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## MOVING BEYOND KOSOVO: ENVISIONING A COHERENT THEORY OF HUMANITARIAN INTERVENTION

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This paper uses the Kosovo bombing of 1999 as a starting point for imagining a sustainable, coherent theory of humanitarian intervention. The paper presents three principal problems of the Kosovo bombing—coherence, legality, and tactics—and describes their impact on the legitimacy of intervention and on human welfare. It then suggests three primary types of reforms that might assist in creating a more coherent logic of intervention: structural reform, coercion, and acculturation. Such reforms might assist the international community in responding more consistently and reliably to crisis situations across the globe.<sup>1</sup>

### **KOSOVO: HUMANITARIAN INTERVENTION AND ITS AFTERMATH**

Although President Clinton used every ounce of his famously infinite reservoir of charisma to persuade the American people of the need for intervention in Kosovo, he never managed to develop a convincing argument that the bombing of Serbia and Montenegro in 1999 was either necessary or humanitarian. He emphasized the consequences for European stability of a Kosovo refugee crisis, he described the importance of promoting democracy in Southeastern Europe, and he speculated about

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the pernicious impact of further fragmentation in the former Yugoslavia. None of these reasons fully convinced U.S. citizens of the necessity of war. Both houses of Congress passed resolutions supporting the bombing, but the relatively narrow margins of victory reflected the intensity of domestic divisions over the conflict.<sup>2</sup>

Additionally, the international community expressed ambivalence about the intervention. The UN Security Council would not authorize NATO bombing, so NATO proceeded independently, without its support. The decision to act outside the bounds of the UN raised questions about the future legitimacy of the organization and its capacity to handle international crises requiring swift, strong action. Even UN Secretary-General Kofi Annan expressed doubts about the future of the UN if it could not act decisively to protect human rights: "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 United Nations" (Annan in Buckley 2000, 222).

The Kosovo intervention reflected a transformation in the principles of state sovereignty that had formed the backbone of international relations theory and practice since the Treaty of Westphalia in 1648. Between Westphalia and the end of the Cold War, state sovereignty trumped nearly all other concerns in adjudicating conflict. This foundation has been shifting, as the concept of rights has slowly moved away from the state and toward the individual. The Kosovo episode signaled a deficit in global governance and in states' abilities to protect individual human rights, but it also acted as a mirror for the international community, reflecting a world changed dramatically since the closing days of World War II. NATO's violation of state sovereignty in the name of protecting individual rights provides evidence of this transformation in international politics, a transformation that is encouraging for individuals seeking global justice, but anxiety-provoking for states uncertain of their role in this new global order.

This essay seeks to explore fundamental questions about the legitimacy of humanitarian intervention, to look closely at its potential for success and failure in an era of globalization. First, the paper examines the normative and empirical impact of globalization on conceptions of human rights. Next, it looks at a set of problems that has arisen as a result. Finally, it attempts to develop a coherent theory of humanitarian intervention to match this unique moment in history. The purpose is to examine current theories of humanitarian intervention and universal human rights, to juxtapose them with the pragmatic considerations of intervention policy,

and to devise a logical framework for intervention that balances national sovereignty and international human rights norms.

## GLOBALIZATION AND INTERVENTION: SOVEREIGNTY MEETS UNIVERSALITY

In his first inaugural address in January 1993, President Bill Clinton provided the nation with a succinct definition of globalization at the same time as he enumerated its impact on U.S. identity. In our time, he said, “there is no longer a clear division between what is foreign and what is domestic. The world economy, the world environment, the world AIDS crisis, the world arms race—they affect us all...America must continue to lead the world we did so much to make” (Clinton 2004, 477). This proclamation, though primarily rhetorical, reflected an important shift in state behavior, a shift with tremendous implications for human rights.

The movement to globalize human rights standards gained attention in the aftermath of World War II, as the international community recognized that the unbending commitment to state sovereignty had contributed to Hitler’s rise: “Until 1945, sovereignty, political independence and territorial impermeability meant that how a state treated its own inhabitants was not a subject of international concern” (Henkin 1999). The Nazi genocide of the Jews provoked mass outrage, and global leaders quickly sought to codify this sentiment in international law. On December 10, 1948, the UN passed the Universal Declaration of Human Rights (UDHR), establishing a “common standard for all peoples and all nations” (Universal Declaration of Human Rights). Although its authors intended it as a statement of objectives, rather than a “part of binding international law,” the UDHR created the symbolic foundation upon which human rights theory has developed (*Questions and Answers about the Universal Declaration*).

The Cold War balance of power defined the first forty years of the UDHR, with countries hesitant to bring human rights claims to the UN for fear of upsetting the delicate balance between the United States and the Soviet Union. “During the Cold War there was not the political will, nor the foundation in law, nor the practical conditions that would support a humanitarian diplomacy that might include the use of interventionary force” (Independent International Commission on Kosovo 2000, 188). Sovereignty ruled supreme during the Cold War, with nations expected to handle their own internal human rights issues and the two great powers hesitant to intervene for fear of sparking a domino effect of conflict (Independent International Commission on Kosovo 2000, 188). The Cold War was not without its fair share of interventions—the Soviet Union

invaded Afghanistan and the United States fought a war in Vietnam—but these military conflicts focused on preserving ideological power, not in deterring human rights violations.

