

A Commentary on David Scheffer's Concepts of Genocide and Atrocity Crimes

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David Scheffer's article is extremely rich and provides cause for thought concerning the concepts of *genocide* and *atrocity crimes*. His two proposals, liberating the use of the term *genocide* from manipulation by governments and international organizations and, more generally, substituting the new concepts of *atrocity crimes* and *atrocity law* for the actual legal, political and public terminology used regarding the crime of genocide, crimes against humanity and war crimes, call for some observations.

In his first proposal, the author means to distinguish between the legal and the political application of the concept of genocide in order to enable a better prevention of the crime through faster action. If the legal application of the concept of genocide is indeed constrained by specific and rigorous requirements,¹ the political application should be, according to David Scheffer, larger and more flexible, thus permitting intervention as soon as precursors of genocide are identified. This idea of separating the criminal character of genocide from its

¹ For the record, article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948) defines genocide as follow : “ (...) genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such : (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.” This first international legal definition of the crime of genocide is identically reproduced in the International Law Commission's 1996 Draft Code (article 17) and in the Statutes of the *Ad Hoc* International Criminal Tribunals for the Former Yugoslavia (article 4) and Rwanda (article 2), as well as in the Statute of the International Criminal Court (article 6).

political reality is appealing, and the focus on the need of a more effective international action to intervene, definitely important.

It is, nevertheless, possible to look at this issue from a different angle, hence reversing Scheffer's proposal: focusing on the *legal application of intervention* – as a tool for prevention since this is the ultimate goal here – rather than on a political application of genocide. As a matter of fact, I feel uneasy with the distinction made between a legal and a political application of the concept of genocide. According to the author, the former is meant for the purpose of repression by prosecutors and courts, as opposed to the latter, meant for the purpose of intervention by governments and international organizations (particularly the United Nations). In my view, the legal definition of genocide is, and should remain, applicable in all cases. Of course, criminal repression, on one hand, and diplomatic, economic or (in the worst case) military intervention, on the other, are two different type of actions which do not involve identical stakes nor do they have identical consequences. But they are both based on legal definitions and provided for in legal frames. Therefore, my suggestion is that an effective and rapid action to intervene in an “atrocities zone” should not necessarily be determined by a liberal understanding of genocide, but rather by a sharper legal understanding of intervention.

This approach would have three main advantages. First, it would give the possibility to avoid a simplified use of genocide that might lead to more confusion between this concept and those of crime against humanity and war crimes, and/or end up trivializing what is meant to be the “crime of crimes.”² Second, it would create an occasion to clear up the fuzziness surrounding the terms prevention and intervention from a legal point of view. Third, it would actually liberate the international community from the need of any legal qualification attesting or

² On this expression, see William A. Schabas, *The UN International Criminal Tribunals. The former Yugoslavia, Rwanda and Sierra Leone*, Cambridge University Press, Cambridge, 2006, 162. Be it noted that such an expression should be understood as referring to the specific legal requirements provided for the qualification of genocide (in particular the special “intent to destroy” a group), but not as referring to a hierarchy of crimes that would imply differences in the sentencing of genocide, crimes against humanity and war crimes. After much hesitation and ambiguity on this issue, the *Ad Hoc* International Criminal Tribunals ended up rejecting the idea that there is a hierarchy between those crimes in term of seriousness or gravity (cf. William A. Schabas, *Ibid.*, 561-562).

certifying the existence of genocide as an exclusive precondition of intervention,³ and give even more strength – as we will see – to David Scheffer’s second proposal.

