

Just Peace at War's End: The jus post bellum Principles as National and Human Security Imperatives – Lessons of Iraq and Kosovo

Joanna K. Rozpedowski

Joanna K. Rozpedowski is a Doctoral Candidate in the Department of Government and International Relations at the University of South Florida, a Visiting Doctoral Student in the Department of Politics and International Relations at the University of Oxford, and the 2013-2014 US-UK Postgraduate Fulbright Scholar at the University of Liverpool School of Law. Her research interests include Cosmopolitanism, International Human Rights Law, European Union Institutions and Citizenship, Political Theory and Philosophy.

Abstract

The contemporary period is characterized by intense scholarly, legal and socio-political debates about the conceptual framework, which ought to guide state responses to unmitigated violence resulting from protracted armed conflicts across the globe. The prevalence of military interventionist discourse in the media and governmental organizations necessitates further reflection on the international community's legal obligations not only with respect to putting an end to violence, but holding aggressors of armed perpetrations individually accountable for political unrest, economic destabilization and loss of life as well as responsible for the reestablishment of social and political order on the ground, which are to ensure human security in the process of post-conflict nation-building. The analysis of two recent conflicts in Kosovo and Iraq will provide a critical foundation for the examination of international bodies' and state actors', such as the United Nations (in the case of Kosovo) and of the United States (in the case of Iraq), implementation of legal mechanisms by which the jus post bellum principles can be made useful for, both, (i) the purposes of providing justifications for war and (ii) post-conflict restoration of order. In addition, relevant connections will be examined between the principles guiding humanitarian interventions and just war narratives, which make military intermediations publically palpable. The study and conclusions drawn may prove especially pertinent to a continuing diplomatic stalemate with regard to armed conflicts in Syria and Ukraine, renewed tensions in South Sudan, the Central African Republic and various micro-insurgencies in Somalia, Libya or Mali.

Keywords: Just war; Human Security; Laws of War; Humanitarian Intervention; Reconstruction.

Introduction

According to Robert Williams and Dan Caldwell in “*Jus Post Bellum*: Just War Theory and the Principles of Just Peace,” the just war tradition has provided tenable justifications for processes of decolonization, democratization, and development in the post-World War II period, while procuring ethical rationalizations for interventions aimed at restoration of political stability. The authors recognize that although theoretical principles direct conduct before (*jus ad bellum*) and during war (*jus in bello*), such principles are missing after the conclusion of active military engagement and the post-conflict environment. On the basis of the four *jus post bellum* principles suggested by Williams and Caldwell, such as: (i) the restoration of order; (ii) vindication of human rights; (iii) restoration of sovereignty; (iv) punishment of human rights violations, the following study aims to critically examine their usage and applicability to two recent post-conflict political conditions in Kosovo and Iraq and assess the role and duties of intervening states, international treaties and international judicial bodies in their promotion. While history logs are replete with instances of interventions in the name of human security, Kosovo and Iraq suggest themselves as substantively rich cases in international law and international relations discourse, which have aided in articulating the legal conditions for humanitarian intervention and hot preemption in a period of intense political debate and scarce legal guidance. The two represent three prongs of a vociferously contested legal conundrum, namely, whether a right to intervention on humanitarian grounds exists, how and when should it be exercised, and under whose authority (Evans and Sahnoun 2002). Second, should countries, believed to be implicated in the illicit acquisition of nuclear weapons and harboring of terrorists, be subject to a preemptive attack? Lastly, do invading countries have any special legal and moral responsibilities for post-conflict/post-war reconstruction? Up to now, literature on *jus post bellum* principles focused on meeting the necessary conditions for bringing about post-conflict peace, justice and reconciliation. Very little commentary has been given to any *jus post bellum* duties that states have towards other states, which they choose to intervene in, occupy, engage in preemptive attack or occupy. The article aims to contend for a post-*bellum* framework, which insists that invading states do have special duties of responsibility and care following a formal conclusion of armed activities, which ought to inform and constitute a non-negotiable part and parcel of pre-war planning, and which are wholly distinct from questions of restorative justice, restitution, and swift criminalization of acts of state mandating or justifying invasion and occupation.

Contemporary Theoretical Landscape

The contemporary period is characterized by intense scholarly, legal and socio-political debates about the conceptual framework, which ought to guide state responses to unmitigated violence resulting from protracted armed conflicts across the globe. The prevalence of military interventionist discourse in the media, governmental organizations, and states’ own respective seats of government, necessitates further reflection on the international community’s legal obligations not only with respect to putting an end to violence, but holding aggressors of armed perpetrations individually accountable for political unrest, economic destabilization and loss of life as well as responsible for the reestablishment of social and political order on the ground, which are to ensure human security in the process of post-conflict nation-building. While the just war theory literature is rife with *jus ad bellum* and *jus in bello* principles, notions of guaranteeing a

just resolution of conflict under a *jus post bellum* framework are duly lacking. The analysis of two recent conflicts in Kosovo and Iraq will provide a critical foundation for the examination of regional actors', such as the United Nations (in the case of Kosovo) and of the United States (in the case of Iraq), implementation of legal mechanisms by which the *jus post bellum* principles can be made useful for, both, (i) the purposes of providing justifications for war and (ii) post-conflict restoration of order. In addition, relevant connections will be examined between the principles guiding humanitarian interventions and just war narratives, which make military intermediations publically palpable. The study and conclusions drawn may prove especially pertinent to a continuing diplomatic stalemate with regard to armed conflicts in Syria and Ukraine renewed tensions in South Sudan, the Central African Republic and various micro-insurgencies in Somalia, Libya or Mali.

Proliferation of conflicts, civil wars, military interventions, and occupations necessitates a comprehensive response to the costs, impacts, and conditions such sudden and often destabilizing and highly destructive engagements provoke. According to the 2005 World Bank Report, it is estimated that "80 percent of the world's 20 poorest countries have suffered major armed conflict since 1990, and that 44 per cent of post-war societies relapse into conflict in the first five years of peace" (Menocal and Eade 2005: 785). Omnipresence of war occasions reflections on the moral questions of responsibility for its conduct and post-conflict reconstruction. Because the nature and impact of wars prove destabilizing to the entire social fabric of societies, challenge governance structures and the political authority of conflict-torn states, *jus post bellum* principles ought to inform strategic military planning and occupy a prominent place in the international law of armed conflict discourse. After all, as Barakat Sultan points out, wars are "extremely destructive in terms of civilian casualties, displacement of population, destruction of livelihood and physical and social development", which in turn, have a negative impact on development. If the *jus ad bellum* principles, which relate to the transition from peace to war and the *jus in bello* principles regulate conduct during war, then the transition back to peace (Evans and Sahnoun 2002) encompassed by ethical, legal and moral prescripts of the *jus post bellum* ought to find full expression in the legal and political lexicon of contemporary modes of global governance. After all, the elementary considerations of humanity duly defended by the Geneva Conventions do not expire with the conclusion of active war. But, whenever life is concerned ought to find continuous support in the post-conflict reconstruction. This may be exemplified, as Jan Klabbers posits, by: (i) the inclusion of all relevant stakeholders in the peace agreement; (ii) refraining from imposing onerous and aggressive reparations on states accused of having committed acts of aggression; (iii) preference for individual rather than collective responsibility; and (iv) attempts at reconciliation between warring parties. Such an approach might ease the burden on the civilian population, often displaced as a direct result of conflict, and hint at a possible solution to intra and post conflict refugee crises witnessed in present day conflicts in Syria, Ukraine or any number of affected African states. International law has fallen short, thus far, in articulating principles and providing effective remedies or remedial measures for victims against states whose actions persist in making the civilian population worse off in post-conflict scenarios than they have been prior to the initiation of armed activities. Without falling victim to the victor's hubris, states and international organizations can fill a gap in the *jus post bellum* architecture of international law by working towards a normative and practical articulation of principles guiding the ending of wars and peacemaking.

