mentioned in Chapter 1, only a very simple realist theory would posit a one-to-one relationship between political power and changes in international norms and even law. Further, only a simple realist would cling to the security paradigm of the Westphalian nation-state, looking for the pursuit of geo-political interests in these interventions.

I do not suggest that such security interests have disappeared, but that they are mostly not applicable in the context discussed in this study. Instead we speak of another type of security policy, one that could be termed 'human security' and/or 'democratization as security policy'. In the Cold War period we would often find geo-strategic security interests in these armed conflicts, because of superpower overlay. Now we rarely do. The scope of the security policy agenda in these conflicts is smaller. The regional level simply matters more than before – a major analytical point to Buzan and Wæver (2004).

Since the 'failed' state agenda is but one type of security problem, we should not expect geo-political interests to prevail in these conflicts or to be able to explain them. The 'interests' involved are really the post-national ones of playing a constructive role on the international scene, of being a 'good international citizen', of satisfying domestic demands for 'doing something', and of actually stabilizing a war torn state and rebuilding it – a goal that is both an ethical and a security policy one.

Thus, there are plenty of rational 'interests' for state actors to pursue also in this field. But none of them, apart from stabilization, relates to the traditional security policy agenda. The lack of an existential threat to own population and territory implies that state interest in acting in this new area of security policy is more uncertain than in a traditional situation determined largely by geo-politics.

To return to the legal issue: argumentation at the Security Council, in the media and at the national level may be persuasive or not in this kind of security policy. In a situation without given security interests, determined by geo-politics, states have leeway for changing positions. Also, they are not pursuing some interest set in stone under the pretext of debating and justifying. As Finnemore rightly points out, justification matters in and of itself, as interests are not given and static. This is at least the case in this type of foreign and security policy.

Does the empirical evidence indicate that this is correct? Here we must distinguish between stages in the policy-making process. A possible intervention has often matured politically in international networks and domestically long before the case comes onto the Security Council agenda. The cases of Somalia, Bosnia, Kosovo and East Timor come to mind. There were long processes in international media, domestic publics, and in elite networks and organizations before the UNSC was asked to decide. In other instance, there may be parallel processes at the Security Council and domestically, such as in the Iraq case.

The role played by justification, not bargaining, in such open medialized processes can be assumed to be great. This is the more salient because the publics play major roles in decision-making for intervention. It is in the domestic process that interventions are really decided on. The elite level can no longer decide on the use of force alone, as a matter of 'national security'. On the contrary, new actors – such as NGOs, press, even churches – play roles in the security field of 'failed states'. The urge to 'do something' is activated on the basis of media reports on the human rights situation of an armed conflict somewhere, and elites have to communicate with their

new security policy constituencies while negotiating on the international level. It is illogical to think that the elite can commit forces unless there is a clear mandate from home.

In this model of decision-making, the domestic level matters more than the international level – which turns traditional security policy with the ‘foreign policy prerogative’ upside down. We do not have empirical studies of decision-making in this area yet, at least not comparative ones, so my suggestions must remain speculative. However, it seems safe to say that the importance of domestic legitimacy trumps the international level. This explains why, in the Iraq case, the USA can act quite comfortably with solid domestic legitimacy only. In addition, it has tried to acquire international legitimacy through coalition building and, first of all, a UN mandate. But the mandate was not decisive for the decision to intervene in Iraq, nor was it decisive for domestic legitimacy.

What does the new importance of domestic actors in security mean for the process of justification – the acquiring of legitimacy? It means, first of all, that there are at least two versions of legitimacy around – the European and the US view, as discussed in the above chapters. It further means that the ‘value’ of having a UN Security Council mandate differs between these domestic publics. In Europe, a mandate decides the question of legitimacy and closes all discussion. In the USA it matters much less.

The route to getting a mandate is one where we may assume that the importance of arguments diminishes with time: as decision time at the UNSC approaches, we can assume that positions have been decided, and that any change can be ascribed to bargaining and/or pressures. At this stage, the issue of the kind of case at hand, whether one should ‘do something, etc.’, has long since been agreed. Thus, the role of justification for the issue of mandate or not is probably quite early in the political process, when options are still open.

The process over the mandate is thus a combined justificatory and bargaining process. Again, we lack in-depth studies of how actors define and redefine their positions in this process. The cases examined in this study suggest that domestic opinion played a key role in the decisions to act in Bosnia and Kosovo, finally putting sufficient pressure on policy elites. However, the mandates were often denied by veto powers that pursued traditional security interests and/or retained Westphalian views of sovereignty – in the cases of ‘failed’ states, most often China and Russia.

As the Security Council process really concentrates world attention on a given case, new evidence presented here may change positions. The presen-

tation of 'evidence' of WMDs in Iraq by US Secretary of State Colin Powell was intended to turn the tables on the mandate issue, but it failed to do so.

The final importance of law here is, however, another one: the 'prize' for the whole political exercise at the UNSC is a legal one – a dichotomous variable: a mandate, or no mandate. Sometimes the objective is to hinder a mandate; sometimes it is the opposite.

Intervention beyond the UNSC?