The prioritization of sovereignty resulted, in part, from the secondary consideration given to human rights at the creation of the UN (Independent International Commission on Kosovo 2000, 168). At its founding, some countries feared they were creating an all-powerful international regime that could preclude state control over local issues. As a result, the UN system—both in the written language of its Charter and in practice—largely ignored human rights violations that occurred behind the closed doors of state borders. However, with the fall of the Berlin Wall, the disintegration of the Soviet Union, and the explosion of technology that shrunk the spaces between continents and blurred the boundaries between nations, human rights discourse assumed a new form. “If the [Cold War] was marked by clear-cut geopolitical challenges and stark policy choices, the imbroglio in Kosovo comes out of a new national security landscape colored in shades of gray” (Callahan 1999). As the linkages between governments, civil society, and individuals have grown in response to this technology boom, conceptions of human rights—as well as state responsibilities to protect them—have changed. The shackles of the Cold War no longer bind state action, allowing the UDHR to reemerge as a viable conceptual roadmap for international human rights.<sup>3</sup>

The end of the Cold War also contributed to a decrease in global stability that brought a new series of human rights disasters. The 1990s witnessed a series of devastating humanitarian catastrophes demanding international attention, from Somalia and Bosnia to Rwanda and Kosovo.<sup>4</sup> The hesitant responses of individual nations and the UN Security Council illustrated the continuing influence of realist theory in international affairs. “The banner of sovereignty still waves ominously over all human rights issues...Sovereign states accept international human rights standards, if they wish to, when they wish to, to the extent they wish to. They submit to monitoring, to judgment by international human rights courts and commissions, if they wish, to the extent they wish” (Henkin 1999). Thus, as Annan makes clear, forming a bridge between the old world order and the emergent one requires balancing moral appeals with more pragmatic ones: “A new, more broadly defined, more widely conceived definition of national interest in this new century would, I am convinced, induce states to find far greater unity in the pursuit of such basic Charter values as democracy, pluralism, human rights and the rule of law” (Annan in Buckley 2000, 222).

Despite the continued influence of realism, the end of the Cold War

provided an opening for the emergence of the individual as a focal point of foreign policy decision-making. Whereas the desire to maintain the tenuous balance of power during the Cold War allowed international leaders to sidestep human rights questions in the interests of “state sovereignty,” a post-Cold War world often looks to the protection of the individual as a primary policy objective: “The international human rights movement, born during the Second World War, has represented a significant erosion of state sovereignty... Since 1945, how a state treats its own citizens, how it behaves even in its own territory, has no longer been its own business; it has become a matter of international concern, of international politics, and of international law” (Henkin 1999).

Though the protection of the individual may often conflict with sovereignty concerns, Vaclav Havel, the Czech dissident who later became the country’s president, saw the individual as the proper focal point for the protection of rights: “Human liberties constitute a higher value than state sovereignty. In terms of international law, the provisions that protect the unique human being should take precedence over the provisions that protect the state... While the state is a human creation, humanity is a creation of God” (Havel in Buckley 2000, 245). Havel saw this transformation as a direct consequence of the processes of globalization:

The idol of state sovereignty must inevitably dissolve in a world that connects people, regardless of borders, through millions of links of integration, ranging from trade, finance, and property, up to information—links that impart a variety of universal notions and cultural patterns. Furthermore, it is a world in which danger to some has an immediate bearing on all; in which... our fates are merged together into a signal destiny; and a world in which we all, whether we like it or not, suffer responsibility for everything that occurs (Havel in Buckley 2000, 240).

With the growing influence of this idea of the primacy of the individual, some scholars came to see this evolution from state to individual as a teleological phenomenon, a reflection of a world growing increasingly sophisticated. “The evolution of civilization [has] finally brought humanity to the recognition that human beings are more important than the state” (Chomsky 2000, 2). In fact, this transition has become internalized and accepted to such an extent that Buchanan and Keohane consider the protection of the individual vis-à-vis the state as an accepted principle in international law: “[These commitments to human rights] are central to the just war tradition and the current international legal order’s allowing human rights to limit state sovereignty” (Buchanan and Keohane 2004).

Prioritizing the rights of the individual over the rights of the state created new opportunities for intervention. Buchanan and Keohane emphasize the correlation between an emergent human rights discourse and the justifiability of taking action to prevent genocide. “We begin with the assumption that it can be morally permissible to use force to stop presently occurring massive violations of basic human rights” (Buchanan and Keohane 2004). According to Annan, “Norms of non-intervention, and the related deference to sovereign rights, no longer apply to the same extent in the face of severe human rights or humanitarian abuses” (Independent International Commission on Kosovo 2000, 169). This logic stipulates that the international community will not tolerate human rights violations, even if stopping these violations requires an infringement on state sovereignty. Annan simultaneously recognized the relevance of globalization and articulated a vision of the UN as an international enforcer of universally accepted human rights norms:

This is the core challenge of the Security Council and the United Nations as a whole in the next century: to unite behind the principle that massive and systematic violations of human rights conducted against an entire people cannot be allowed to stand. For in a world where globalization has limited the ability of states to control their economies, regulate their financial policies and isolate themselves from environmental damage and human migration, the last right of states cannot be and must not be the right to enslave, persecute or torture their own citizens (Annan in Buckley 2000, 222).

Havel declared that the Kosovo intervention represented the “first war in history fought ‘in the name of principles and values’... signaling ‘the end of the nation-state,’ which will no longer be ‘the culmination of every national community’s history and its highest earthly value’” (Chomsky 2000, 1-2). Annan’s vision may not yet be a reality, but as globalization continues to erode state sovereignty in favor of universal standards and the protection of individual rights, it might be realized one day.<sup>5</sup>

The end of the Cold War and the subsequent rise of economic, political, and cultural globalization make this an ideal historical moment to examine the theory and practice of humanitarian intervention. Moving forward toward stronger global governance requires a deeper exploration of this issue. Learning from Kosovo and preparing for the next crisis depend upon an ability to consider carefully and seriously the detrimental effects of the status quo and to envisage a coherent intervention policy for the future.