The Law of Armed Conflict and its Normative Implications

The rules and principles of the law of armed conflict (LOAC) find their origin in (i) the Declaration of Paris of 1856; (ii) the Declaration of St. Petersburg of 1869; (iii) the Hague Peace Conferences of 1899 and 1907; (iv) the Geneva Protocol of 1925; (v) the Geneva Convention of 1929; (vi) the Four Geneva Conventions of 1949; and (vii) Two Additional Protocols of 1977. Collectively, they constitute the *jus in bello* rules that govern conduct during armed conflict and delineate moral limits on the use of force, set out principles for the treatment of individuals in the course of war, and minimize unnecessary suffering and the use of excessive violence. Alongside *jus ad bello*, or laws pertaining to the circumstances surrounding the initiation of conflict, the actors involved and their respective legal and moral justifications for the use of military power, *jus in bello*, aims to define the parameters and set restrictions on the conduct of war. Both sets of rules fall under the domain of public international law. The following discussion focuses on the historical development of the rules and principles of the law of armed conflict.

The *Jus in Bellum* as the body of law pertaining to the control of conduct during war takes its inspiration from the Old Testament and Koran, which, as scholars claim, provide the earliest articulation of the appropriate relationship between the “victors and the vanquished” (Bovarnick 2011: 11). Respectful treatment of captured soldiers and civilians according to established rules of war was also a matter of considerable concern for the Seventh Century Babylonians (Bovarnick 2012). And the Fourth Century Chinese military general and philosopher, Sun Tzu, in his work *The Art of War* considered “treatment and care of captives, and respect for women and children in captured territory” (Bovarnick 2011: 11) of significant importance to a civilized and humane conduct of warfare.

The scarcity of rules governing the use of force and conduct of war from antiquity to the Middle Ages, however, made itself apparent in unregulated practices of enslavement, trade in human capital, use of poisoned weapons, and indiscriminate appropriation and seizure of territory. The era of the just war doctrine, dominant in the medieval international system, conditioned the rights and duties of the belligerents on “the justice of the cause for which they waged war” (Kolb and Hyde 2012: 22). As long as the war (i) was conducted with *justa causa* or a just cause, i.e. in self-defense or to avenge past injuries; (ii) it was sanctioned by a lawful authority; and (iii) based on the right intention of belligerent parties, the means utilized could only be limited by what was necessary to achieve the desired purpose (Kolb and Hyde 2012: 22). The Treaty of Westphalia of 1648 and the inauguration of the modern state system did away with the just cause doctrine and considered the waging of war to be “a sovereign entitlement of every state” (Kolb and Hyde 2012: 22). With inviolable prerogative to wage war, the cruelty and devastation that followed, with time, awakened the international community’s public conscience. The turning point came in 1859, when the “miserable fate of the wounded left on the battlefield” (Kolb and Hyde 2012: 38) after the Battle of Solferino fought between the French, Sardinian and Austrian armies, propelled Henry Durant to articulate general principles aimed at humanizing the battlefield.

The enthusiastic response of the European nation-states to Durant’s proposals of (i) giving “a legal protection to the military wounded in the field” and (ii) creation of national societies who were to prepare in peacetime all the material and personnel needed in war” (Kolb and Hyde

2012: 38) resulted in gradual formalization of “non-derogable protections for the victims of war” (Bovarnick 2011: 20) formally collected and codified after World War II under four respective Geneva Conventions, jointly referred to as Geneva Law. Thus, the Geneva Convention of 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field (GCI), intended to obligate states engaged in armed conflict to “respect, protect and aid wounded and sick military personnel without adverse discrimination” (Kolb and Hyde 2012: 38). The Geneva Convention on Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea (GCI) extended GCI land warfare protections to wounded, sick and shipwrecked personnel at sea and took protective note of hospital ships. The Geneva Prisoners of War Convention of 1949 (GCIII) defined the status of troops taken prisoner of war and, finally, the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (GCIV) aimed at the protection of the civilian population from the ravages of war. “The International Red Cross was created in 1870 to alleviate suffering in war” (Detter De Lupis 1987: 123).

The proliferation of non-international conflict in the decades following the end of World War II, gave rise to Two Additional Protocols of 1977, which “strengthen the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts and place limits on the way wars are fought.”⁵⁶ The Two Protocols extend protections: (i) to civilian medical and religious personnel, (ii) of cultural objects and places of worship, (iii) of hospitals, medical ships and aircraft.⁵⁷ While the Geneva Law represents “the passive side of the same coin (what the protected persons should not suffer), the Hague Law “expresses the active side of the coin (what the military may do)” (Kolb and Hyde 2012: 41) under conditions of armed conflict.

The prohibition on certain means and methods of combat (including weapons, tactics, and targeting decisions), which are considered excessive, is the primary aim of a body of rules collective referred to as the law of the Hague. In addition to the Declaration of Paris of 1856, which abolished privateering and regulated the relationship between enemy ships on the high seas,⁵⁸ the Declaration of St. Petersburg of 1869 was among the first documents to articulate “the legitimate aims of warfare” and set out limitations on the means of its conduct (Kolb and Hyde 2012: 53). The Hague Conventions of 1899 and 1907 explicitly forbade the use of “poisoned weapons, or arms or projectiles which would cause unnecessary suffering, or the refusal of quarter” (Starke 1963: 423) and defined the “rights and duties of belligerents in occupied territories” (Kolb and Hyde 2012: 54). Additionally, Article 22 of the Hague Convention IV states that “the means of injuring the enemy are not unlimited” (Bovarnick 2011: 19) and the injunction applies to all theatres of war and mediums of combat: land, sea and air. Moreover, specific treaties and protocols aim to limit or prohibit the use of weapons which cause suffering disproportionate to military objectives and military necessity. The 1923 Geneva Protocol prohibits use of poisonous and asphyxiating gas; the 1993 Chemical Weapons Convention prohibits production, stockpiling, and use of chemical weapons; the 1925 Geneva Protocol

⁵⁶ International Red Cross

<http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

⁵⁷ Ibid.

⁵⁸ International Red Cross

<http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=10207465E7477D90C12563CD002D65A3>.

prohibits use of biological weapons and the 1972 Biological Weapons Convention prohibits their production and stockpiling; the 1980 Certain Conventional Weapons Convention prohibits or restricts the use of weapons which cause indiscriminate suffering, such as, laser weapons, mines, booby traps, or explosive remnants of war; and the 1954 Hague Cultural Property Convention seeks to preserve and protect cultural property in the event of armed conflict (Bovarnick 2011: 20). Moreover, the 1998 Rome Statute on the International Criminal Court (itself, not an implicit part of the LOAC) expands upon the provisions of the LOAC, and aims to repress and penalize the occurrence and perpetration of international crimes, including war crimes (Kolb and Hyde 2012: 55), ensures that States abide by international humanitarian law, and provides new guidelines for the scope and methods of war and use of force under public international law.

The law of armed conflict consists thus of a set of practical and clearly defined principles, which seek to strike a balance between humanity and military necessity (Kolb and Hyde 2012: 55). They are, the principle of: (i) *distinction* (GPI, Arts. 48, 52) – armed forces must distinguish between combatants and civilians; (ii) *proportionality* (HR IV, Arts. 22, 23; GPI, Arts. 57, 51(5)(b) of Additional Protocol) – excessive use of force is in violation of LOAC; (iii) *military necessity* (H IV, Art. 23(g) – to make the opponent submit, reasonable use of force is permitted; (iv) *limitation* (HR IV, Arts 22, 23; GP I, Arts. 35(1), 57, Additional Protocol 1) – means and methods of warfare are not unlimited and unnecessary suffering and superfluous injury are prohibited; (v) *humanity* (GC I-IV, Art. 12; Article 4 of Additional Protocol II) – belligerents are to treat protected persons with respect; (vi) *good faith and reciprocity* – between opponents is a customary principle of warfare and good faith must be shown in the interpretation of the LOAC (Kolb and Hyde 2012: 45-49).