However, there is also the question posed by UN Secretary-General Kofi Annan: what happens when the Security Council is not acting and there unfolds a major human rights tragedy? The Korean 'Uniting for Peace' resolution adopted by the UN General Assembly when the Security Council was unable to act remains a theoretical possibility also in the future. This resolution sets a precedent for similar actions by the General Assembly. (Annan 1999).

Even beyond this, there are arguments that international law provides a basis for military intervention. The UK issued a memo to all NATO allies on the Kosovo case where it argued that 'Security Council authorisation to use force for humanitarian purposes is now widely accepted...but force can also be justified on the grounds of overwhelming humanitarian necessity without a UNSC resolution'. The following criteria would need to be applied: There must be evidence of 'overwhelming humanitarian necessity', of 'extreme humanitarian distress in a large scale', and the force used must be 'proportionate' and 'limited in time and scale'. These UK proposals, although well intended, run the risk of divesting the use of force from an international and collective context, placing it again, as before in history, in the hands of the individual state.

In his own UN intervention, however, on 20 September 2000, Kofi Annan said:

State sovereignty is being redefined by the forces of globalisation and international cooperation. The state is now widely understood to be the servant of its people, not vice versa. The inability of the international community in the case of Kosovo to reconcile these two equally compelling interests – universal legitimacy and effectiveness in defence of human rights – can only be viewed as a tragedy. It has revealed the core challenge to the Security Council and the UN as a whole in the next century: to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand.

The Secretary-General called for a new type of national interest, that of the pursuit of democracy, human rights, and the rule of law, and reforms of the Security Council so that it can perform its role. It is unacceptable to stand by and watch massive violations of human rights – that undermines the whole idea and spirit of the United Nations.

In his 1999 lead article in the *Economist* Annan speaks about two concepts of sovereignty – one old-fashioned and static, the other that of the state that respects human rights and serves its people. Clearly, the implication is that only the latter types of states – democracies – are legitimate in the eyes of the world community. In an important address to the international peace conference in The Hague the UN Secretary-General put in a nutshell what the debate of human rights vs. state sovereignty is about: ‘...unless the Security Council can unite around the aim of confronting massive human rights violations and crimes against humanity on the scale of Kosovo, then we will betray the very ideals that inspired the founding of the UN’.

US lawyers have been the key ones in arguing that when the UN is unable to act, the mandate for taking action recedes to states. Both the UK and the USA argued that Kosovo was such a case; and as we see, Kofi Annan raised the same *problematique*. This is a valid and unresolved issue with extremely serious implications for the use of force. If force is used in a purely humanitarian intervention, it would seem that the *Realpolitik* of human rights trumped the problem of an ‘unjust’ veto in the UNSC. But this opens the Pandora’s box of force as a tool of unilateral foreign policy: Iraq was also a case of failing to achieve a mandate. The ‘thin red line’ between the Kosovo and Iraq cases lies in moral justification, or in the legitimacy that these justifications carry. In terms of UN ‘history’ and the missing mandate, the cases are so not very different.

REGIME CHANGE AND THE R2P

The growing legitimacy for non-military intervention – the imposition of political conditionality in foreign policy *tout court* – is accompanied by the emergence of ‘integrated missions’ where the military tool is but a tool, a very necessary one, in the toolbox.

In this section, we consider how military intervention and democracy evolve. Four cases of military intervention premised on restoring democracy are examined (Panama, Haiti, Sierra Leone and Liberia). The relationship between the military and non-military tools in modern integrated missions

appears less sharp than before, and also this facilitates a certain 'mission creep' in terms of bestowing legitimacy for using this tool more randomly.

Non-Military Intervention: The emerging 'democratic entitlement'

There are several reasons why the political norm change towards the view that 'only democracies are sovereign' or as we call it here, 'conditional sovereignty', has been especially strengthened in the post-Cold War period:

First, *the power behind the ideological contender imploded with the fall of the Soviet Union*. We find that human rights at this time become firmly 'wedded' to democracy as the sole political form that can realize them, marked perhaps best by the 1990 Charter of Paris.

The fact that no major power has opposed democracy in its human rights-based, liberal variant after 1990 has consolidated the norm. At the OSCE, COE, and EU as well as at the UN we see that human rights and democracy are linked as a whole.

Even Kofi Annan states this clearly 'It is increasingly recognized that good governance is an essential building block for meeting the objectives for sustainable development, prosperity and peace...Good governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights, and the meaningful participation of all citizens in the political process of their countries and in decisions affecting their lives' (Annan 1997: 5, para 2).

Today most states are democratic, by far the largest majority of the UN membership. Politically, it has become impossible to argue for anything less than democracy as a legitimate form of government – *vide* the widespread political conditionality in membership criteria (EU, Council of Europe) and the explicit 'mission' in conditionality in all but humanitarian aid. Further, there is no longer adherence to the still legally valid 'occupation law' when a military intervention has taken place. although it prescribes that political institutions be left as they were before the occupation. Instead, the occupant seeks to impose democracy and cannot leave until this is accomplished. All interventions now aim at democratization, and the holding of elections is the very pre-requisite for any kind of exit strategy. As Annan notes, 'what began as an adjunct to conflict resolution has grown to a broader, institutionalized legitimating function'.

Second, *security is increasingly linked to development and democracy*. 'Security sector reform' has become a key theme for democratization of

'failed states', and the need for physical security is now a standard theme for development policy discussion. Only some years ago these themes were not regarded as interrelated.