In his second proposal the author means to render the description of genocide and other atrocities meriting effective governmental and organizational responses (crimes against humanity, including ethnic cleansing, war crimes and aggression) more accurate. He, therefore, suggests the use of a new concept of *atrocities crimes* as violations of *atrocities law* (a mix of international criminal law, international human rights law, international humanitarian law and law of war). There are two main reasons to support this proposal. From a practical point of view, the terms *atrocities crimes* and *atrocities law* have the great merit to address a complex corpus of different criminal acts contained in multiple norms of international law, hence providing a unified and simplified (rather than accurate) description or denomination – in other words, a useful “conceptual short cut”. Just like the word “feline” refers to many animals, the words “atrocities crimes” and “atrocities law” respectively refer, in a strongly expressive (almost “visual”) way, to diverse acts and norms related to the most serious international crimes. From a legal point of view, the author’s second proposal is very attractive since it reflects the spirit underlying the codification⁴ work done by both the International Law Commission (ILC) and the drafters of the International Criminal Court (ICC) Statute. This manifests in four key ways:

1. Scheffer’s *atrocities crimes* as violations of *atrocities law* are actually nothing else than the so-called “crimes against the peace and security of mankind” of the 1996 ILC Draft Code⁵ (crimes against United Nations and associated personnel excluded),⁶ or the “most serious crimes of concern to the international community as a whole” of the 1998 ICC Rome Statute.⁷

³ A precondition whose perverse consequences we have recently seen in the case of Darfur (see the special issue on Darfur in *Genocide Studies and Prevention*, vol. 1, n° 1, summer 2006).

⁴ See Edward M. Wise, “Perspectives and Approaches”, in Cherif Bassiouni ed., *International Criminal Law*, Transnational Publishers, Inc., New York, 2nd ed. 1999, 283-292.

⁵ Text adopted by the International Law Commission on its forty-eight session (cf. Cherif Bassiouni, “The Draft Code of Crimes Against the Peace and Security of Mankind”, in Cherif Bassiouni ed., *International Criminal Law, Ibid.*, 293-310). See articles 16 (aggression), 17 (genocide), 18 (crimes against humanity) and 20 (war crimes) of the Draft Code of Crimes Against the Peace and Security of Mankind (26 July 1996).

⁶ Article 19 of the 1996 Draft Code of Crimes Against the Peace and Security of Mankind.

⁷ See article 5 (crimes within the jurisdiction of the Court) and articles 6 (genocide), 7 (crimes against humanity), 8 (war crimes) of the ICC Statute (17 July 1998). Article 5 § 2 establishes that “[t]he Court shall exercise

Moreover this corpus of international crimes, referred to as *atrocities crimes* by the author, has initially been comprised in the subject matter jurisdiction of the *Ad Hoc* International Criminal Tribunals for the Former Yugoslavia (ICTY)⁸ and Rwanda (ICTR)⁹. David Scheffer's definition of each one of those crimes is based on the two Tribunals' case law. This choice is coherent and appropriate because the aforesaid case law is, itself, grounded on international customary law notably interpreted in the light of the 1996 ILC Draft Code,¹⁰ and has also greatly influenced the drafting of the 1998 ICC Statute.¹¹

2. The idea according to which *atrocities crimes* have in common to be particularly heinous acts of an orchestrated character, significant magnitude and severe gravity, committed in time of war or in time of peace, summarizes perfectly the approach expressed in the work of the ILC, the *ad hoc* international judges, and the drafters of the ICC Statute, just like the work of the major legal scholars: genocide, crimes against humanity and war crimes are perceived as being "core crimes" of international law, constituting violations of imperative international customary norms – or *jus cogens* norms –¹² which protect human dignity, and concerning the international community of sovereign States as a whole.¹³

jurisdiction over the crime of aggression once a provision is adopted (...) defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations."

⁸ See articles 2 (grave breaches of the Geneva Conventions of 1949), 3 (violations of the laws or customs of war), 4 (genocide) and 5 (crimes against humanity) of the ICTY Statute (25 May 1993).

⁹ See articles 2 (genocide), 3 (crimes against humanity) and 4 (violations of article 3 common to the Geneva Conventions and of Additional Protocol II) of the ICTR Statute (8 November 1994).

¹⁰ But also in the light of the United Nations Charter, several international conventions, national law, general principles of law, or judicial decisions and academic writings as subsidiary sources. For developments: William A. Schabas, *supra* note 2, at 74-120.

¹¹ On this matter: Machteld Boot, *Genocide, Crimes Against Humanity, War Crimes. Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court*, Intersentia, Antwerpen, Oxford, New York, 2002.