Evolution of Cosmopolitan Standards Regarding the *ad/in/post Bellum* Moral Terrain

In toto, the above reflect an evolving moral landscape, which puts emphasis on individual subjects as entities proper of public international law. The international community, according to Michael Barnett, has come to increasingly recognize acts of violence as “causeways for benevolence” (2011: 23), thus treating massacres, international and civil wars, war crimes, crimes against humanity, and war-induced famines as “calls to alms”. Moreover, advances in military technology and logistics of military strategy, “furthered the desire of the international community to expand the laws of war and provide more protections and relief to civilians” (Barnett 2011: 23). Yet such beneficent largesse on the part of humanity could not have occurred spontaneously and without a chartered institutional trajectory of law articulation, interpretation, and enforcement. Alongside the first pangs of cosmopolitan enlightenment exemplified by compassionate recognition of human need and suffering across the globe and the growing internationalization and institutionalization of humanitarianism - which provided normative foundations for action - the rise of a supranational legal regime with its novel emphasis on *human* security and protection of individual human beings has begun to play a decisively transformative role in the discourse and practice of international relations. The Declaration of Human Rights, the Geneva Convention, the International Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights are but a few examples of multilateral legal instruments which allow, “humanity to assert itself through law” and seek civil and criminal accountability for overt transgressions of

“the universalizable content of the core humanity law norms” (Teitel 2011) through a global institutional order. Naturally, this emerging humanitarian-cosmopolitical turn identified by scholars has amplified the importance of supranational judiciaries, such as the Inter-American Court of Human Rights, the International Criminal Court and the European Court of Human Rights, in “furthering the humanity-based scheme of jurisdiction that follows the person” (Teitel 2011).

As “state-sovereignty-oriented approaches have been gradually supplanted by human-oriented approaches,” Teitel notes, the evolution of the international and cosmopolitan legal regime, which emphasizes “the primacy of individual responsibility” as well as “protection and preservation of persons and peoples,” has come to the fore in both domestic and international political and legal discourse. Concurrently, it is recognized that a more resolute recognition of human rights and cosmopolitan approaches by supranational judicial bodies must therefore co-evolve alongside such paradigmatic and sacrosanct norms as state sovereignty, monopoly on the use of force, and the superior prerogatives of state security.

In sum, the fundamental purpose of the modern-day laws of armed conflict, derived from rich and varied historical disputations among venerable scholars, is to prevent unnecessary suffering, avoid unmitigated escalation of force and spread of conflict, protect civilian objects from indiscriminate targeting or annihilation, and protect civilian population and non-combatants and *hors de combat* from sustaining damages to the mind and body during armed struggles. The principles of law and the realities of combat, however, often conflict and require proper and judicious balancing by both the military and civilian personnel directly involved in the pursuit of and conduct of war. Whereas a clear and distinct trajectory of law-articulation and law-making exists for both the *jus ad bellum* and *jus in bello* obligations, the *jus post bellum* framework has received cursory attention hesitatingly and selectively undertaken in the 20th century by Oppenheim and Phillipson. Under the present international law architecture, no compelling reason exists for why the above-stated principles guiding conduct in combat should not be extended to conditions of peace, reconciliation, and reconstruction.

Moreover, developments in the normative bases of the twenty-first century framework of the Responsibility to Protect (R2P) call into question the indivisible sovereign authority and appeal to humanitarian conscience for the right to intervene in the name of preserving humanity from harm at the hands of the state. The duty and responsibility to protect the most vulnerable strata of non-belligerent civilian population in times of egregious human rights violations brought about by the inevitable fog of war, also provides the international community with urgent and ample opportunities for moral refinement of the just war doctrine with a view to further theorization and grounding in reason and law of the modern-day humanitarian-intervention mandate. A just war framework regarding the R2P norm can be conceived, which takes into account and responds to the litmus test of the *ad/in/post bellum* scenario. Thus, when the international assembly of states evaluates the issue of protecting communities from “mass killings, of women from systematic rape, and of children from starvation”, that is, from “the point of view of those needing support and assistance, rather than those who may be considering intervention” (Evans and Sahnoun, 2002) and grants that the primary responsibility for the well-being of citizens rests with the state, the international community acts in accordance with preordained *jus ad bellum* principles. Only if the state is “unable or unwilling to fulfill its

responsibility to protect, or is itself the perpetrator, should the international community take the responsibility to act in its place” (Evans and Sahnoun, 2002). The *jus ad bellum* implies that the international community has a “responsibility to react” to overt transgressions of humanity’s law. What is more, in its exercise of the “responsibility to prevent”, the international community upholds the *jus in bello* norms by adhering to norms stipulating the right conduct in war codified in international humanitarian law and the law of war. Lastly, no modern-day just war theory would be complete and palpable to the aggrieved parties, without a reaffirmation of *jus post bellum* or the international community’s commitment to the *post*-conflict reality and its concomitant “responsibility to rebuild.” While the normative underpinnings of the R2P provide fecund ground for legal controversy, the just war theorists can make a substantive contribution to an ongoing and much needed debate about its legal and moral value and import to public international law.

War: Common Justifications

Traditional approaches to the ethics of war such as: (i) realism; (ii) utilitarianism; (iii) pacifism; and (iv) just war theory, provide variegated sets of arguments for the decision in support of war or of its utter unacceptability. A scholarly consensus has emerged around the concept of the just war theory and its viability in advancing a more nuanced understanding of the legal and moral principles that ideally ought to guide conduct in the occasion of war. According to Michael Walzer and Igor Primoratz, just war theory is bifurcated into: (i) an analysis of “conditions for a morally justified decision to go to war (*jus ad bellum*),” and (ii) an analysis of “what may and may not be done in the course of waging war (*jus in bello*).” (Primoratz 2002: 222). Such a definition is based on a long practice of intellectual scrutiny of the justifications for war, which found their most celebrated articulations in the writings of Aristotle, St. Augustine, and St. Thomas Aquinas, who maintained that (i) the “purpose of war is to remove the things that disturb peace” (Aristotle); (ii) that the “purpose of waging war is peace” (St. Augustine); and (iii) that those who engage in just war with “proper authority, just cause and right intention” must “intend the advancement of good, or the avoidance of evil” (St. Thomas) (Primoratz 2002: 222). Williams and Caldwell argue that the right intention principle inherent to the just war theory “prohibits the pursuit of unjust ends” (Williams and Caldwell 2006: 312); and the war, itself, to be deemed morally acceptable must be one of “defense against aggression” and involve the pursuit of “legitimate targets, soldiers and a narrowly circumscribed class of civilians,” (Primoratz 2002: 222) who demonstrate active engagement in the “business of war” (Walzer 2000: 43).

Arbitrary declarations of war without just cause for the purposes of “avenging of injuries, punishing wrongs, and returning what was wrongfully taken” was conceived by St. Augustine to be contrary to the natural order tailored for the purposes of preserving “peace of mortal things” (Sharma 2008, 11). The *ad bellum* principles calling for a just cause to war and proper authority in declaring it remained the cardinal sphere of concern for early Christian theologians, prompting Thomas Aquinas to reflect more expansively on the inner demons propelling nations to war with one another. For him, as much as for St. Augustine, thus, inward dispositions of rulers and soldiers engaged in the business of war mattered a great deal. A lawful war, writes Aquinas in his *Summa Theologiae*, waged with a legitimate authority and a just cause “may be rendered unlawful by wicked intent” (IIaIIae 40), where “the desire for harming, the cruelty of revenge, the restless

and implacable mind, the savageness of revolting, the lust of dominating” (in Sharma 2008, 14), adds St. Augustine, reveal an utterly malevolent propensity and cruel and vindictive inner character, which must be avoided. Francisco Suarez, a Spanish Jesuit priest, philosopher and theologian, would emphasize and prioritize the right manner of waging war (*debitus modus*) over right intention, giving rise to questions of the appropriate conduct in war, with which *jus in bello* has since concerned itself. Any sovereign, therefore, who takes his nation to an unjust war, Emer de Vattel concluded in his 1797 *Law of Nations*,

“is guilty of a crime against the enemy, whom he attacks, oppresses, and massacres, without cause: he is guilty of a crime against his people, whom he forces into acts of injustice, and exposes to danger, without reason or necessity, —against those of his subjects who are ruined or distressed by the war, —who lose their lives, their property, or their health, in consequence of it: finally, he is guilty of a crime against mankind in general, whose peace he disturbs, and to whom he sets a pernicious example” (383).