Third, the European thesis of the *liberal peace*, dating from Kant's 1776 *Zum ewigen Frieden*, has received renewed interest and relevance today with the success of the EU integration model as a 'security community'. Security through democratization is a powerful argument with empirical referents, but also the converse seems to be correct: no democratization *without* security.

Fourth, there *has been a steady development of election monitoring on the part of the UN and other international organizations*. These are by now standard, and have evolved over forty years. The UN has an extensive history of monitoring elections in states emerging from colonialism, but its first mission to an independent state was in 1990, Nigeria. This implies that the international community is not at all indifferent to the internal condition of a state, but that there is a growing body of political practice and also international law which considers that an emerging democratic entitlement exists:

Fifth, we see the *development of the 'democratic entitlement' in international law*: Whereas the American Law Institute in 1987 wrote that 'international law does not generally address domestic constitutional issues, such as how a national government is formed' (quoted in Fox & Roth 2000). Thus, continue the authors, 'prior to the events of 1989-91, "democracy" as a word rarely found in the writings of international lawyers', the same lawyers today agree that 'it is now clear that international law and international organizations are no longer indifferent to the internal character of regimes' (*ibid.* 2).

It is some American scholars of the New Haven school of international law that most strongly insist that there is a new conditional sovereignty at hand. Reisman argues that the UN Charter, which is 'based on the principle of self-determination of peoples', as its art. 1 reads, thereby introduces a new sovereignty concept vested in the people and in human rights (Reisman 2000: 240). He adds: 'No serious scholar still supports the contention that internal human rights are essentially within the domestic jurisdiction of any state' (*ibid.* 243).

Thus, there are major reasons why 'conditional sovereignty' is today the dominant conception. The changes after the Cold War have enabled this development also in terms of standard foreign policy. But is there an extension of this agenda into a new norm of 'democratic intervention'?

Military intervention for democracy?

In response to the military coups in Sierra Leone and Haiti, political boycotts of the regime followed. There has also been a vigorous military response in some few cases, such as the restoration of Jean Bertrand Aristide in 1994 (SC Res. 940) in Haiti and the removal Ahmad Kabbah in Sierra Leone in 1998.

Using military force against military coups seems to be increasingly accepted, although the practice of the UN varies: One protested against the coups in Myanmar and Nigeria through economic sanctions, one tolerated Kabila in DR Congo and Zaire, and little has been done in the case of Algeria. We find no consistent state or UN practice in response to military coups.

Nonetheless, the statements from Kofi Annan are strong: in 1997 he asserted it as an 'established norm' that 'military coups against democratically elected governments by self-appointed juntas are not acceptable'. Thus, there is a strong statement of a norm, implying that breaches of the norm must be dealt with.

If we look at interventions historically, we find that that very few, if any, were justified in terms of restoration or creation of democracy, although many actual interventions contained such elements. As early as in the attempted coup in Tanganyika in 1964 when President Nyerere asked the UK for help, troops were flown in and suppressed the coup in a single day.

The pattern seems to have been political condemnation rather than intervention: In the Gambia in 1994 there was a bloodless military coup by young insurgents who claimed it would be a 'coup with a difference'. But no military help came to President Jawara, who had asked for it. A US warship off the coast refused to intervene, but the coup was condemned politically.

The intervention in Haiti, briefly discussed in Chapter 5, was the first case of a UN resolution where there was a reference to democracy in connection with a 'threat to international peace and security'. Again the UNSC adopted economic sanctions at first, but when these had no effect, the Council mandated a military intervention because the coup and the humanitarian situation represented a 'threat to international peace and security' (res. 940/94). In this case, the threat of intervention worked: the regime re-installed President Aristide.

The remarkable fact is that this intervention was mandated with reference to 'international threats' to peace and security, while the fact remains that the threat came from the form of government: it was not democratic, but a military dictatorship. But the principle this would create would mean

that military intervention could be allowed in all cases where the form of government is not a democracy. The resolution explicitly stated that this was a unique case, but nonetheless it is one which may create a precedent. Almost all the cases of the UNSC in the 1990s are presented as unique cases with unique mandates, but this raises the issue of when a row of 'exceptions' makes for a new practice and a new canon of interpretation. The resolution text reads: 'in these unique and exceptional circumstances, the continuation of this situation threatens international peace and security in the region' (res. 841/93, preamble). The care taken to point out that this is 'unique' and 'exceptional' is a general trait of all resolutions that depart from the state-to-state standard of war, and can be found wherever a humanitarian or democratic justification is given. Some states, like China and Russia, are jealous guardians of traditional state sovereignty and the traditional interpretation of the non-intervention norm.

The diagnosis that the lack of democracy in Haiti was a threat to peace in the region resulted in much debate. Refugee flows may be one answer, as was presented later in the Kosovo case. In the assessment of Byers and Chesterman (2000: 285), there was no acceptable argument in this vein – no outflux of refugees followed, and the humanitarian argument was not made in the resolution. In short, the democracy-security link in the Haitian case was a very weak and unconvincing one.

