

CONTENTS

Page

Isaac Marks Memorial Lecture

EDUCATION FOR CO-EXISTENCE..... *Martha Minow* 1

Articles

CLUSTER BOMBS OVER KOSOVO: A
VIOLATION OF INTERNATIONAL
LAW? *Thomas Michael McDonnell* 31

Responding to international crimes whether perpetrated by governments or private terror groups challenges the international community in general and the United States and its allies in particular. This Article deals with one aspect of such a response, namely, NATO's use of cluster bombs in its humanitarian intervention in Kosovo. A cluster bomb consists of a great number of small, but extraordinarily powerful bombs, contained within a large canister or dispenser. The cluster bomb is an "area weapon," so called because a single dispenser can spread its cluster bombs over a huge area, from one to five football fields. Each small cluster bomb, euphemistically called a "bomblet," has over a hundred pieces of shrapnel, which have a high initial velocity. Consequently, the cluster bomb can cause grave physical injury at especially long distances. If dropped on a military target in a populated area, cluster bombs almost certainly will kill, maim or otherwise wound a large number of innocent civilians.

Aside from endangering civilians by the incredible destructive power of the bomblets and huge swath that they cut, five to thirty percent of the bomblets are duds. But they can remain dangerous years after launch; a slight vibration can detonate them. Their small size, bright color, and toylike appearance make them particularly attractive to children. This Article examines whether cluster bombs themselves or the manner in which they were deployed by NATO violates international law. In addition, the Article discusses whether using such a weapon is consistent with a humanitarian intervention. Since the United States also has dropped cluster bombs in the recent conflict in Afghanistan, the Article addresses whether as a matter of law and policy, the cluster bomb is an appropriate weapon with which to combat terrorism.

RAPE BY DRUGS: A STATUTORY OVERVIEW AND PROPOSALS FOR REFORM	<i>Patricia J. Falk</i>	131
--	-------------------------	-----

Rape accomplished by administering drugs and alcohol, and rape of self-intoxicated persons is a disturbing problem in the United States today. Most American jurisdictions outlaw the sexual assault of persons after the defendant has administered an intoxicant. A smaller number prohibit sexual conduct with persons incapable of consenting because they have become self-intoxicated. I argue that all modern rape statutes should prohibit sexual conduct with persons incapable of giving consent due to intoxication regardless of who is responsible for the intoxication. If the defendant administered the drugs as a prelude to rape, he should be punished also for a separate crime of drugging or for a more serious sexual offense.

Notes

REPLACING THE SWORD WITH A SCALPEL: THE CASE FOR A BRIGHT-LINE RULE DISALLOWING THE APPLICATION OF LACK OF MARKETABILITY DISCOUNTS IN SHAREHOLDER OPPRESSION CASES	<i>James H. Eggart</i>	213
---	------------------------	-----

CAT AMONG PIGEONS: THE CONVENTION AGAINST TORTURE, A PRECARIOUS INTERSECTION BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND U.S. IMMIGRATION LAW	<i>Andrea Montavon-McKillip</i>	247
--	---------------------------------	-----

Case Note

STATE V. ESTRADA	<i>Abbe M. Goncharsky</i>	283
------------------------	---------------------------	-----