## LOOKING FORWARD WITHOUT LOOKING BACK: THE PITFALLS OF AN AD HOC APPROACH

Globalization's impact on intervention discourse and practice has garnered praise from some human rights activists and international leaders, but it simultaneously highlights the pervasive global governance deficit. As a new paradigm has emerged, a paradigm that sees a larger role for humanitarian intervention at the same time as it places a diminished emphasis on state sovereignty, the limited capacity to implement it becomes more and more apparent. The problems, however, do not arise solely from the minimal capacity of the UN system. They also stem from a failure to develop a robust, coherent theory of humanitarian intervention that will not only supply a set of criteria to gauge when intervention is justified, but also provide guidance on the form intervention should take.

The pressure from frequent crises overburdens a weak, archaic international human rights regime.<sup>6</sup> The UN system has barely changed in the nearly sixty years of its existence, with the composition of the Security Council a snapshot of the political scene at the close of World War II. Countries that emerged from that war to occupy positions of global economic and political prominence, such as Japan, India, and Germany, remain excluded from a permanent seat on the Security Council, while less powerful nations like the United Kingdom retain their seats. The stagnancy of the Security Council results in the marginalization of the interests of those nations who lack permanent seats and veto power.

As evidenced by the Kosovo intervention, institutions designed for the Cold War have proven inadequate to deal with the challenges of a globalized world, particularly the need for authoritative action in crisis situations. Prior to NATO's intervention in Kosovo, Serb forces mocked the organization's legacy of avoiding conflict in the 1990s, adopting the motto "a massacre a day helps keep NATO away" (Power 2002, 447). Because they never believed a strong resolution could pass the Security Council, NATO nations did not wait for Council approval before initiating their bombing campaign. Circumventing the primary international institution responsible for approving the use of force suggests a failure of that institution.

Without a clear system for addressing human rights concerns, without a system that delineates between proper and improper intervention, states are left on their own to balance the responsibility to protect human rights with the need to respect state sovereignty. Moreover, without a proper process for handling human rights concerns, institutional failure unofficially sanctions extralegal behavior: "UN practice has created greater flexibility

and permissiveness with respect to the use of force than can be derived from the most relevant of international law texts, including the Charter” (Independent International Commission on Kosovo 2000, 170).

While globalization has resulted in almost constant appeals to leading nations for intervention in humanitarian crises, no institutional or legal mechanism compels them to intervene. The absence of a formal, institutionalized process for dealing with human rights crises results in three major problems: incoherence, illegality, and poor intervention tactics.

## Coherence

At the center of criticisms of the Kosovo intervention lies a problem of coherence. Coherence refers to the degree to which the behavior of an intervention matches the rhetoric used to support it, as well as the viability and applicability of the logic behind the intervention. Many critics of the Kosovo bombing attack it on grounds of inconsistency. They claim that NATO leaders failed to provide a convincing rationale for why Kosovo warranted intervention, while other crises—such as East Timor or Chechnya—did not. Similarly, the United States has tacitly supported Ariel Sharon, accused by many human rights activists of war crimes in Lebanon in the early 1980s, while in contrast, war crimes became a primary justification for ousting Milosevic. Many critics accuse NATO members of seeking intervention in areas of strategic interest, while largely ignoring regions like Africa. Nelson Mandela argued, “While NATO prepared itself for action in Kosovo, Sierra Leone seemed a virtually forsaken place from an international perspective” (Independent International Commission on Kosovo 2000, 15).

Critics also have used a coherence argument in claiming that NATO publicly misrepresented its intentions in bombing Kosovo, fueling a discrepancy between leaders’ public statements and private speculation about the real causes of the war. Some scholars, such as Samantha Power, believe Kosovo constituted the first humanitarian intervention in U.S. history (Power 2002, 448). Yet even Power acknowledges that the intervention was not “purely humanitarian” (Power 2002, 448). Despite NATO’s public pronouncements that its campaign focused on ending ethnic violence against Albanian Kosovars, critics contend that the political interests of NATO member states were the real motivation for the intervention.

Former Secretary of State Warren Christopher attempted to justify the strength of the Kosovo intervention relative to international action in Bosnia by appealing to political, rather than humanitarian, interests: “Kosovo was thought to be different from Bosnia because of its potential



to unleash violence throughout the rest of the Balkans” (Power 2002, 446). Tony Blair similarly appealed to non-humanitarian concerns in underscoring the importance of a successful intervention: “The bottom line was we couldn’t lose. If we lost, it’s not just that we would have failed in our strategic objective; failed in terms of the moral purpose—we would have dealt a devastating blow to the credibility of NATO and the world would have been less safe as a result of that” (Chomsky 2000, 4). Skeptics of intervention questioned whether the rhetoric of humanitarianism might simply act as a veil for the pursuit of state self-interest. Taking that question even more seriously, just war theorists speculated that for a war to be legitimate, its “aims must be made clear, [the] criteria for what is to count as success must be publicly available” (Elshtain in Buckley 2000, 366).

In response, Clinton justified selective intervention by appealing to pragmatism, describing the impossibility of taking action in all places at all times, but never provided a manageable set of criteria that would govern when and how to intervene. “There are times when looking away simply is not an option. We can’t respond to every tragedy in every corner of the world, [but that doesn’t mean] we should do nothing for no one” (Chomsky 2000, 3). These various justifications for war, combined with the absence of criteria for identifying the logic behind selective intervention, led some international leaders to criticize the use of military power. Mandela feared that the war would give the United Kingdom and the United States the authority to play “policeman of the world” (Chomsky 2000, 3).

Conflicting portraits of the rationale for war also contributed to speculation about the precedent that the Kosovo bombing might set. Annan warned of the dangerous consequences of acting outside international institutions and without recourse to international law. Ad hoc action, unsupported by legal authority to take that action, risks legitimizing haphazard intervention: “To endow the NATO campaign with an aura of legality on the basis of ‘implicit’ authorization to use force by the UNSC seems an undesirable precedent” (Independent International Commission on Kosovo 2000, 173).