Again it is prominent US lawyers who argue that this case has set a precedent for 'an international principle of democratic rule and of collective humanitarian intervention' (Teson 2003: 252). Byers and Chesterman argue that this resolution does not at all constitute such a precedent, and that it instead can be seen as a result of an invitation to assist by the elected leader of Haiti, Aristide himself. He was in exile, and asked the UN to assist him, and 'an invitation of this kind is widely acknowledged to legitimate unilateral or collective invitation in the absence of UNSC authorization', they argue (Byers & Chesterman 2000: 287). However, also this interpretation is not convincing, as the USA was ready and willing to intervene, and several years had passed since Aristide had been exiled. There was no imminence in the situation.

Byers and Chesterman conclude, however, that the 'the international legal system is undergoing rapid change, especially in the area of human rights...it is therefore proper for the UNSC cautiously and gradually to adapt its conception of international peace and security over time' (2000: 288). Here two important issues of principle are addressed: One, the legal development in the 'democratic entitlement' direction is so dynamic that it

must have implications for the law on intervention in the sense that the latter must adapt to it; and two, law follows political developments that are gradually reflected in legal standards that evolve. The Security Council must adapt to these evolving legal standards.

The second 'pro-democratic' intervention with a Security Council mandate was in Sierra Leone in 1997. The elected government of President Kabbah was overthrown by a military coup carried out by the Armed Forces Revolutionary Committee (AFRC). This was part of an ongoing war situation, dating back to 1991. There were political condemnations, and the regional peace-keeping force under ECOWAS announced that it would reverse the coup. The ECOWAS was given a mandate by the Organization for African Unity (OAU), and the UNSC adopted resolution 1132/97, mandating the ECOWAS force to prevent the AFRC from acquiring weapons and other resources. The resolution text made reference to a threat to international peace and security constituted by the 'situation', and there was also a 'demand' on the new military regime that it relinquish power and restore democracy. In the political debates around the mandate, some remarkable arguments were adduced – like the South Korean one, which amounted to a causal claim that the lack of democracy in Sierra Leone 'had a destabilizing effect on the whole region by reversing the new wave of democracy which was spreading across the African continent'(!).

In this case, as in many others, the mandate from the Security Council came after the fact. Also the mandate given by the OAU, and in fact first proclaimed by ECOWAS itself, was retrospective. The fact was that ECOWAS had already decided what to do, and did so without consulting the Security Council. As most states agreed with this course of events, the mandate was forthcoming. But the timeline here is important: we cannot speak about any determination on the part of the Security Council to intervene militarily in order to restore democracy in Sierra Leone. Instead, this was a case of 'mandate creep'. Then, in 1998, the force under ECOWAS, ECOMOG, successfully restored the elected government to power in Sierra Leone.

Legal views vary on whether this case set a precedent for pro-democratic intervention. Major US scholars such as Teson and d'Amato support this. So does Roth (1999), who states that 'Sierra Leone is the best evidence yet of a fundamental change in international legal norms pertaining to "pro-democratic intervention"...The argument can be made that coups against elected governments are now *per se* violations of international law, and that regional organizations are now licensed to use force to reverse such *coups* in member states'. Against this view stands the opposite conclusion of Byers and Chester-

man: retrospective validation of the military actions cannot be taken as a precedent and is not a principled change in international law. Interestingly, these two scholars depart from the analytical mode and become highly normative in discussing this issue: 'We take the view that pro-democratic intervention may...actually be inimical to human rights (...) the restoration of democracy is not yet – and should not in the future be – considered sufficient basis for [military intervention]' (Byers & Chesterman 2000: 288).

Not only are legal scholars in stark disagreement on the crucial issue of whether the intervention norm now allows for 'democratic intervention', but their agreement is political and normative rather than based on sound legal foundations. This points up the intensely political character of this question, and that there is no clear legal direction to be found. This in turn indicates that we are correct in our conjecture that the legal 'canons' in this field are very diffuse and give little direction to the interpretation of this kind of intervention.

Unilateral pro-democratic interpretation?

There is a legal debate that started with US legal experts on the issue of whether the Security Council can 'lose' its unique mandate as the organ that determines the question of using force in international affairs. Reisman set off the debate in 1984 in an editorial in the *American Journal of International Law* (Reisman 1984), in which he argued that in cases where the UN fails to act – when it ought to – then states are called upon to do so. In his view, self-help is allowed; he continued this argument in a further article in the same journal (Reisman 1990). This line of argument is echoed by d'Amato: the pro-democratic intervention in Panama was legal since the USA did not intend to annex Panama and the justification given, viz. the 'restoration of democracy', was therefore the real motivation as well (d'Amato 1990: 520).

This debate is similar to the arguments made by Kofi Annan in the Kosovo case, discussed in Chapter 6. Here he stated that when the UNSC is unable to act – in this case, its inability to mandate the Kosovo intervention – the sovereignty to act reverts to member states. This is an argument with major and perhaps unanticipated consequences, as it fits logically with the arguments of Reisman and d'Amato, which seek to legitimate unilateral humanitarian and/or pro-democratic intervention. In the New Haven school, these and other scholars argue that moral legitimacy trumps international law and the status of the UN Security Council. Their interpreta-

tion, known as 'policy-oriented jurisprudence', holds that law is indeed related to notions of justice and is just a means to an end: 'The authority of institutional arrangements is context-dependent...and must always be determined empirically in a given context' (Roth 2003: 244).