A brief genealogy of just war theory suggests that its origins are deeply rooted in Christian ethics, which have been informed by a tradition of natural law, that is, a collection of normative precepts and universal principles whose authority is “absolute, immutable, and universal for all times and places” (Hayman 2002: 1) and whose source rests in other than human invention, that is in (i) nature, (ii) Supreme Being; or (iii) human reason. Cicero would therefore claim that “true law is right reason in agreement with nature; it is of universal application, unchanging and everlasting ... to curtail this law is unholy, to amend it illicit, to repeal it impossible” (Hayman 2002: 3). Such inadmissibility of challenge permitted the natural law theory, and alongside it, the *jus gentium* (the law of the people) and *jus civile* (the civil law), to continue to evolve and flourish. With “peace and well-being of the community” (Hayman 2002: 4) in mind, “the obligation of government was to protect the natural rights to life, liberty, and possessions” (Locke, 1998: 303). To this important facet of jurisprudence has been added a consideration for a doctrine of human rights as a rationale for just war, which today, as Walzer argues, can constitute the only consequential motivation worth fighting for and the “most effective limit on military activity” (Walzer 2000: 304).

According to the *jus ad bellum* principle, a just war is one that is justifiable; that is, it is above all

“fought in defense of human rights when those rights – at least the fundamental rights to life and liberty – cannot be secured in any other way. Likewise, a war is fought justly if it is fought with respect for the human rights of noncombatants ... a war is concluded justly – that is, a just peace exists – when the human rights of those involved in the war – both winners and losers – are more secure than they were before the war” (Williams and Caldwell 2006: 316-317).

Moreover, a just recourse to war and its just execution mandate that a just war be:

(i) publically declared; (ii) have a reasonable prospect for success; (iii) its cause be proportional and sufficiently grave to warrant the extreme measure of war; (iv) waged as a last resort; (v) waged for a just cause; and (v) waged by a legitimate authority (Calhoun 2001: 45).

The restoration of just peace, as a minimal restitution for harms suffered in the course of active military engagement, and the conditions for postwar justice, which fall under the rubric of the *jus post bellum*, require that purposes for which the war was waged be achieved. Moreover, the

recognition and due punishment of depravities descended to by the parties involved, eases the transition from the state of aggression to the phase of re-establishment of the *status quo ante bellum*. In its most fundamental expression, a just peace demands a full vindication of human rights of all parties to the conflict in a proportional manner and with regard to prevention of future violation (Calhoun 2001: 317). Robert Williams and Dan Caldwell point out that principles informing postwar policies must also take seriously the following dictates: (i) restoration of (public) order by the victor through elimination or minimization of widespread violence and vindication of human rights; (ii) rehabilitation in the form of economic reconstruction of war-torn economies, which necessitates responsible administering of the state with a view to bettering the welfare of the people; (iii) restoration of full sovereignty and self-determination; (iv) punishment of human rights violations, prosecution of abuses of the laws of war, and condemnation of war crimes (Calhoun 2001: 318).

Recognition of the burdens imposed upon the modern leaders by the *jus post bellum* principles of the just war theory, its insistence on the understanding and sober approach to the *pre*, *during*, and *post* conflict challenges, provides the necessary restraint on the means by which war is fought and peace restored. Consequential to the endeavor of strategizing about military engagement is its characteristically modern symptom of protraction, lack of a traditional and spatially defined battlefield, and abandonment of formal means for declaring and concluding armed conflict by means of peace treaties and reparation agreements. Such a state supports James Turner Johnson's claim that "the most difficult problem posed by contemporary warfare, all in all, is the difficulty of achieving a stable, secure ending to it" (Johnson 1975: 318). Such a condition impedes not only the adherence to and fulfillment of the above listed *jus post bellum* principles, but hinders a process of "developing a shared national vision of the future; developing collaborative governance; and understanding the historical, cultural, and regional context" (Barakat 2005: 571), which collectively delineate the steps of a post-war reconstruction and permit for the issuance of final judgments on the justifiability and legality of the war effort itself.

In view of the above, it is essential to consider how the *just post bellum* principles fare in the post-conflict contexts requiring substantial reconstruction interventions. As mentioned above, special attention will be given to post-conflict Kosovo and post-Saddam Iraq, as illustrations of the degree of difficulty such ongoing reconciliations of the complexities of human conflict and reevaluation of means for the restoration of stable peace and security inevitably pose to international organizations, judicial bodies, and governmental institutions.

Post-Saddam Iraq and Just Peace?

In *Reconstructing War-torn Societies: Afghanistan*, Barakat Sultan considers reconstruction as primarily a development challenge, which requires good governance and institutional development brought about as a result of a "healthy collaboration between the state, the market, and civil society." Roland Paris in *At War's End: Building Peace after Civil Conflict* cautions, however, against a too rapid investment in market-based initiatives arguing for their inherently destabilizing effect when initiated in the absence of the rebuilding and strengthening efforts of domestic institutions. Yet, negligence of political and economic reforms and development, Gerd Junne and Willem Verkoren in *Postconflict Development: Meeting New Challenges* argue, will almost certainly eventuate in the renewal of violence. Rehabilitation of war-torn countries as a precondition for meeting the

basics of *jus post bellum* or post war justice, must include, according to Robert Rotberg's *When States Fail: Causes and Consequences*, (i) economic jump-starting; (ii) elections; (iii) judicial reforms; (iv) demobilization of ex-combatants; and (v) participation of civil society. To this, Caroline Sweetman in *Gender, Peacebuilding, and Reconstruction* adds equal representation of all citizens in decision-making. To the extent to which participatory approach of all key stakeholders is vital to post-war development, to that extent formal cessation of military engagements and variegated sets of military strategies will seek to incorporate reconstruction blueprints in their transitioning from conflict to peace building.

When in his 2002 speech to the United Nations, President George W. Bush characterized Iraq as a dangerous threat to international peace and security, and the United Nations Security Council in its Resolution 1441 responded in tandem, holding Iraq in material breach of previous Security Council resolutions mandating verification, inspection and monitoring mechanisms over its weapons arsenal, an international ad hoc "coalition of the willing" was formed to put an end to Saddam Hussein's Ba'thist party regime on 1 May 2003. In adherence to Resolution 1432, the United States quickly assumed the position of an occupying power responsible for essential reconstruction functions in Iraq. Restoration of peace and re-development of Iraq's infrastructure, which has undergone a deliberate destruction following the U.S. invasion, proved elusive, however, demonstrating that practical application of a post-conflict formula is at best difficult and at worst contested. The absence of formal capitulation, incomplete political settlement, and protracted occupation had disallowed Iraq to benefit fully from rehabilitative measures. Today, similar and significant hurdles, such as the lack of substantive diplomatic engagement, formal capitulation and incomplete political settlement also impede restoration of peace in Syria, Ukraine, and South Sudan. Because post-war reconstruction denotes a "range of holistic activities in an integrated process designed not only to reactivate economic and social development but at the same time to create a peaceful environment by addressing the emerging deficits in security and political and institutional capacity that will prevent a relapse into violence" (Barakat 2005: 573), Iraq's peculiarly uncertain political situation prevents full adoption of policies aimed at stimulating development; leaving the country, despite its considerable liquid resource asset wealth and robust human capital, underserved and under a constant threat of renewal of violent disruptions. "The widespread violence that has plagued Iraq since the end of U.S. combat operations in May 2003," Williams and Caldwell argue, "has jeopardized the ability of both the occupation forces and the Iraqi government to secure human rights of Iraq's people" (Williams and Caldwell 2006: 318), leaving *jus post bellum's* first principle of restoring order, precariously unfulfilled.