¹² The concept of *jus cogens* (peremptory norms) was first used in articles 53 and 64 of the Vienna Convention on the Law of Treaties (23 May 1969). These provisions recognize the existence of substantive norms of a fundamental character, such that no derogation from them is permitted even by treaty. On reading article 53's commentary, it appears that serious violations of international criminal law and international human rights were already considered as being acts against *jus cogens*: cf. notably Alfred Verdross, "Jus Dispositivum and Jus Cogens in International Law", *American Journal of International Law*, 1966, 57 ff; Theodor Meron, "On a Hierarchy of International Human Rights", *American Journal of International Law*, 1986, 14 ff; Li Haopei, "Jus

3. As noted by David Scheffer, the term *atrocities law* gives the chance to correct the inaccurate general reference to *international humanitarian law* (i.e. the law of armed conflicts, which does not concern genocide or crimes against humanity committed outside the ambit of armed conflict) as the field of international law covering the crimes in question. More precisely, it actually acknowledges the broad interpretation made by the International Criminal Tribunals of this body of law, going beyond both the text of their Statutes¹⁴ and the recommendations of the United Nations Secretary-General,¹⁵ in accordance with the 1996 ILC Draft Code and the ICC Rome Statute.

4. Finally, Scheffer's second proposal allows describing "what a State appears responsible for committing," and not only what individuals are internationally held accountable for. Thus, in the author's estimation, *atrocities crimes* generate individual as well as State international responsibility. As sensitive as the issue of State responsibility is, such a suggestion does build a bridge connecting the 1996 ILC Draft Code and the ICTY / ICTR / ICC Statutes (all related to individual criminal responsibility),¹⁶ with the 2001 ILC Draft Articles on Responsibility of

cogens and international law", in Yee Sienho and Tieya Wang ed., *International Law in the Post-Cold War World. Essays in memory of Li Haopei*, Routledge, London, New York, 2001, 508 ff.

¹³ See for example: Cherif Bassiouni, "The Sources and Content of International Criminal Law : A Theoretical Framework", in Cherif Bassiouni ed., *International Criminal Law*, *supra* note 4, at 67 ff, and Rafael Nieto-Navia, "International Peremptory Norms (*jus cogens*) and International Humanitarian Law", in *Man's Inhumanity to Man. Essays on International Law in Honour of Antonio Cassese*, Kluwer Law International, The Hague, London, New York, 2003, 595-640. On the rejection of the idea that there is a hierarchy, in term of seriousness, between those international crimes (according to the International Criminal Tribunals), see *supra*, note 2.

¹⁴ See the Preamble and article 1 of the ICTY and ICTR Statutes. The reference to international humanitarian law was initially a limitation of the Tribunals' competence *ratione materiae*, justifying their establishment by the Security Council as an enforcement measure under Chapter VII of the UN Charter, for the restoration and maintenance of international peace and security.

¹⁵ *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, UN Doc. S/25704 (May 3, 1993), §§ 29 and 31 ff.

¹⁶ See article 2 of the ILC Draft Code of Crimes Against the Peace and Security of Mankind (article 4 specifies that "[t]he fact that the present Code provides for the responsibility of individuals (...) is without prejudice to any question of the responsibility of States under international law"); article 7 of the ICTY Statute; article 6 of the ICTR Statute; and article 25 of the ICC Statute (the same article specifies that no provision of the Statute "

States for Internationally Wrongful Acts.¹⁷ It is at this point particularly interesting to remember that, in its first works on State responsibility, the International Law Commission distinguished international “delicts” and “crimes” – the latter referring to violations of “superior norms” of international law, which implicitly meant peremptory norms of *jus cogens*.¹⁸ Even though the very controversial term of “international state crimes” has since been abandoned, the 2001 Draft Articles on Responsibility of States adopts a close distinction between “internationally wrongful acts” and “serious breaches of obligations under peremptory norms of general international law.”¹⁹ It would, accordingly, be possible to understand the latter as including breaches of obligations under *atrocities law* – in other words, including *atrocities crimes*.²⁰ This possibility is confirmed on reading the 2001 Draft’s commentary related to article 40, which defines the scope of application of those “serious breaches”: after noting that “[i]t is not appropriate to set out examples of the peremptory norms referred to in the text of article 40 itself, any more than it was in the text of article 53 of the Vienna Convention,”²¹ the drafters affirm that basic rules of international humanitarian

(...) relating to individual criminal responsibility shall affect the responsibility of States under international law”).