This seemingly opens up for an ethical determination of a 'just war', but it could also admit a new Brezhnev doctrine if left to states to implement. It is the combination of the reversal to states *and* the claim of morally sound purpose – humanitarian or otherwise – that constitutes the explosive implication of this turn of legal thought. On the surface, it seems a very just and attractive idea: when a veto-power state, for no other reason than sheer national interest and/or fear of a weakening of the old sovereignty notions, opts for the veto and no mandate is possible, why not turn to states actually involved, as was the case with Kosovo? The moral imperative to act is faultless for most.

The invective against the positivist model of legitimacy seems correct. In the words of one representative of this school:

Positivist jurisprudence...identifies lawfulness in terms of compliance with rules...the decision-maker at the pinnacle, however, does not think in terms of compliance with rules, but in terms of making decisions that optimize the many policies that may be expressed in rules...from the perspective of the positivist jurist, the decision-making is acting unilaterally and unlawfully. Using a different and quite possibly more appropriate jurisprudential lens could lead to the opposite conclusion. (M. Reisman, as quoted in Roth 1999: 246).

This view of the authority of law and legal canons leads to complete political freedom to interpret the former. This is controversial, to say the least; however, the many humanitarian interventions in the 1990s have not only 'stretched' the UNSC legal canon, but also weakened the role of the Council as such when an intervention has taken place without a mandate, as in the case of Kosovo. In fact, it could be argued that Kosovo, rather than the Iraq case, has weakened the Security Council and the intervention norm precisely because it was a morally, therefore politically, legitimate intervention.

Further, what started with the Kosovo case was a privileging of morals, or political legitimacy, over positivist legal interpretation. There was agreement, in NATO and elsewhere, that the intervention was morally right although legally wrong. This opened the Pandora's box for later interventions without a mandate. In the case of Iraq, it was the clumsy process of justification that failed, as well as the fact that a new resolution was called for – a concession the USA made to the UK. If Washington had argued con-

sistently along the humanitarian and/or pro-democratic lines, perhaps more international political legitimacy would have been forthcoming. This is logically also true if the WMD argument has been right. In both these cases of justification, there might have been an outcome that commanded political legitimacy, also without a Security Council mandate.

The pro-democratic intervention argument by US legal experts rests on the ethical intention behind the interventions argued for – Panama and Grenada, where the ‘evidence’ of such is the fact that the USA was not seeking occupation or annexation, but withdrew after the restoration of democracy. By emphasizing political-moral legitimation, they avoid international law altogether. The result is a development away from the unique role of the UN and a ‘realist’ type of intervention regime – this time not for reasons of traditional *Staatsraison*, but reasons of ‘doing good’. Even if the latter in some cases actually amounts to this, the principle remains the same.

Unilateralism equals self-help, as the traditional realist term calls it. Several examples from US practice come to mind: the June 1993 missile strikes on Iraq in response to an alleged assassination attempt on President George Bush, the 1998 missile strikes on Sudan and Afghanistan in response to terrorist attacks, the December 1998 strikes on Baghdad by the USA and the UK, the continued enforcement of the no-fly zones, and Iraq 2003.

Østerud (2004) makes the point that ‘democratization’ was one of the justifications offered for the invasion of Iraq, but that it was not very well developed, nor did it rank high on the agenda. However, if the democracy argument had received much more political prominence, it could have commanded much more legitimacy, thereby making for a ‘Kosovo’ case.

The ‘mainstream’ legal interpretation remains, however, that ‘there is (as yet) no general principle for the armed redress of ‘serious human rights violations’, argues Roth (1999: 249). But, he concedes, it is political will that ultimately drives legal changes of interpretation; and he asserts that there is ‘little reason to believe that states widely accept that outsiders will have the last word’ (*ibid.*). However, this in turn invites the realist argument that only powerful states will have the power to say no to such ‘pro-democratic’ intervention. And with that, we are in fact back where we started, with the ‘failed states’ agenda.

Failed states drive the pro-democratic intervention agenda

In Chapter 3 we analysed ‘mission creep’ in terms of democracy in several UN missions of the 1990s. The point was that two different develop-

ments coincided in time: the need for democratization, and the need for security in these states. The security requirement became paramount with the 'lessons learnt' in these places – an increasingly militarily robust mandate was issued by the UNSC in cases such as Somalia and Bosnia.

The sheer need for physical force dictated this development. Also at stake was the legitimacy of any of these missions: without military 'success' there would be no humanitarian and/or democratic 'success'. Thus, military robustness came to be an integral part of any such missions, reluctantly but nonetheless steadily.

This point is a key one: the drive, from politically informed Western publics, to intervene in failed states was premised on the moral or ethical conviction that 'something had to be done'. When that 'something' resulted in an intervention, the failure of the humanitarian/democratic project was certain when there was not sufficient and adequate security on the ground. It is this 'lesson learnt' that accounts for the actual rise in military intervention in the 1990s at the UN. There was never the motivation to invade and conquer in the traditional realist mode, but rather the 'implication' of force by default.

Here we should note that 'pro-democratic' intervention happened as part of the larger 'failed' states agenda, and that legal practice often was *post hoc*. But this in turn led to heightened legitimation for such interventions, both politically and legally.