Similarly, simply providing evidence of serious human rights violations may not provide a sufficient justification for war. Buchanan and Keohane suggest that a fully coherent approach to intervention will depend upon a clear threshold level of violence, beyond which international actors may legitimately intervene to mitigate the conflict: “It is crucial to emphasize that this *prima facie* justification for the preventive use of force does not apply to all cases where harm may be prevented but only to situations in which there is a significant risk of sudden and very serious harms on a

massive scale” (Buchanan and Keohane 2004).<sup>7</sup> Incoherence thus stems at least partially from the lack of a detailed set of guidelines around what level of violence justifies intervention, a deficiency that permits states to intervene at will and claim *ex post facto* legitimacy. Gareth Evans, the head of the International Crisis Group, explained, “No universally accepted practice currently governs the use of military force. States are going to war when they should not be, and not taking military action when they should” (*The Economist*, November 18, 2004). The Kosovo bombing thus left the world no closer to understanding what levels of violence warrant a violation of state sovereignty.

### Legality

The lack of normative and empirical coherence in the international intervention has given rise to questions about the legality of the Kosovo campaign. This incoherence has contributed to a growing gap between the behavior of the UN and the legal limitations of its Charter: the way the UN wants and needs to behave in an era of globalization does not match the Charter’s narrow provision of international governance power. According to the UN Charter, established in 1945 at the UN’s founding, the use of force is prohibited, except in two cases. First, Article 51 provides for a right of self-defense “only if exercised in response to a prior armed attack across an international frontier, and then only provisionally” (Independent International Commission on Kosovo 2000, 167). Second, under Chapter VII, member states may use force if authorized by the Security Council in the event of a breach, or threat to, world peace (*The Economist*, December 1, 2004). Under the Uniting for Peace Resolution, the General Assembly may act as well, but only if the Security Council is unable to address threats to international peace and security. A preemptive strike may be legal if an attack is imminent, but only a Chapter VII authorization, and not the Article 51 exception, permits preventative strikes. A “commanding majority” of the International Court of Justice, particularly in the Nicaragua case decided in 1986, has supported this “narrow” interpretation of the UN’s legal capacity to use force. Some scholars claim that this limited interpretation conflicts with the Charter’s support for protecting human rights. Others respond that restrictions on force were considered a “core component” of the establishment of the UN, whereas statements concerning human rights were “left deliberately vague, and were clearly not intended when written to provide a legal rationale for any kind of enforcement” (Independent International Commission on Kosovo 2000, 167-168).

The legality of an intervention also depends on using force as a last

resort, after the parties have exhausted all potential diplomatic avenues. Despite the efforts of Richard Holbrook, the President's chief negotiator during the Balkan conflicts, the Independent International Commission on Kosovo (hereafter referred to as "the Commission") believed nonmilitary options were never sufficiently explored: "The negotiations conducted before March 24, 1999, although extensive, were enmeshed in threat diplomacy and ambiguous offers of negotiation, and thus failed to satisfy fully the legal requirements associated with the obligation to pursue the peaceful settlement of all international disputes" (Independent International Commission on Kosovo 2000, 166).

The forces of globalization and the end of the Cold War gave rise to a proliferation of non-state actors that have posed critical challenges to this legal framework. As the Bush administration has claimed, a post-September 11<sup>th</sup> world alters considerations of imminence and increases the attention that governments must devote to non-state networks. The United States now sees global events as an even greater potential threat to its security. In this context, international legal norms designed at a time when state sovereignty and state actors dominated foreign policy are not sufficient. Compared to domestic legal systems, the international legal order has relatively minimal power: "One of the ways in which the international order differs from the domestic order is in the much diminished range of its adjudicatory mechanisms and, conversely, the greater range for the deployment of power even in the face of legal claims" (Kahn 2000, 2). The system must turn to reforms that will allow it to meet the security threats that characterize a globalized world order.

In the Kosovo intervention, NATO's decision to act without authorization from the Security Council illustrated the flaws in the system. The Commission concluded that the NATO campaign was "illegal, yet legitimate" (Independent International Commission on Kosovo 2000, 186). It justifies this logic-defying conclusion by an appeal to the spirit of the Charter: "Such a conclusion is related to the controversial idea that a 'right' of humanitarian intervention is not consistent with the UN Charter if conceived as a legal text, but that it may, depending on context, nevertheless, reflect the spirit of the Charter as it relates to the overall protection of people against gross abuse" (Independent International Commission on Kosovo 2000, 186).<sup>8</sup> Although this justification may in some small way reduce the incoherence, it rests on tenuous logic.

## **Intervention Tactics**

Constructing an argument in *A Problem From Hell* about why states rarely

intervene to prevent genocide, Power cites three primary reasons for their reluctance: perversity, futility, and jeopardy (Power 2002, xviii).<sup>9</sup> States appeal to the perversity argument in claiming that intervention will only make a situation worse. Futility implies a situation in which intervention is unlikely to have any real impact at all, and jeopardy refers to an intervention that could damage the interests of the state that intervenes. Although Power cites perversity, futility, and jeopardy as ideational and psychological barriers that states must overcome to create more effective human rights prevention mechanisms, her theoretical rubric proves quite helpful in distinguishing between the viability of a decision to intervene and the quality of that intervention. This dichotomy significantly influences the perceptions of an intervention, as public opinion will oppose actions that produce a large number of casualties, prove too costly, or tie up military forces for an extended period of time. This opposition will occur even if most people support the decision to intervene in the first place.<sup>10</sup>

Kosovo provides a stunning example of the chasm between the merits of intervention and its problematic implementation. In Kosovo, the decision to avoid NATO casualties raised questions about the morality of the mission. NATO conducted the entire campaign from the air, but several leaders, including Wes Clark, the Supreme Allied Commander of NATO, called for ground troops to reduce collateral damage and increase the speed of the military victory. Planes flying at high altitudes, out of the reach of anti-aircraft fire, are inevitably less accurate in hitting their targets. The BBC reported that Royal Air Force missiles hit approximately 40 percent of its targets, 2 percent in the case of some bombs (*BBC News*, August 14, 2000). Despite these pleas, NATO never used ground troops; when the war ended, it had suffered zero fatalities. Clinton continues to stand by his decision to conduct an exclusively air mission, claiming that ground troops would have actually increased civilian casualties. "I'm also still convinced that fewer civilians died than would have perished if we had put in ground troops" (Clinton 2004, 859).