¹⁷ Text adopted by the International Law Commission at its fifty-third session. For an analysis of the text: James Crawford, *The International Law Commission’s Articles on State Responsibility. Introduction, Text and Commentaries*, Cambridge University Press, Cambridge, 2002; Alain Pellet, “Le nouveau projet de la CDI sur la responsabilité de l’Etat pour fait internationalement illicite: requiem pour le crime?”, in *Man’s Inhumanity to Man...*, *supra* note 13, at 655-683.

¹⁸ For example: John Dugard, “Criminal Responsibility of States”, in Cherif Bassiouni ed., *International Criminal Law*, *supra* note 4, at 241 ff; Dinh Nguyen Quoc, Patrick Daillier and Alain Pellet, *Droit International Public*, LGDJ, Paris, 6th ed. 1999, 205; Julio Barboza, “State Crimes: A Decaffeinated Coffee”, in Laurence Boisson de Chazournes and Vera Gowlland-Debbas ed., *The International Legal System in Quest of Equity and Universality. Liber Amicorum Georges Abi-Saab*, Martinus Nijhoff Publishers, The Hague, London, Boston, 2001, 357-375.

¹⁹ Provided for at Chapter III of Part two of the 2001 ILC Draft. Chapter III contains two articles: article 40, defining its scope of application, and article 41, spelling out the legal consequences entailed by the serious breaches of obligations under peremptory norms of general international law.

²⁰ The use of the term “serious” would be redundant in case of violations of *atrocities law* (or commission of *atrocities crimes*) by a State, since the elements defining the “serious” character of the breaches – as it appears in article 40’s commentary – are already implied in the cases in point (“It must also be borne in mind that some of the peremptory norms in question, most notably the prohibitions of aggression and genocide, by their very nature require an intentional violation on a large scale”): http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

²¹ See *supra*, note 12.

law, prohibition of aggression, genocide and crimes against humanity are to be regarded as such.²²

For all these reasons, I am not only supportive of David Scheffer's second proposal, but also believe that, looking back to the initial goal of this discussion (which is thinking out a more effective action to intervene and protect the civilian populations), his concept of *atrocities crimes* – as violations of *atrocities law* binding on individuals and States – should be taken in consideration for a better legal understanding of intervention.

David Scheffer seems to associate the terms *intervention* and *prevention* – the latter being used in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.²³ He, therefore, presupposes that international intervention is determined by the existence of acts of genocide – hence his first proposal to liberate the use of genocide from its strict legal requirements in order to stimulate the international community to act more readily. In my opinion, this presupposition is nevertheless questionable for two reasons. First, intervention and prevention are not necessarily two exchangeable terms: on one hand, international intervention might be punitive (notably in the case of judicial intervention, like the creation of the International Criminal Tribunals by the UN Security Council); on the other, prevention might be independent from any international intervention (in the case of national preventive measures, like for example the prohibition of genocide in domestic law). Second, the use of the term prevention in the 1948 Convention is actually unclear,²⁴ and “(...) nowhere does the Genocide Convention recognize that individual States or the international community acting in concert may or must intervene in order to prevent the crime.”²⁵ Article I of the Convention

²² http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

²³ Article I of the 1948 Convention reads: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.” Article VIII authorizes States parties to “(...) call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and the suppression of acts of genocide or any of the other acts enumerated in article III.”

²⁴ On the rare occurrence and the imprecision of the term *prevention* in international conventions: Linos-Alexandre Sicilianos, “La responsabilité de l’Etat pour absence de prévention et de répression des crimes internationaux”, in Hervé Ascensio, Emmanuel Decaux and Alain Pellet ed., *Droit international pénal*, Pedone, Paris, 2000, 119 ff.