This general development has greatly aided the USA in acting unilaterally with such motivations. The more legal interpretations of 'international peace and security' departed from standard state-to-state threats at the UN, the more room there was for 'moral' interventions when a Security Council mandate failed due to traditional veto reasons. After all, why accept that some states retained the old notions of sovereignty and non-intervention when in fact the 'new' human security notion of 'conditional sovereignty' was condoned by both the UN and, in the absence of the UN, NATO itself? Further, if the law could be stretched so far, why not farther? The Kosovo case represented a major blow to a positivist view of international law in putting morality above the UN Security Council.

The implications of this are many: the Security Council is not really needed when the case is a morally good one – a view that also Kofi Annan advocated. Moreover, morality in the sense of a *Realpolitik* of human rights trumps the legal canons of interpretation, or at least can change them – as underlined by the willingness to interpret new 'threats' on the part of the UNSC in the 1990s.

Where does that leave us? In fact, we are left with a very open and 'dangerous' situation regarding intervention at present. Abandoning a positivist view of the intervention norm and turning instead to a substantive moral or ethical one can lead to 'good deeds' being done – but it also to a weakening of the status of the UNSC and to a weakening of the status of legal norms, by making the canons of their interpretation so broad that the 'mainstream' legal interpretation is no longer hegemonic or authoritative.

The advent of terrorism linked to failed states completes this picture. Intervening against a perceived terrorist threat is an act of self-defence, and as such condoned by the UNSC and international public opinion in the case of Afghanistan. Such threats are existential if they are real threats, which means that each state will weigh the need for multilateral decision-making in the UNSC against the imminence of the threat. Sometimes pre-emptive unilateral action is chosen.

REFERENCES

- Abbot, K.W., & Snidal, D., 2000, 'Hard and Soft Law in International Governance', *International Organization*, 54, 3.
- Blair, T., 1999, 'Doctrine of the International Community', Chicago Economic Club, April 24.
- Brownlie, I., 1991, *International Law and the Use of Force by States*, Oxford: Clarendon Press.
- Buchanan, A., 2003, 'Reforming the Law of Humanitarian Intervention', in Holzgrefe & Keohane (eds).
- Ibid.*, and Keohane, R., 2004, 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal', *Ethics and International Affairs*, vol 18, no. 1, pp. 1-24.
- Byers, M., 2000, 'Pro-democratic Intervention in International Law', in Fox & Roth (eds).
- Ibid.*, 2003a, 'Introduction: The Complexities of Foundational Change', in Byers & Nolte (eds).
- Ibid.*, 2003b, 'Letting the Exception prove the Rule', *Ethics and International Affairs*, 17, 1.
- Ibid.*, & Chesterman, S., 2000, 'You, the People: Pro-democratic Intervention in International Law', in Fox & Roth (eds).
- Ibid.*, & Chesterman, S., 2003, 'Changing the Rules about the Rules? Unilateral Humanitarian Intervention and the Future of International Law', in Holzgrefe & Keohane (eds).

- Ibid.*, & Nolte, G., (eds), 2003, *United States Hegemony and the Foundations of International Law*, Cambridge: Cambridge University Press.
- Burke, A., 2005, 'Against the New Internationalism', *Ethics and International Affairs*, vol. 19, no. 2, pp. 73-90.
- Cassese, A., 1986, *International Law in a Divided World*, Oxford: Clarendon.
- Ibid.*, 2005, 'The Fundamental Principles Governing International Relations'; in *ibid.*, *International Law*, 2nd edition, pp. 46-68. Chayes, A., & Chayes, A., 1995, *The New Sovereignty: Compliance with International Regulatory Agreements*, Cambridge, MA: Harvard University Press.
- Chesterman, S., 2004, 'Humanitarian Intervention and Afghanistan', in Welsch, J., op. cit.
- Clapham, C., 2003, 'The Challenge to the State in a Globalized World', in Milliken, J., (ed.), *State Failure, Collapse, and Re-Construction*, Oxford: Blackwells.
- Clark, I., 2005, *Legitimacy in International Society*, Oxford University Press, Oxford.
- Clark, W., 2001, *Waging Modern War: Bosnia, Kosovo, and the Future of Combat*, New York: Perseus Books.
- Cottey, A., 2004, 'The Iraq War: The Enduring Controversies and Challenges', *SIPRI Yearbook 2004*, pp. 67-95.
- Cortell, A., & Davis, J., 1996, 'How Do International Norms Matter? The Domestic Impact of International Norms and Rules', *International Studies Quarterly*, 40.
- d'Amato, A., 1990, 'The Invasion of Panama was a Lawful Response to Tyranny', *American Journal of International Law*, 84.
- Dobbins, J., et al., 2003, *America's Role in Nation-building from Germany to Iraq*, Santa Monica, CA: RAND Corporation.
- Duffield, M., 2001, *Global Governance and The New Wars: The Merging of Development and Security*, New York/London: Zed Books.
- Ethics and International Affairs*, no. 1, vol. 16, 2002 ('The New War: Which Rules Apply?') and no. 1, vol. 17, 2003 ('Evaluating the Preemptive Use of Force').
- EU Commission's daily newsletter 'Sources Say...', 8.12.03.
- Fearon, J.D., and Laitlin, D., 2004, 'Neo-trusteeship and the Problem of Weak States', *International Security*, 28.
- Feinstein, L., and Slaughter, A-M., 2004, 'A Duty to Prevent', *Foreign Affairs*, vol. 83, no. 1, pp. 136-150.
- Findlay, T., 2002, *The Use of Force in UN Peace Operations*, Solna, Sweden: SIPRI; Oxford/New York: Oxford University Press.