Vindication of human rights in terms of economic reconstruction mandated by the second principle of the *jus post bellum* rationale, provides the occupying power and the fledgling Iraqi government with opportunities not typically encountered in war-torn nations, whose otherwise poor institutional development, scarce resource base, negligent human capital lead to "long-term dependence on international finance and technical assistance to support capacity building and development" (Barakat 2005: 574). The World Bank Report estimates Iraq to hold the second largest oil reserves in the world, which provided the country throughout the 1980s' with substantial revenue base for the creation of a modern state with a "largely educated population, public services and infrastructure" (Barakat 2005: 574) thus boding well for its eventual

independence and self-sufficiency. An effective coordination of the reconstruction program necessitates, however, not merely an adequately responsive administrative process and technical literacy, but a shared political vision capable of prioritizing the multidimensionality of regional, national, and international challenges the country is likely to encounter on the road to recovery. The formulation of a national vision is deemed essential for peace building, because “it can provide a unified conceptual framework around which reconstruction partners can build relevant and integrated strategies in a collaborative coalition of international and national actors” (Barakat 2005: 578). In the sphere of economic redevelopment, any failure to minimally attend to a collective national vision can result in publically damning and uncomplimentary awarding of no-contest contracts. Their unilateral coordination by the U.S. Corp of Engineers to U.S. companies and their subsequent hiring of multinational corporations at the exclusion of local human capacity can lead to a perception of unfair outsourcing and exploitation of national wealth, while contributing only marginally to the internal development of local economies and infrastructural projects. It is important to note, however, that the parameters for the U.S.-led economic reconstruction were already defined in the pre-war plans at the behest of critically sidelining United Nations developmental capacities and international financial institutional programs.

From a study by the Centre for Strategic and International Studies (CSIS), which attempted to evaluate the reconstruction progress in Iraq, it is possible to deduce a rather dismal and unsatisfactory picture of Iraq’s qualitative development. Through structured conversation methodology, the researchers attempted to capture the public’s sentiments regarding five important dimensions along which a comprehensive understanding of progress may be obtained, they were: (i) security (defined by the statement “I feel secure in my home and in my daily activities); (ii) governance and participation (defined by the statement: “I have a say in how Iraq is run”); (iii) economic opportunity (defined by the statement: “I have a means of income”); (iv) services (defined by the statement: “I have access to basic services, such as power, water and sanitation”); and (v) social well-being (defined by the statement: “My family and I have access to health care and education”) (Barakat, Chard and Jones 2005: 845). The study procures a vision of reconstruction efforts, which result in negative public perceptions in all five key areas of human development, with little prospects for radical improvement. Confounded by the complexities of micro and macro level economic priorities, i.e. the rehabilitation of the banking system and currency stabilization, debathification, privatization of state enterprises, management of unemployment and disbanding of army and security services, governments of Iraq and of the United States accepted as inevitable the consequences of war, while also concentrating their attention on relief and developmental strategies in the hopes of creating a secure environment for the re-establishment of the rule of law. Failures and oversights in collective *post bellum* initiatives raise legitimate doubts among scholars and skeptics alike, who point to an imprudent hubris of the international community in thinking that major donors and international bodies can assist in reconstruction of entire societies after war and state collapse in countries as culturally, religiously, and ethnically complex and diverse as Iraq, Angola, Democratic Republic of Congo, Liberia, or Sierra Leone (Luckham 2004: 13).

In addition to putting in place technical capacity for improving material conditions of populations sundered by war, the overriding priority ought to aim at the establishment of the rule of law. The third requirement for the vindication of human rights mandated by the *just post*

bellum principle and its emphasis on full restoration of sovereignty and rights to self-determination, allows for putting in place a form of “collaborative governance” instrumental to the rebuilding of fragile relationships between citizens and institutions. By successfully developing the “ability to invite civil society groups and local communities to participate effectively in the identification and development of reconstruction programmes” the government can reconstitute its capacity to “deliver and account for reconstruction policies at the national and sub-national levels, while providing a conducive environment for recovery” (Barakat 2005: 580). Just peace requires that sovereign political institutions take note of equal and fair distribution of power among disparate social groups, while working on the rebuilding of civic culture and robust civil society capable of maturing into a system of governance in which stringently fair electoral standards lead to “sustainable power-sharing arrangements” (Barakat 2005: 581). Since goals for social development are, according to Barakat, qualitative, long-term, holistic, and essentially political, governmental capacity capable of managing sovereignty must embrace and display as well as encourage: (i) promotion of inclusion and equality; (ii) policy and strategy development; (iii) leadership and vision; (iv) participation of public and international partners; (v) respect for diversity; (vi) space for dialogue; (vii) capacity and effectiveness of resource delivery (Barakat, Chard and Jones 2005: 844). Mere reproduction of U.S. administrative norms delegitimizes the prospects for meaningful and sustainable political vision that is shared and consensually accepted by the larger citizen body. Institutions and administrative entities that are “sustainable and sufficiently robust to deal with the vicissitudes of human nature and political activity – be it struggles for power, criminal behavior, corruption, violence, or merely lack of experience” (Samuels 2005: 734), must be developed with a view to collaboration, which actively seeks out local input.

“Democracy,” Barakat contends, “has to be negotiated and built, it cannot be imported” (Barakat 2005: 586). Sustainable peace-building which makes manifest a mobile and robust democratic spirit must be attuned to and recognize the value of participatory engagement and public socio-political empowerment, and not be averse to the creation of discursive spaces in which national dialogue comes to its full potential and realization. To live up to the articulations of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, scholars advise that Iraq’s reconstruction ought to meet with an interest of the international community and the United Nations in particular, as that independent political entity that can best translate, facilitate, and coordinate the multifaceted reconstruction programs while paying particular attention to the advancement of human rights. The international community, however, must be wary of appearing overzealous in the political stabilization of the developing and war-torn societies and refrain from tenuous humanitarian justifications for intervention, which may be perceived as acting in and serving the great power politics and multinational corporate interests (Luckham 2004: 15).

The final, fourth principle of *jus post bellum* doctrine requires implementation of legal punitive mechanism through which war-induced violations are prosecuted and crimes commensurably punished. “While laws of war define non-combatants in terms of what they are not,” writes Thomas W. Smith in “*Humanitas in bello*: Human Rights and the Norms of Modern Warfare,” rights “turn civilian status into a positive identity” necessitating an obliging behavior on the part of combatants who “must actively protect civilians, not just refrain from targeting them” (Smith