By prioritizing avoiding casualties of its own troops, NATO's tactics suggested to the Balkan people that it cared more about its own soldiers than about innocent Serbians, Montenegrins, and Kosovars who might get hit by an inadvertent bomb. According to Michael Ignatieff, "The alliance's moral preferences were clear: preserving the lives of their all-volunteer service professionals was a higher priority than saving innocent foreign civilians" (Ignatieff 2000, 62). Taking a more philosophical approach, he argues that a humanitarian intervention conducted at 15,000 feet to avoid any risk to NATO pilots suffers from a moral paradox: "Riskless warfare

in pursuit of human rights is a moral contraction. The concept of human rights assumes that all human life is of equal value. Risk-free warfare presumes that our lives matter more than those we are interfering to save” (Ignatieff 2000, 162). Similarly, the political theorist Michael Walzer, writing in Buckley, agrees that this position is not morally tenable: “But this is not a possible moral position. *You can’t kill unless you are prepared to die*” (emphasis added) (Walzer in Buckley 2000, 334).

A practical evaluation of intervention tactics has proven to be more difficult, and has resulted in more contradictory results, than the philosophers’ explorations of just war theory. In its “Final Report of the Committee of the ICTY Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia,” the International Criminal Tribunal for the Former Yugoslavia (ICTY) found that war crimes allegations against NATO were not sufficient to merit further investigation or trials. These findings conflicted with Amnesty International’s report, “Violations of the Laws of War by NATO during Operation Allied Force,” that recommended pursuing more in-depth investigations (Independent International Commission on Kosovo 2000, 178). Yet even Amnesty seemed conflicted: while recommending additional investigations, the organization commended NATO for its “unprecedented” accuracy in hitting bombing targets and minimizing civilian casualties (Independent International Commission on Kosovo 2000, 181).

Regardless of the final verdict on the morality or amorality of NATO’s tactics, the operational choices made in the Kosovo campaign will contribute to a final assessment of its success in improving people’s lives. A successful intervention should not only improve the welfare of individual citizens, but also contribute to the long-term economic and political development of the country. “Eventual assessment of the ‘Kosovo principle’ [that human rights violations may justify unilateral intervention] will also be strongly influenced by the ultimate outcome in Kosovo—whether the international action is seen as producing stable and human governance, or the opposite” (Independent International Commission on Kosovo 2000, 175).

Some skeptics claim that intervention actually increased the violence by prompting Milosevic to implement Operation Horseshoe, his plan to force a solution to the “Kosovo problem.”<sup>11</sup> In his March 2000 report to the UN Commission on Human Rights, Jiri Diensbier, a former Czech dissident and UN Special Investigator for the Former Yugoslavia wrote, “The bombing hasn’t solved any problems. It only multiplied the existing problems and created new ones” (Chomsky 2000, 41). According to Robert Fisk, starting the war resulted in a problematic increase in the number

of retaliatory murders: “The number of Serbs killed in the five months since the war comes close to that of Albanians murdered by Serbs in the five months before NATO began its bombardment in March” (Chomsky 2000, 136).

Would the people of Kosovo have supported the intervention if they had known beforehand how it would be carried out? Jean Louis Tauran questions whether the immense cost justified the benefit: “Does protecting the Kosovars’ legitimate aspirations justify the destruction of the whole of Serbia?” (Tauran in Buckley 2000, 248). On the other side, Power believes Albanian Kosovars consider the benefits worth the costs: “Given the choice, virtually every Albanian in Kosovo would have preferred to take his or her chances with NATO bombing over business as usual under Milosevic” (Power 2002, 454).

Beyond the death counts, the accusations that the bombing provoked retaliatory violence, and the anger of many of the country’s people, the bombing also exacerbated political rifts between industrialized and developing nations. Many countries resented the United Kingdom and the United States for flexing their power. The South Summit meeting of the G-77 issued the Declaration of the South Summit, stating, “We reject the so-called ‘right’ of humanitarian intervention, along with other forms of coercion that the Summit also sees as traditional imperialism in a new guise, including the specific forms of corporate-led international integration called ‘globalization’ in Western ideology” (Chomsky 2000, 4). From the perspective of these nations, the intervention’s incoherence, its illegality, and its poor tactical implementation contributed to a distrust of western countries and skepticism about the merits of humanitarian intervention.

## **A PATH AHEAD: MOVING TOWARD A COHERENT THEORY OF INTERVENTION**

The Kosovo bombing exposed gross flaws in the international governance system, and as discussed above, it exacerbated rifts in the international community between developing and industrialized nations. Yet despite its failings, the Kosovo intervention also represented a giant step forward: it recognized that upholding human rights norms may require intervention. Power argues that a commitment to human rights also implies a commitment to authoritative action, even action of a military nature (Power 2002, 446). Moving toward a coherent theory of humanitarian intervention—one that will simultaneously protect people against unwarranted abuse and respect state sovereignty—requires acknowledging the critical role of such

intervention in any system that defends human rights.