- Finnemore, M., 1996, 'Constructing Norms of Humanitarian Intervention', in Katzenstein (ed.).
- Forde, S., 1991, 'Classical Realism', in Nardin, T., & Maple, D.R., (eds), *Traditions of International Ethics*, Cambridge: Cambridge University Press
- Fox, G., 2004, 'Democratization', in Malone (ed.).
- Fox, G., & Roth, B., (eds), 2000, *Democratic Governance and International Law*, Cambridge: Cambridge University Press.
- Føllesdal, A., 2003, 'Competing Concepts of Legitimacy', Oslo: ARENA paper.
- Franck, T., 2000, 'Legitimacy and the Democratic Entitlement', in Fox & Roth (eds).
- Franck, T., 2003, 'Interpretation and Change in the Law of Humanitarian Intervention', in Holzgrefe & Keohane (eds).
- Gray, C., 2000, *International Law and the Use of Force*, Foundations of Public International Law, Oxford: Oxford University Press.
- Hendricksen, W., 2005, *The Bush-Doctrine of Pre-Emptive Self-Defence*, MA thesis, Faculty of Law, University of Oslo.
- Holzgrefe, J.L., 2003, 'The Liberal Case for Humanitarian Intervention', in Holzgrefe & Keohane (eds).
- Holzgrefe, J.L., & Keohane, R., (eds), 2003, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge: Cambridge University Press.
- Ignatieff, M., 2004, 'Why are we in Iraq? (And Liberia? And Afghanistan?)', *New York Times Magazine*, March 14, pp. 13-16.
- Isenberg, D., 2004, *A Fistful of Contractors: The Case for Pragmatic Assessment of Private Military Companies in Iraq*, issued by British-American Security Information Council.
- Jennings, Sir Robert, 2002, 'Sovereignty and International Law', in Kreijen (ed.).
- Jepperson, R.L., *et al.*, 1996, 'Norms, Identity, and Culture in National Security', in Katzenstein (ed.).
- Kissinger, H., 1992, 'Thin Blue Line for a World Cop', *The Guardian*, 16.12.92.
- Kohen, M., 2003, 'The Use of Force by the US After the End of the Cold War, and its Impact on International Law', in Byers & Nolte (eds).
- Krahmann, E., 2003, 'Conceptualising Security Governance', *Cooperation and Conflict*, 38, 1.
- Krasner, S., 1999, *Sovereignty: Organized Hypocrisy*, Princeton, NJ: Princeton University Press.

- Krasner, S., 2004, 'Sharing Sovereignty: New Institutions for Collapsed and Failing States', *International Security*, 29, 2.
- Kreijen, G., 2002a, 'The Transformation of Sovereignty and African Independence: no Shortcuts to Statehood', in Kreijen (ed.).
- Kreijen, G., (ed.), 2002b, *State, Sovereignty, and International Governance*, Oxford: Oxford University Press.
- Krisch, N., 2003, 'More Equal than the Rest? Hierarchy, Equality, and the US Predominance in International Law', in Byers & Nolte (eds).
- Lyons, G.M., & Mastanduno, M., (eds) 1995, *Beyond Westphalia?* Baltimore, MD: Johns Hopkins University Press.
- Malone, D., 1998, *Decision-Making in the UNSC: The Case of Haiti*, Oxford: Clarendon Press.
- Malone, D.M., 2004 (ed.), *The UN Security Council, from the Cold War to the 21st century*, Boulder, CO: Lynne Rienner.
- Marks, S., 2000, 'International Law, Democracy, and the End of History', in Fox & Roth (eds).
- Matlary, J., 2002, *Intervention for Human Rights in Europe*, London: Palgrave-Macmillan.
- Ibid.*, 2004a, 'The Legitimacy of Military Intervention: How Important is a UN Mandate?', *Journal of Military Ethics*, 3, 2.
- Murphy, J., 2004, *The United States and the Rule of Law in International Affairs*, Cambridge: Cambridge University Press.
- Mulligan, S., 2004, 'Questioning the Question of Legitimacy in IR: A Reply to Jens Steffek', *European Journal of International Relations*, vol. 10, no. 3, September, pp. 475-483.
- Nardin, T., 2005, 'Humanitarian Imperialism: Response to Ending Tyranny in Iraq', *Ethics and International Affairs*, vol. 19, no. 2, p. 21.
- National Security Strategy of the United States of America*, Washington DC, 17th September 2002.
- Nye, J., 1955, *Bound to Lead: The Changing Nature of American Power*, New York: Basic Books.
- Ottaway, M., 2002, 'Rebuilding State Institutions in Collapsed States', *Development and Change*, 33,2.
- Owen, J.M., IV, 2000, 'International Law and the Liberal Peace', ch. 11 in Fox & Roth (eds).
- Patten, C., 2000, 'The Protection of Human Rights in the 21st Century', conference speech, Dublin, March 3rd, published in revised version in the *Human Rights Law Journal*, vol 21, no. 8, November 4th, pp. 311-313
- Penksa, S., & W. Mason, 2003, 'EU Security Cooperation and the Transatlantic Relationship', *Cooperation and Conflict*, 38, 3.