2010: 1). Moreover, while humanitarian law “focuses on headline atrocities, human rights takes a more catholic view of the effects of war – on public health, social fabric, environment, indirect, secondary, and enduring violence, immediate as well as long-term fallout from war” (Smith 2010: 1). Just war theory holds individuals responsible not only for what they do in the course of fighting the war, but also for the mere participation in it (Primoratz 2002: 229). Thus, three categories of individuals forfeit their right to immunity in the face of war crimes: (i) soldiers upon whose shoulders rests the responsibility of distinguishing between legitimate and illegitimate targets in war; (ii) high-ranking political officials responsible for the conceptual framing of the war and in making the final decision of pursuing it as an end of political action; and (iii) arms and ammunition factory workers implicated in the arms supply chain required for successful realization of the military and political war plans.⁵⁹ According to Igor Primoratz, civilians who choose to “make silence a token of consent” (2002: 238) are equally likely to lose any exemption from prosecution for human rights violations.⁶⁰ A moral duty, however, to hold violators of the laws of war accountable to international treaties and human rights norms for the purposes of vindicating human rights and restoring social order is a *condition sine qua non* for the conferral of authority and legitimacy to the government and the international community. Thus, Williams and Caldwell argue, “human rights can be vindicated in Iraq and Afghanistan only if American violations of the laws of war are prosecuted along with our enemies’ crimes” (Williams and Caldwell 2006: 318). Indispensable to the notion of post war justice is the consideration of obligations that extend beyond war itself, such as, ensuring of post-conflict justice, truth and reconciliation, compensation, rehabilitation, and reconstitution of bitterly divided societies (Smith 2010: 28) as well as reconciliation and compromise of the language of the right to life with that of military proportionality and strategic advantage. The Geneva Convention recognizes that “human rights entitle and oblige,” when military strategizing and questions of human security allow for prioritization (Oberleitner 2005: 605). It is therefore of essence to make the *jus post bellum* principle a guiding force behind war’s operational norms in pre, during, and post planning and all subsequent peace building efforts. Restitution of human rights can bring to light the possibility of building meaningful just peace in the absence of compelling and persuasive rationales for fighting a just war and a prolonged maintenance of a justifiable occupation. While the normative foundations for the reinvigorated debate about the contours of post-war justice are strong in principle, their practical application on the ground is far less persuasive. Not only significant problems with establishing the formal conclusion of hostilities, exit strategies, and institutional preparedness of bearing the burden of peace-building pose a legal conundrum, evidence suggests that a massive nine-year \$60 billion effort to reconstruct Iraq has made but a tepid material progress. Despite Washington’s \$15 billion investment in Iraq’s power and water supply, school, road and housing repair, a \$9 billion health care, law enforcement and humanitarian assistance; a \$20 billion raining and re-equipping of Iraqi security forces; \$8 billion

⁵⁹ Although this last category is not directly responsible for the atrocity in war, workers tacit consent and active participation in the war effort through arms supply or what Michael Walzer refers to as engagement in the “business of war”, makes them indirectly culpable of human rights violations.

⁶⁰ Primoratz’s position is not collaborated by more traditional just war theory scholars, e.g. Michael Walzer. Not only is Primoratz making a facetious distinction between tacitly consenting and overtly consenting, but not directly engaged in the atrocities of war public, but his argument when put to the pragmatic test, fails to yield satisfying results. Moreover, Primoratz fails to acknowledge citizen’s fallibility in assessing the situation in the face of incomplete information, and leaves no room for a change of position regarding war, once full information is obtained, thus minimizing, if not eliminating the degree of culpability.

effort to enhance the rule of law and battle narcotics, and \$5 billion effort to prop up the economy⁶¹, the country's political and economic situation looks at best precarious, suggesting that a financial commitment must be accompanied by a rich contextual and historical as well as long-term institutional approach to reconstruction and be embedded in all aspects of pre-war military and political planning.

The Balkan Wars: *Jus post bellum* Principles and Just Peace in Kosovo

The breakup of the Socialist Republic of Yugoslavia in 1991, radicalized divisions among three main ethnic groups, the Serbs, Croats, and Muslims,⁶² which accounted for the country's distinctive cosmopolitanism in the midst of a more homogenous continental Europe. The wave of destruction the sudden political turmoil unleashed and serious human rights violations to which it gave rise, necessitated involvement, albeit reluctant and slow, of major governmental and non-governmental organizations of the Western hemisphere, chief among them, the United States, France, Canada, the European Union, the United Nations, and the North Atlantic Treaty Organization forces. Although, the war in former Yugoslavia does not fall directly under any formal just war theory considerations, as its nature was one of belligerent aggression, population expulsions, and ethnic cleansings that occurred without regard or formal recourse to any of the aforementioned international law principles, it is possible, nonetheless, to consider the (in)adequacy of international norms regimes, presumably in operation at the time of the ongoing violence, and evaluate the role and effectiveness of international organizations' efforts at restoring stability and achieving a just peace in view of the requirements of the *jus post bellum* doctrine. By so doing, this section will pay special attention to the UN institutional reconstruction efforts of the judiciary and security forces, as promising means of vindicating human rights by demonstrating commitment to justice and holding criminals individually accountable for their transgressions committed during active military engagement.

The conflict in Kosovo originated with Slobodan Milosevic's, the former President of Yugoslavia, suspension of the region's autonomy and semi-independence, which it has enjoyed since 1968. With Milosevic's ambitions of obtaining a stronger hold on the region, came social restrictions and prohibitions barring the ethnic Albanians from serving as judges, prosecutors, and legal educators. Following expulsions from professional circles, ethnic Albanian filed formal grievances and came to gradually exhaust all reconciliation mechanisms meant to arbitrate between competing legal claims. With Albanian support for independent Kosovo growing, Milosevic quickly decided to embrace a violent resolution in the form of ethnic cleansing of Kosovar Albanians and forced the displacement of many others. The United Nations Resolution 1199 of September 23, 1998 strongly condemned Milosevic's actions and called for immediate cessation of hostilities, ordering total withdrawal of security forces from Kosovar territory and termination of attacks on the region's civilian population. Shortly after, the Organization for Security and Cooperation in Europe sent numerous groups of unarmed monitors to assess the situation on the ground and finding the UN resolution implemented. Milosevic's temporary implementation of the UN resolution proved short lived, however, and much more intensified

⁶¹ "The Failed Reconstruction of Iraq" <http://www.theatlantic.com/international/archive/2013/03/the-failed-reconstruction-of-iraq/274041/>.

⁶² Central Intelligence Agency, "Ethnic Groups in Yugoslavia," *Making the History of 1989*, Item #170, <http://chnm.gmu.edu/1989/items/show/170>.

military campaign against Kosovo, necessitated intervention of NATO forces in the Spring of 1999, and subsequent introduction of a UN peacekeeping mission to the region.

The protracted Balkan conflict encompassing Kosovo, Croatia, and Serbia resulted in a widespread humanitarian crisis and severe challenges connected with population evacuations and displacements as well as mass refugee influxes into the neighboring states. Under the UN auspices and mandate, rehabilitation and reconstruction plans for the region, which eventually emerged following the war's ending on June 9, 1999, were organized around four main pillars: (i) humanitarian assistance; (ii) civil administration; (iii) democratization and institution building; and (iv) reconstruction and economic development (Wilson 2006: 157). Also important, were ethical responsibilities for the displaced refugees, and legal obligations of the UN and neighboring countries in regards to their expressive rights under the 1951 Convention.

Human Rights Norms and Protections

This leads to a psychological and moral conundrum of displacement, which raises important questions about the legal duties and general ethics of care. As Simone Weil noted in *The Need for Roots*, to be rooted is the most important and least recognized need of the human soul. Rootedness obliges and privileges, binds and deinvisible. The geographical space allocated to growing roots, conveys social rank and political value, and naturalizes beings into the environment, which they inhabit and within the confines of which they become legitimated subjects and bearers of right. Aware of this basic human need for socio-psychological stability, the world community in Article 15 of the 1948 Universal Declaration of Human Rights extended protections over safe shelter and habitable human dwelling for thousands of displaced victims of forced "uprootings" of the 20th Century, induced by wars, military campaigns, occupations and political programs of denationalization and mass extermination. In times of forceful ascensions of some European powers and prompt dissolutions of others, during the period between the two world wars, the status of the Rights of Man became conjoined with the fates of nation-states. Displacement of populations, deemed a temporary condition and a by-product of some crisis event, was historically redressed either by assimilation, repatriation or naturalization. By promulgating every person's right to citizenship, that is, the right to belong to a nation state, the United Nations moved from basic norms of the international law to a new cosmopolitan regime, a juridical proclamation of rights that was to apply universally; a promulgation, however, which never transgressed the immanent category of the nation-state, but reasserted it and took it for the sole sovereign agent capable of turning a human being into a citizen. Social and political integration, through interiorization of the mechanisms of power proper to a given nation-state, transforms stateless alienation into disciplined subjectivity, a political aberration of refugeeism into the norm of citizenship.