Unfortunately, acknowledging a role for intervention is not enough. Stymied by problems of coherence, legality, and tactics, the international governance system needs significant reforms before it can achieve true legitimacy in future humanitarian interventions. Ad hoc intervention has obviously failed as a viable long-term remedy for responding to the complex, multifaceted and deeply contested problem of international human rights violations. This discussion suggests that the Independent International Commission on Kosovo errs in speculating that coherence and legality might not matter, that perhaps they are mere obstacles to achieving the all-important, self-justifying end of human rights protection. “The effectiveness of rescue initiatives would seem to take precedence over formal niceties” (Independent International Commission on Kosovo 2000, 176). The problems discussed in previous sections of this paper—from a haphazard system of selecting which crises warrant intervention to contradictions with international law—represent more than just “niceties.” They reflect a failing system characterized by international institutions too resistant to change. The gap between the need for certain types of UN behavior and the absence of laws or institutions to legitimize that behavior constitutes a burden the international system cannot endure forever.

In spite of these myriad problems, a viable theory of intervention is still possible. The challenge lies in refusing to back away from legal, normative, and behavioral inconsistencies in this current system, refusing to condemn these inconsistencies as the inherent failures of a weak global system or to accept them blindly as the inevitable byproduct of states in conflict. Reforms are necessary, and in them lie the potential for dramatic improvements to intervention policy.

Noam Chomsky presents two possible paths forward: “The world faces two choices with regard to the use of force: (1) some semblance of world order, either the UN Charter or something better if it can gain a degree of legitimacy; or (2) the powerful states do as they wish unless constrained from within, guided by interests of power and profit, as in the past” (Chomsky 2000, 141). Global policymakers must choose the former, seeking to mend the inconsistencies, to strengthen international institutions, and to codify the ambitions of the UN to give it legitimacy in pursuing the significant role it wants to occupy on the international stage.

A coherent theory will establish a set of criteria to guide intervention decisions, providing a concrete, pragmatic rationale for why certain situations require intervention and others do not. It will provide a logical framework to govern policy in a world altered by an explosion of global

forces. Finally, it will match the challenges at the ground level—challenges of protecting global citizens from oppressive states or prejudiced individuals—with a robust and active institutional apparatus that ensures the fairness and sustainability of the system as a whole. To move toward that theory, we must consider three principal paths of action: structural reform, coercion, and acculturation. Although presented as distinct alternatives, these options are not necessarily mutually exclusive.

### Structural Reform

Despite temptations to circumvent it, the UN represents the best hope for a stronger system of international governance and should therefore be the focal point of institutional reform. Structural reforms must reflect the shift in governance needs over the past sixty years. Specific changes might include changing the composition of the Security Council, amending or eliminating the veto, and strengthening the executive branch to give it substantive enforcement capacity.

By omitting international powers like Japan, Germany, and India, the Security Council hinders its authority and its relevance. According to *The Economist*, “dominated by rich white nations, the UN’s main decision-making body has long been regarded as undemocratic and out of touch with modern geopolitical realities” (*The Economist*, November 18, 2004). The Commission concurs: “Since the UN was formed, its structure has not changed with the changing post-Cold War political atmosphere. The Commission acknowledges that in order for the [Security Council] to maintain its functionality and global legitimacy, it should be reformed” (Independent International Commission on Kosovo 2000, 197). On December 1, 2004, the UN announced that it will consider two proposals to add additional members to the Security Council: one that adds six new permanent seats and another that creates a rotating “semipermanent” second tier, with members elected to four-year terms.<sup>12</sup> Either option would add legitimacy to the Security Council by incorporating a greater diversity of nations and by recognizing emerging states.

With all permanent members of the Security Council possessing veto power, many human rights issues fall victim to political squabbling, as states try to protect their political and economic interests.<sup>13</sup> This veto power is so great that Ignatieff sees it as a reason for circumventing UN approval: “Where a veto threatens to make the international community complicit in evil, coalitions of member states should be able to act on their own” (Ignatieff 2000, 78-79). Such was the case during the Kosovo intervention, when the threat of a Security Council veto forced the United



States to resort to NATO, rather than the UN, to conduct and support the intervention.

The likelihood of action by the UN in response to humanitarian concerns will increase if Security Council members agree to relinquish or diminish their veto power. Eliminating the veto would certainly make the Security Council more democratic, evening the distribution of power, and emphasizing the basic democratic principle of majority rule. Because current members of the Security Council are unlikely to give up this authority, less substantial reforms—such as adding permanent members, or changing the Council’s structure to include more temporary members—might represent the only hope for curtailing its overwhelming influence.<sup>14</sup>

A third structural reform contains perhaps the most potential for influence. Strengthening the executive branch of the UN would give it the authority and the flexibility to act quickly in response to international crises. In the current system, the UN is almost exclusively a legislative body, defined primarily by the deliberative General Assembly and Security Council. When a situation demands immediate attention, the diversity of interests among UN member states makes a quick, effective response almost impossible. This bottleneck prompted the United States to look outside the UN for support: “Intervention in Kosovo was justified at the UN on the grounds that urgent necessity overrode the requirement of formal consent... When a house is on fire, you do not seek a search warrant before entering to put out the blaze” (Ignatieff 2000, 181). In comparison, the U.S. legislative body plays a small role in emergency response. Provided with Commander-in-Chief authority by the U.S. Constitution, the President makes most decisions, ensuring relatively swift and decisive action.

At the UN, the Secretary-General currently sets the tone for UN action, but has only minimal power to precipitate action. Structural reform could add enforcement capacity to the Secretary-General position, codifying his ability to act as the UN’s “Commander-in-Chief.” The UN could also add executive posts similar to the U.S. cabinet, dividing executive responsibilities to permit a greater focus on enforcing specific issues. To address questions of democratic accountability—critics might argue that international citizens do not elect the Secretary-General, which provides a strong rationale for keeping the position relatively weak<sup>15</sup>—UN member countries could conduct referendums on the appointed Secretary-General. Similar to the procedure in which the U.S. Senate confirms executive appointments, the legislatures of UN member nations could vote to confirm the appointee.