²⁵ William A. Schabas, *Genocide in International Law*, Cambridge University Press, Cambridge, 2000, 491 (where the author also reminds that “[t]he matter was only addressed tangentially, in the debate concerning

definitely sets out an *erga omnes* obligation to prevent (and to punish),²⁶ but whether the scope of this obligation includes a duty of humanitarian intervention is uncertain and controversial.²⁷ David Scheffer himself, as the United States Ambassador for War Crimes at the time, expressed in late 1998 a view according to which there is no such legal obligation in the strict sense of the term.²⁸

The fact remains that article VIII of the Genocide Convention authorizes the Contracting Parties to “(...) call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention (...) of act of genocide (...)” The reference to the UN Charter is a key element for a better understanding of intervention (putting aside the question of whether it is a right or an obligation implicitly provided for in the 1948 Convention), since its legal basis is, after all, Chapter VII of the Charter. As an exception to the general principles of the sovereign equality (article 2 § 1)²⁹ and non intervention (article 2 §§ 4 and 7)³⁰, article 2 § 7 (second sentence)³¹ of the UN Charter enables the application of enforcement measures under Chapter VII related

article VIII, a provision watered down in the final version to remove specific mention of the Security Council, the logical candidate for such activity”). For details on the drafting of article VIII: William A. Schabas, *Ibid.*, 448 ff.

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Further Requests for the Indication of Provisional Measures*, 13 September 1993, [1993] *International Court of Justice Reports* 325; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Preliminary Objections*, 11 July 1996, [1996] *Ibid.*, 595, § 31, Dissenting Reasons of Judge *ad hoc* Kreca, § 101. See also *Reservations to the Convention on Genocide, Advisory Opinion*, [1951] *Ibid.* 14, 24 and *Barcelona Traction, Light and Power Co. Ltd (Belgium v. Spain)*, [1970] *Ibid.* 3, 32.

²⁷ For developments: William A. Schabas, *supra* note 25, at 492 ff.

²⁸ See the Address by David Scheffer, Ambassador-at-Large for War Crimes Issues, US Department of State, at the Conference on “Genocide and Crimes Against Humanity: Early Warning and Prevention”, Holocaust Museum, Washington, DC, 10 December 1998, extract reproduced in William A. Schabas, *Ibid.*, 496.

²⁹ Article 2 § 1: “The Organization is based on the principle of the sovereign equality of all its Members.”

³⁰ Article 2 § 4: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” Article 2 § 7 (first sentence): “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter (...)”

³¹ Article 2 § 7 (second sentence): “(...) but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

to action with respect to threats to the peace, breaches of the peace and acts of aggression. International intervention is indeed justified under the law of the United Nations as soon as, in the Security Council's discretionary estimation,³² peace and security are threatened. Now, on this particular point, both the Security Council³³ and the *Ad Hoc* International Criminal Tribunals³⁴ consider that the "serious violations of international humanitarian law" committed in the Former Yugoslavia and in Rwanda – i.e. genocide, crimes against humanity and war crimes, which comprise Scheffer's *atrocities crimes* – constitute such a threat. Ever since, "[t]he implicit philosophy is that gross human rights violations anywhere are a threat to peace and security everywhere"³⁵ and justify (as well as breaches of peace and aggression do) an action to intervene on the ground of Chapter VII.

More specifically, in the light of the preceding developments, it is possible to understand intervention, legally speaking, as a collective action authorized by the Security Council,³⁶ and

³² See article 39 of the UN Charter. On the discretionary character of the Security Council's power to qualify a situation as being a "threat to the peace": Hans Kelsen, *The Law of the United Nations. A Critical Analysis of Its Fundamental Problems*, Stevens & Sons Limited, London, 2nd ed. 1951, 372 ff; Keith Harper, "Does the United Nations Security Council have the Competence to Act as a Court and Legislature ?", *New York University Journal of International Law and Politics*, 1994, 135 ff; Jean-Pierre Cot, Alain Pellet and Mathias Forteau ed., *La Charte des Nations Unies. Commentaire article par article*, Economica, Paris, 3rd ed., 2005, pp. 1133 ff. See also, in the ICTY case law: Decision of the Appeal Chamber, *Dusko Tadic*, 2 October 1995, IT-94-1, §§ 28-29; and in the ICTR case law: Judgement of the Trial Chamber II, *Joseph Kanyabashi*, 18 June 1997, ICTR-96-15, § 20.