The United Nations commitment to universal human rights, best exemplified by its humanitarian interventionism and illustrated in the case of Kosovo, creates an institutional paradox. On the one hand, the organization constituted as a society of states with a global outreach, abolishes the statist paradigm of non-interference and sovereignty established by Hobbes, who insisted on the self-sufficiency of state units being in a state of nature in their relations with one another. On the other hand, due to lack of comprehensive theory of the global order, the United Nations cannot but integrate in and place under the protectorate of the state, the human agents which it sought,

in the first place, to extricate from underneath its rule. The victims of genocides, ethnic cleansings, and protracted civil wars generate a broad range of new positive and negative duties; and although the premise for intervention rests precisely on the assumption that neither their nor our humanity is exhausted by juridical citizenship, our collective destiny, nonetheless, is congealed by an institutional framework of the state vested with the power to acknowledge or annul our political existence.

It is therefore not a coincidence that the United Nations Department of Justice sought first to consolidate a legal base for the reintegration of refugees in the aftermath of the war's forced population displacements. As part of the reconstruction effort, a sophisticated judicial branch consisting of four separate divisions was created to address matters pertaining directly to the consequences of the Balkan wars: (i) the Judicial Development Division; (ii) the Penal Management Division; (iii) the International Judicial Development Division; and (iv) the Office of Missing Persons and Forensics (Wilson 2006: 158). In addition, a security force charged with "reconstruction of nonmilitary facilities, search and rescue missions, disaster response, humanitarian relief, and infrastructure reform" (Wilson 2006: 158) was created as a means for ensuring rapid response to crisis situations in the war-torn zone. Recognition of the necessity to equip the region with basic institutional skeleton would ensure the protection of refugees and streamline the process of their repatriation into a much-changed geopolitical landscape. Thus as a matter of foresight and conscious of its obligations under the Human Rights Law, the United Nations sought to create conditions for the actualization of *jus post bello* principles of restoration of order by creating mechanisms adequate for accommodating some 750,000 refugees and internally displaced from Albania (431,000), Macedonia (234,000), Bosnia and Herzegovina (18,500) and Montenegro (64,300) (Ogata 2005: 153).

Realizing the flagrant nature of the social and political context, the Interim Administration Mission (UNMIK) invested in the professionally trained police force. "Compared to recent nation-building operations such as those in Afghanistan and Iraq, Kosovo has enjoyed a higher ratio of national police to the total population, and in general, the international teams have been more successful in training police" (Wilson 2006: 160). Incremental restoration of order in Kosovo went hand in hand with increases in reconstruction aid. According to Jeremy Wilson, "Kosovo had the highest level of economic assistance for the overall mission ... [its] annual aid per capita over the first two years of reconstruction was US\$526, whereas it was US\$225 for Iraq and US\$30 for Afghanistan over a similar period" (2006: 160). It was also recognized that corruption of public officials and organized crime posed significant problems to the second principle of *jus post bellum* – vindication of human rights through economic reconstruction. Strengthened judicial and police system permitted for responsive action and resulted in many notable arrests. In addition, ethnically divided Kosovo necessitated interventions which would significantly decrease the levels of discrimination and tension that still prevailed following the conflict, requiring broad measures aimed at integrating Serbian and Albanian populations into an institutional and, above all, social framework.

Scholars point to four variables that are sought out at the beginning of post-conflict reconstruction, they are: (i) functioning government; (ii) status of security forces; (iii) status of the rule of law; and (iv) peace settlement (Wilson 2006: 155). The presence of such conditions on the ground can advance specific *jus post bellum* principles, which aim at the human rights defense,

restoration, and punishment of violations. The importance of good and stable governance not only makes the defense of human rights feasible, but government's promotion of "economic development, pluralist, and democratic, and effective institutions" (Einborn 2001: 22-25) and respect for an independent judiciary, can reinvigorate the shared political vision necessary for the country to effectively heal and embrace a sovereign nation-building program. Advancement of any and all of the above four goals requires assistance of foreign military forces or peace-keeping missions in addition to judges and special representatives proficient in the letter of the law. Durable financial assistance and technical knowledge, often provided by foreign training personnel, are also of especial assistance in conceptualizing logistical difficulties of reconstruction and efficiently surmounting them. The level and success of stabilization in Kosovo were assessed, as in the case of the aforementioned 2004 study of post-Saddam Iraq, by variations in public's perceptions of security, the rule of law, and corruption, as well as crime rates, and levels of political violence and preponderance of insurgencies.

Moreover, the UN Security Resolution 1244 (1999) "called for an international security force to be deployed to Kosovo, which led to the creation of the KFOR. KFOR's official purpose was to ensure a safe and secure environment that would facilitate the return of refugees and the implementation of UNMIK's stabilization mandate" (Perito 2002). In cooperation with the UN Refugee agency (UNHCR), which under the guidelines of the 1951 convention, worked to ensure that rights of refugees were duly respected, KFOR maintained public order, conducted regular patrols, crowd control, and intelligence gathering. In addition, working closely with UNMIK, KFOR created Kosovo Protection Corps of civilian Kosovars charged with providing emergency services, rescue missions, relief, and infrastructural repairs (Wilson 2006: 164). Recognizing the prominence of security measures in the strengthening of emerging democracies and putting in place mechanisms necessary for its actualization, such as creating a police and correctional system, and literate judiciary, the United Nations' post-war planning in Kosovo proved widely successful. The Freedom in the World indicators, which offer numerical indication of the level of freedom of expression and belief, judicial independence, and civil rights, show Kosovo moving steadily in the positive direction. At the nation's inception, "Freedom House rated Kosovo's rule of law and civil liberties as being the worst possible (i.e., 7). This rating has improved modestly since then, to a 5 by the fifth year, indicating reconstruction efforts have helped to enhance individual freedom, personal security, and procedural justice" (Wilson 2006: 168). In a country where inter-ethnic strife was rampant and explosive, early stabilization efforts in the form of a functioning multi-ethnic legal and criminal system and enhanced security mechanisms became decisive in proceeding with the reconstruction and nation-building following the war. More importantly, delegation of responsibilities among multiple governmental and non-governmental institutions, as illustrated above, has allowed for a multipronged approach to reconstruction aimed at achievement of concrete objectives without instilling a fear of long-term occupation and coerced installment of foreign and non-descript political authority.

Rehabilitation and vindication of human rights prescribed the *jus post bellum* and norms of justice, in case of Kosovo, permits for reassessment and moral evaluation of measures undertaken before and during the conflict. The international community's initial reluctance in responding to calamities of the Balkan wars necessitated a humanitarian response, which sought to establish

general requirements for postwar justice. Recognizing its limited scope for action and acknowledging the belatedness and inadequacy of their response, the United Nations and its partners, it can be observed, attempted to put in place institutional framework which would support and promote the *jus post bellum* doctrine in all key areas: the restoration of order, vindication of human rights through economic reconstruction, restoration of sovereignty, and punishment of human rights violators via war tribunals and legal channels of the International Criminal Court. Moreover, international peace building and achievement of sustainable peace required a participatory, pluralistic, and democratic approach of all stakeholders. High on the list of priorities were: (i) transformation of the society from violence-prone to one recognizing and seeking political means for the resolution of conflict; (ii) reformation and/or reconstruction of institutional frameworks of governance which permits for and encourages social dialogue, reconciliation of differences, negotiation over future socio-political arrangements, thus preventing over conflict stemming from political exclusion and social marginalization; (iii) creation of sustainable and domestically-conditioned rather than externally imposed institutions with durable impact and longevity capable of withstanding formal cessation of international interventions (Samuels 2005: 728).