## Coercion

Raphael Lempkin, the man who coined the word “genocide,” said, “Only man has the law...you must build the law!” (Power 2002, 47). Lempkin recognized that without legal codification of human rights norms, the duty to protect them falls victim to the arbitrariness of state behavior. A coercive approach aims to use strong international institutions to codify those norms and to create a legal responsibility to intervene to protect them.<sup>16</sup> International institutions have already begun to move in this direction: in 2001, the International Commission on Intervention and State Sovereignty recommended establishing a “responsibility to protect” that would obligate intervention in situations of “compelling human need” (International Commission on Intervention and State Sovereignty 2001). Yet in spite of this recommendation, states continue to express reluctance to agree to a binding responsibility, with many “unwilling to accept a duty of humanitarian intervention except at times and places of their own choosing” (Independent International Commission on Kosovo 2000, 191).

To avoid the coherence problem, the “responsibility to protect” must distinguish between those cases that warrant intervention and those that do not. Evans argues for using five criteria: seriousness of threat, proper humanitarian purpose, last resort, proportional means, and reasonable probability of success (*The Economist*, November 18, 2004). The Commission takes the argument one step further, positing an additional burden on humanitarian interventions to establish legitimacy in both the decision to act and in the tactics employed.

Because human rights issues occupied a secondary role at the founding of the UN, the provisions of the UN charter do not sufficiently protect today’s international citizens from humanitarian violations. UN member states must revisit this language, and strengthen it to meet the challenges of a globalized world. By revising the Charter to include legal avenues for the protection of human rights, the international system will possess the legal and political capacity to respond to human rights crises. The Commission, for example, suggests preparing a Declaration on the Right and Responsibility of Humanitarian Intervention. This Declaration would be passed by the Security Council and the General Assembly and then incorporated into the UN Charter (Independent International Commission on Kosovo 2000, 187).

Coercive mechanisms might also include reforming the international judicial system to give it additional influence. The United States rendered the current system relatively ineffective because of its disdain for international

treaties like the Kyoto Protocol, its refusal to sign on to the International Criminal Court (ICC) treaty, and its attempt to subvert international judicial power even further by negotiating bilateral immunity deals to undermine the ICC's practical authority. A commitment to international judicial processes by the United States could dramatically strengthen the system as a whole.

Independent of U.S. action, however, the UN could consider several steps that would strengthen the international judiciary: moving international criminal tribunals closer to their home countries, adding layers to the court system to provide for a more extensive and authoritative appeals process, trying defendants from conflict-ridden and superpower nations alike, and establishing clear judicial norms that allow a fair application of human rights standards. The controversial idea of "conditionality" might prove useful in ensuring compliance with international norms. The Commission recommends "conditioning sovereign rights on respect for human rights and the maintenance of the capacity to govern" (Independent International Commission on Kosovo 2000, 190). Because the legal system confers legitimacy on state behavior, these reforms could add to the UN's power to coerce states to respond to humanitarian crises.

### **Acculturation**

Acculturation presents a compelling alternative to coercion. As defined by law professors Ryan Goodman and Derek Jinks during their November 18, 2004 presentation at Duke Law School, acculturation involves an internalization of human rights norms.<sup>17</sup> Seen through the lens of human rights intervention, this process of internalization could help states to see humanitarian intervention as a necessary byproduct of modern statehood, a task they are willing to take on without coercion by other states or the UN. "States care about following norms associated with liberalism because being 'liberal states' is part of their identity in the sense of something they take pride in or from which they gain self-esteem" (Finnemore and Sikkink 1998, 904). As opposed to coercion, a form of formal power in which an international institutional framework obligates action, acculturation would urge a state to act not out of legal necessity, but out of its own commitment to human rights and rational self interest. Action need not occur only as a result of legal necessity or the desire to advance a humanitarian ideal, but because developing a strong human rights record will help the state to promote its own objectives.

Unlike the coercive approach, acculturation shies away from imposing a set of values on resistant nations, and allows countries to selectively mimic

behavior based on their observation of effective intervention practices. For instance, if powerful countries consistently intervene successfully to protect human rights in neighboring countries—if South Africa had taken action against Rwanda, or if Russia had intervened to stop Milosevic in Kosovo—other states may imitate that behavior over time.

Perhaps most importantly, acculturation uses a behavioral model to expand the “circle of we,” the community of international citizens. Whereas defining that circle according to membership in international organizations threatens to provoke accusations of imperialism, acculturation will promote a community of states based on action. A state will enter that *de facto* club of international citizenship, that “circle of we,” once its behavior conforms to accepted norms, not because it pays membership dues.

## A HISTORIC MOMENT

The Kosovo intervention challenged the international order, straining an outdated system that has barely changed since its inception at the end of World War II and exposing problems of coherence, legality, and tactical implementation. The bombing not only challenged the capacity of historians and political analysts to understand the events that precipitated it, but also suggested the need to recognize the difficulty of developing a coherent narrative of intervention for a post-Cold War world. What does it mean to be an international citizen in an era of globalization, and what are the protections and responsibilities that come with that citizenship? More specifically, is this narrative deep and wide enough to incorporate a clear role for humanitarian intervention? When is intervention legitimate, and what international structures can we use to establish this legitimacy?

For the United States, the interrogation of its identity cuts even deeper. Once a state defined by its strong commitment to isolationism, the United States finds itself as the world’s lone superpower, a position that comes with a burden of responsibility as enormous, vast, and dauntingly limitless as its power. Last summer, in Montenegro, a country with wounds still fresh from the 1999 bombing, I listened to the director of the USAID office talk about his dual responsibility: to promote development while protecting U.S. foreign policy interests. I found myself wondering if these two objectives might not be mutually exclusive, if the needs of a superpower seeking to maintain its status might not conflict with the goals of local communities attempting to reestablish themselves in the wake of the dissolution of their country. Can the United States, once so concerned with overstepping its boundaries, look outward at the same time as it remains focused on protecting its interests?