³³ See Resolution 808 of 22 February 1993 (§ 7), Resolution 827 of 25 May 1993 (§ 4) and Resolution 955 of 8 November 1994 (§ 5).

³⁴ Decision of the ICTY Appeal Chamber, *Dusko Tadic*, 2 October 1995, IT-94-1, §§ 30 ff; Judgement of the ICTR Trial Chamber II, *Joseph Kanyabashi*, 18 June 1997, ICTR-96-15, §§ 20 ff.

³⁵ William A. Schabas, *supra* note 25, at 498-499.

³⁶ On the very critical question of whether humanitarian intervention without Security Council authorization could be legally permissible: William A. Schabas *Ibid.*, 500 ff. William Schabas, whose opinion I strongly share, emphasizes the fact that "[t]olerating individual initiatives in the absence of Security Council permission is a slippery slope that threatens chaos" (*Ibid.*, 502). On the same line, see for example: Antonio Cassese, "'Ex iniuria ius oritur': Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?", *European Journal of International Law*, 1999, 23-30; Alain Pellet, "'La guerre du Kosovo'. Le fait rattrapé par le droit", *Forum du Droit international*, 1999, 160-165; Richard Falk, "Humanitarian Intervention after Kosovo", in Laurence Boisson de Chazournes and Vera Gowlland-Debbas ed., *supra* note 18, at 188 (where the author specifically refers to the "(...) special role of the United States as a self-anointed guardian of international order, and as such exempt from any inhibiting constraints of

determined by the occurrence of *atrocities crimes* (or violations of *atrocities law*) which are deemed a threat to international peace and security, within the meaning of Chapter VII of the UN Charter. This apprehension of intervention, connected with the author's concept of *atrocities crimes* on the basis of the normative developments notably generated by the crisis in the Former Yugoslavia and in Rwanda, can lead to a more effective action of the international community in an "atrocities zone"; thus extending the legal scope of intervention to the most serious international crimes against fundamental human values, for the protection of civilians, and in the interest of the whole international community.

Of course, this said, and as pointed out by some, the support for the international implementation of minimum human rights in the face of severe governmental abuses and criminality shouldn't disguise the risk of a post-colonial revival of interventionary diplomacy.³⁷ It's all about finding a "proper balance in particular situations as between sovereign rights and humanitarian intervention"³⁸: a balance which depends, in the last instance, on the motives behind the political will of the Security Council to use – or not to use – its discretionary power, or on the scale of the interventionary operation required and its evaluation, not to mention the decision making process within the principal organ of the United Nations often criticized for its hegemony under the leadership provided by the United States.³⁹ So many elements which refer to the important and on going debate on the forms of legality review of Security Council decisions, "subject to respect for peremptory norms of international law."⁴⁰

international law"); Hubert Thierry, "Réflexions sur le 'droit d'ingérence humanitaire'", in *Ibid.*, 219-227; Jean-Pierre Cot, Alain Pellet and Mathias Forteau ed., *supra* note 32, at 464.

³⁷ Richard Falk, *Ibid.*, 178.

³⁸ *Ibid.*, 177. See also Vladimir-Djuro Degan, "Humanitarian Intervention (NATO Action Against the Federal Republic of Yugoslavia in 1999)", in *Man's Inhumanity to Man...*, *supra* note 13, at 248 ff; Ralph Zacklin, "Beyond Kosovo: The United Nations and Humanitarian Intervention", in *Ibid.*, 948 ff; Karl Zemanek, "Human Rights Protection vs. Non-Intervention: a Perennial Conflict?", in *Ibid.*, 953-975.

³⁹ See for example Monique Chemillier-Gendreau, *Droit international et démocratie mondiale. Les raisons d'un échec*, Textuel, Paris, 2002.

⁴⁰ Judgment of the ICTY Appeal Chamber, *Dusko Tadic*, 15 July 1999, IT-94-1, § 296.