Conclusion

The growth in the number of ethno-national conflict, “tectonic plate wars”, and proliferation of “small wars,” which collectively display a seeming disregard for traditional just war principles, necessitates a careful and prodding attention from legal scholars and social scientists. The emerging trend toward invasive military action and protracted occupation without formal declaration of war or cessation of active military activity by means of a peace treaty has considerable and adverse consequences for civilian rights-endowed populations. As the Nuremberg and Tokyo war crimes trials following the conclusion of World War II presented a watershed moment in military and legal history for excluding from the field of acceptable justifications for action a defense of mere “taking of orders”, likewise today, the norms of transnational justice call for an oversight and analysis of pre, during, and post war justifiability of conflict and military intervention in the name of “deterrence” or defense against ill-defined “terrorist activity”, and their subsequent assessment in congruence with the cosmopolitan norms regime procured by articulate human rights provisions and doctrines of the just war theory.

It ought to be recognized, as Giorgio Agamben and David Cole suggest, that political and social ethics and the rules guiding the conduct of war disallow for the sovereign nation state to exert total control over the collective life of all individuals by declaring a protracted “state of exception” which the war effort and its superior cause necessitates, but which effectively suspends human rights claims and the provisions of the law itself. The unmitigated reluctance to hold military strategists and high-ranking officials accountable to the rules of war and to the high moral standards procured by the doctrine of just war and its *jus ad bellum*, *jus in bello*, and *jus post bellum* prescripts, may bid ill for the resolution of wars in Afghanistan and Iraq, and set an unwelcomed international precedent for future military interventions in Syria, Ukraine or South Sudan, which with the passage of time, may reveal themselves ultimately dispossessed of sensible and answerable rationale. There exists, therefore, a pressing need for articulating and inscribing *jus post bellum* principles into the formal architecture of international law that is intent on

sustaining peace rather than merely brokering an end to violence (Stahn 2008: 107). Such a framework must be dynamic in scope, flexible and sufficiently responsive to apply to situations of internal and external conflict of conventional, and increasingly, unconventional character. In sum, just cause, right intention, discrimination and proportionality, and legitimate authority adhered to before and during war must not abandon post-conflict responsibilities aimed at stable and lasting peace settlement, vindication of rights, inclusion, compensation, accountability and punishment, which aim at full restoration of individual dignity, humanity, and legal personality to those adversely affected by the dehumanizing machinery of modern warfare.

References

- Abdela, Lesley. (2003): "Kosovo: Missed Opportunities, Lessons for the Future." *Development in Practice* 13(2/3), 208-216.
- Barakat, Sultan. (2004): *Reconstructing War-torn Societies: Afghanistan*. Basingstoke: Palgrave Macmillan.
- Barakat, Sultan. (2005): "Post-Saddam Iraq: Deconstructing a Regime, Reconstructing a Nation." *Third World Quarterly*. 26(4-5), 571-591.
- Barakat, Sultan, Chard, Margaret, and Jones, Richard. (2005): "Attributing Value: Evaluating Success and Failure in Post-War Reconstruction." *Third World Quarterly* 26(4-5).
- Barnett, Michael. (2011): *Empire of Humanity: A History of Humanitarianism*. Ithaca: Cornell University Press.
- Bovarnick, Jeff A. et al. (2011): "Law of War Deskbook" The United States Army Judge Advocate General's Legal Center and School.
- Calhoun, Laurie. (2001): "The Metaethical Paradox of Just War Theory." *Ethical Theory and Moral Practice* 4(1), 41-58.
- Detter De Lupis, Ingrid. (1987): *The Law of War*. Cambridge University Press.
- Einborn, Jessica. (2001): "The World Bank Mission Creep." *Foreign Affairs* 80.
- Evans, Gareth and Mohamed Sahnoun. (2002): "The Responsibility to Protect." *Foreign Affairs*. Accessible at WWW: <http://www.foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect>. Accessed 12 December 2014.
- Hayman, Robert, et al. (2002): *Jurisprudence Classical and Contemporary: From Natural Law to Postmodernism*. St. Paul: West Group.
- Johnson, James Turner. (1975): *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts 1200-1740*.
- Junne, Gerd and Werkoren, Willem. (2004): *Postconflict Development: Meeting New Challenges*. Boulder: Lynne Rienner.
- Kolb, Robert and Richard Hyde. (2012): *An Introduction to the International Law of Armed Conflicts*. Oxford: Hart Publishing.
- Locke, John. (1988): *Two Treatises of Government*. Cambridge: Cambridge University Press.
- Luckham, Robin. (2004): "The International Community and State Reconstruction in War-Torn Societies" Accessible at WWW: http://www.bundesheer.at/pdf_pool/publikationen/10_wg12_psm_20.pdf. Accessed 5 February 2015.

- Menocal, Alina Rocha and Eade, Deborah. (2005): "Annotated Resources on Peace Building and Post-War Reconstruction." *Development in Practice* 15(6), 785-800.
- McGinty, Roger. (2003): "The Pre-War Reconstruction of Post-War-Iraq." *Third World Quarterly*. 24(4), 601-617.
- Oberleitner, Gerd. (2005): "Porcupines in Love: The Intricate Convergence of Human Rights and Human Security." *European Human Rights Law Review*. 6.
- Ogata, Sadako. (2005): *The Turbulent Decade*. New York: W.W. Norton.
- Paris, Roland. (2004): *At War's End: Building Peace after Civil Conflict*. Cambridge: Cambridge University Press.
- Perito, Robert M. (2002): "The American experience with police in peace operations." The Academic Series. Clementsport, Nova Scotia, Canada: The Canadian Peace Keeping Press, Pearson Peacekeeping Centre.
- Primoratz, Igor. (2002): "Michael Walzer's Just War Theory: Some Issues of Responsibility." *Ethical Theory and Moral Practice* 5(2), 221-243.
- Rotberg, Robert I. (2003): *When States Fail: Causes and Consequences*. Princeton: Princeton University Press.
- Samuels, Kristi. (2005): "Sustainability and Peace Building: A Key Challenge." *Development in Practice*. 15(6), 728-736.
- Sharma, Serena K. (2008): "Reconsidering the *Jus ad Bellum/ Jus in Bello* Distinction" in Carsten Stahn and Jann K. Kleffner (eds.) *Jus Post Bellum Towards a Law of Transition from Conflict to Peace*. Cambridge: Cambridge University Press.
- Smith, Thomas W. (2010): "*Humanitas in bello*: Human Rights and the Norms of Modern Warfare." Draft paper presented for the International Studies Association, St. Pete Beach, FL, October 22-23. 1-33.
- Stahn, Carsten. (2008): "Jus Post Bellum: Mapping the Discipline(s)" in Carsten Stahn and Jann K. Kleffner (eds.) *Just Post Bellum: Towards a Law of Transition From Conflict to Peace*. The Hague: Asser Press.
- Starke, J.G. (1963): *An Introduction to International Law*. London: Butterworths,
- Sweetman, Caroline (ed.) (2004): *Gender, Peacebuilding, and Reconstruction*. Oxford: Oxfam GB.
- Teitel, Ruti. (2011): *Humanity's Law*. Oxford: Oxford University Press.
- Walzer, Michael. (2000): *Just and Unjust Wars*. New York: Basic Books.
- Williams, Robert E. and Caldwell Dan. (2006): "*Just Post Bellum*: Just War Theory and the Principles of Just Peace." *International Studies Perspectives*. 7(4), 309-320.

Wilson, Jeremy M. (2006): "Law and Order in and Emerging Democracy: Lessons from the Reconstruction of Kosovo's Police and Justice Systems." *Annals of the American Academy of Political and Social Science*, 605.