Perhaps the edges of this dichotomy soften in an era of globalization. With technology increasing interconnectedness—shortening the distance between countries and blurring boundaries—looking outward and looking inward might become more and more the same. President Clinton suggested as much in his 1993 inaugural address, and certainly September 11<sup>th</sup> evidenced this shrinking gap between domestic and foreign policy.

As the world grows closer together, the need for a strong global government increases. As leader of the global governance system, working to add strength and legitimacy to the UN, Kofi Annan sees the unique potential of this historic moment to define the UN's role for the future and balance a past reliance on state sovereignty with a more contemporary duty to protect human rights. Hopeful of the future, Annan envisions a UN with the capacity to develop a coherent approach to humanitarian intervention: "On the eve of the new millennium, it is this United Nations we seek: responsive to a dynamic and changing world, respectful of the sovereignty of states and resilient in its determination to advance the rights and freedoms of the peoples of the world" (Annan in Buckley 2000, 222-223). To move toward this vision, Annan should consider structural reform, coercion, and acculturation options.

Five years after the bombing, Serbians and Montenegrins still resent the intrusion on their sovereignty, the paternalistic attitude of the West in ousting a popular leader, and the prioritization of the lives of NATO soldiers over Serbian civilians. Did the bombing create a better life? Montenegro has used vast international aid resources to develop a budding tourist industry and an emergent civil society sector, but Kosovo remains governed by a UN peacekeeping mission.

Whether costs outweighed benefits or benefits outweighed costs, analysts agree that the Kosovo bombing devastated the lives of many Serbians, Montenegrins, and Kosovars, killing innocent civilians and prompting Milosevic's retaliation in Operation Horseshoe. Doing justice to that experience, ensuring that future interventions avoid the mistakes of their predecessors, requires both an intensive exploration of the past and an idealistic vision of the future. As the world learns from its mistakes in Kosovo, international governance institutions must keep pace.

## NOTES

<sup>1</sup> This article is based on preliminary research and conversations conducted in July and August 2004 in Podgorica, Montenegro, as part of an internship with the Center for Democracy and Human Rights.

<sup>2</sup> The Senate voted 58-41 in favor of NATO action. The House supported

it with a vote of 219-191. Although these are clear majorities, the votes seem relatively close for a military resolution, reflecting the division of both houses on the rationale for war.

- <sup>3</sup> For example, the end of a two-superpower system has permitted international trials of heads of state, essentially impossible during the Cold War because many of those leaders were either explicitly or implicitly supported by the superpowers (Independent International Commission on Kosovo 2000, 189).
- <sup>4</sup> Rwanda and Srebrenica were two of the most devastating human rights abuses in the 20<sup>th</sup> century. In Rwanda, approximately 800,000 people were killed in a 100-day period. In Srebrenica, Bosnian Serb soldiers killed over 7,000 Muslims in a five-day period. In both situations, UN peacekeeping forces watched these murders helplessly, their inaction rendering them seemingly complicit in the mass murders.
- <sup>5</sup> The Independent International Commission on Kosovo perceives the Cold War legacy of destructive, self-interested interventions (in the limited cases where intervention actually occurred) as a hindrance to local communities' acceptance of future UN interventions. "This legacy has resulted in continuing suspicion, especially by states that had been colonized or dominated by the West, that 'humanitarian intervention' is a new name for Western domination" (Independent International Commission on Kosovo, 188-189).
- <sup>6</sup> A short list of the major crises of the 1990s alone includes Bosnia, Somalia, Rwanda, East Timor and Kosovo.
- <sup>7</sup> In their subsequent discussion, Buchanan and Keohane argue that the Yugoslavia intervention did not meet their criteria for a "significant risk of sudden and very serious harms on a massive scale."
- <sup>8</sup> One reason to question this attempt to resolve the issue is that the public often conflates legitimacy and legality. Lawyers may regard them as distinct concerns, but average people tend to believe that the law confers legitimacy. Without legal compliance, legitimacy becomes questionable.
- <sup>9</sup> Power borrows these three categories from Albert O. Hirschman's *Rhetoric of Reaction: Perversity, Futility, Jeopardy*.
- <sup>10</sup> This distinction has been confirmed by poll data on the conflict in Iraq. Although many U.S. citizens supported the intervention initially, they now express reservations about the conduct of the war.
- <sup>11</sup> Experts remain divided, however, on whether Milosevic would have carried out this plan regardless of NATO's intervention.
- <sup>12</sup> Both options add nine seats in total. The first option also includes

- three two-year term members. The second includes eight nations with four-year terms and one with two years (Hoge 2004; *The Economist*, November 18, 2004).
- <sup>13</sup> The Security Council's reaction to Nigeria's execution of the Ogoni Nine in 1995 manifests the complexity of negotiating a human rights resolution (Friedman 1995).
- <sup>14</sup> The procedural requirements for reform impede the possibility for significant change. "Structural changes...require the backing of two-thirds of the delegates in the General Assembly, further ratification by two-thirds of the governments at home, and no veto by the Security Council's permanent members" (*The Economist*, December 1, 2004).
- <sup>15</sup> Issues of democratic legitimacy and the Secretary-General office are somewhat ambiguous. The General Assembly appoints the Secretary-General, subject to veto by the members of the Security Council. One could argue that because the representatives at the General Assembly are by default "representatives" of the citizens of the country they serve, a democratic logic still holds. Of course, in the U.S. example at least, claiming that the U.S. ambassador to the UN is not actually a legitimate representative of the entire U.S. population might present a compelling counterargument.
- <sup>16</sup> These criteria could include the nature of the violence, whether the violence targets ethnic groups, the number of people killed and the probability of successful intervention. See the Independent International Commission on Kosovo for a more detailed explication of potential criteria.
- <sup>17</sup> Dr. Ryan Goodman and Derek Jinks are professors at Harvard Law School and Arizona State College of Law, respectively. They will publish these ideas about influencing state behavior in an upcoming issue of the *Duke Law Journal*.

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