- Philpott, D., 2001, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*, Princeton NJ: Princeton University Press.
- Posen, B., 2003, 'Command of the Commons', *International Security*, 28, 1.
- Powell, C., 2004, 'A Strategy for Partnerships', *Foreign Affairs*, January/February.
- Quille, G., 2004, 'The European Security Strategy: A Framework for EU Security Interests?', *International Peace-Keeping*, 11, 3.
- Reisman, M., 1984, 'Coercion and Self-Determination: Construing Charter Art. 2 (4)', *American Journal of International Law*, 78.
- Ibid.*, 1990, 'Sovereignty and Human Rights in Contemporary International Law', *American Journal of International Law*, 84.
- Ibid.*, 2000, 'Sovereignty and Human Rights in Contemporary International Law', in Fox *et al.* (eds).
- Rieker, P., 2004, 'Conflicts and Cooperation: Reinterpreting French-US Relations and French Foreign Policy after 9/11', Oslo: unpublished paper, NUPI.
- Rotberg, R., *et al.* (eds.) *When States Fail. Causes and Consequences*, Princeton, NJ: Princeton University Press. p. 1. The book is a product of the Failed States Project at Harvard University.
- Roth, B., 1999, *Governmental Illegitimacy in International Law*, Oxford: Clarendon Press.
- Ibid.*, 2003, 'Bending the Law, Breaking It, or Developing It?', in Byers & Nolte (eds).
- Schermers, H., 2002, 'Different Aspects of Sovereignty', in Kreijen (ed.).
- Schmitt, C., 1922, *Political Theology: Four Chapters on the Concept of Sovereignty*, Cambridge, MA: MIT Press.
- Singer, P.W., 2003, *Corporate Warriors: The Rise of the Privatized Military Industry*, Ithaca, NY: Cornell University Press.
- Smith, K., 2001, 'The EU, Human Rights, and Relations with Third Countries: a Foreign Policy with an Ethical Dimension?', in K. Smith & M. Licht (eds) *Ethics and Foreign Policy*, Cambridge: Cambridge University Press.
- Stromseth, J., 2003, 'Rethinking Humanitarian Intervention: The Case for Incremental Change', in Holzgrefe & Keohane (eds).
- Teson, F., 1997, *Humanitarian Intervention: An Inquiry into Law and Morality*, Irvington-on-Hudson, NY: Transnational Publishers.
- Ibid.*, 2003, 'The Liberal Case for Humanitarian Intervention', in Holzgrefe & Keohane (eds).
- Ibid.*, 'Ending Tyranny in Iraq', *Ethics and International Affairs*, 2005, vol. 19, no. 2.

- Thune, H., & Hansen, V., (eds), 1998, 'Etter Srebrenica. Massakre, Militær-makt og Humanitære Dilemmaer', *Internasjonal Politikk*, 1.
- Tilly, C., 1990, *Coercion, Capital, and European States, 990–1990*, Oxford: Blackwells.
- Toope, S., 2003, 'Powerful but Unpersuasive? The Role of the US in the Evolution of Customary International Law', in Byers & Nolte (eds).
- Tucker, R., & Hendricksen, D., 2004, 'The Sources of American Legitimacy', *Foreign Affairs*, November/December.
- Ulriksen, S., 2004, 'Requirements for Future European Military Strategies and Force Structures', *International Peace-Keeping*, 11, 3.
- Ulriksen, S., *et al.*, 2004, 'Operation Artemis: The Shape of Things to Come?', *International Peace-Keeping*, 11, 3.
- UN Reform Panel, 2004, *A More Secure World: Our Shared Responsibility*, 2004, Report of the Secretary-General's High-Level Panel on Threats, Challenges, and Change, New York: United Nations; also available online at <http://www.un.org/secureworld/report3.pdf>.
- USNSS *see National Security Strategy*.
- van Staden, A., 2002, 'The Erosion of State Sovereignty: Towards a Post-Territorial World?', in Kreijen (ed.).
- Weiss, T., 2004a, 'The Humanitarian Impulse', in Malone (ed.).
- Ibid.*, *et al.*, 2004b, *The UN and Changing World Politics*, Boulder, CO: Westview.
- Ibid.*, 2005, *Military-Civilian Interactions: Humanitarian Crises and the Responsibility to Protect*, New York: Rowman and Littlefield.
- Welsch, J.M., 2004, (ed.) *Humanitarian Intervention and International Relations*, Oxford University Press; Oxford.
- Wesley, M., 2005, 'Towards a Realist Ethics of Intervention', *Ethics and International Affairs*, vol. 19, no. 2, pp. 55-72.
- Wheeler, N., 2000, *Saving Strangers? Humanitarian Intervention in International Society*, Oxford: Oxford University Press.
- Yannis, A., 2002, 'State Collapse and its Implications for Peace-Building and Reconstruction', *Development and Change*, 33,5.
- Østerdahl, I., 1998: *Threat to the Peace: The interpretation by the Security Council of art 39 of the UN Charter*, Uppsala University, Swedish Institute of International Law, vol. 13.