



Facing Up to Genocide: The Obligation to Intervene

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The Canadian commander of United Nations peacekeeping forces in Rwanda during the 1994 genocide, General Romeo Dallaire, has stated that he would have been able to suppress the butchery if he had been given 5,000 troops to do the job. Dallaire's tantalizing "what if" shames the West to this day: Stopping the perpetrators of the genocide in Rwanda, who were lightly armed, poorly trained, and much more expert at killing unarmed men, women, and children than in confronting professional soldiers in battle, could have been accomplished relatively easily had the US and its allies responded affirmatively to General Dallaire's requests for modest reinforcements.

Sadly, the one place in the world where humanitarian intervention was most needed to save a people from genocide was also the place where it might have been the most expeditiously accomplished and where, in the end, nothing was done.

Those in the human rights movement who had appealed for intervention to save Rwandans vowed not to let our government sit idly by the next time mass ethnic killing began. That "next time" for Physicians for Human Rights (PHR) was Kosovo. Although the number killed in Kosovo pales in comparison to Rwanda, the two tragedies were similar in that the international community had months of early warning signs of a carefully planned campaign to destroy an ethnic group. In Kosovo, that destruction took the

form of "demonstration" killings of thousands of Kosovar Albanians to create terror and flight; destruction of Kosovar Albanian civil society through arrests or targeted executions of Albanian doctors, political figures, journalists, and other civil society leaders; widespread destruction of homes; and the eventual expulsion of more than 800,000 Albanians from their country.

An Appeal for Peacemakers

PHR, which was barred from investigating human rights violations in Kosovo by President Milosevic, nonetheless collected significant data on abuses by interviewing Kosovar refugees in Albania in June 1998, several months after Serbian forces began a brutal counterinsurgency campaign against the nascent Kosovo Liberation Army uprising in the province. Both because the early days of the Kosovo conflict bore all the ugly hallmarks of Milosevic's four-year war in Bosnia and because of the world's inaction in Rwanda, PHR issued an early appeal for an international "peace-making" force to be deployed in Kosovo with a mandate to protect the Albanian population from depredations by Serbian forces.

But a ground force to protect Kosovar Albanians was not considered at the time, and the US and Europe instead engaged for nearly a year in diplomatic efforts to persuade President Milosevic to withdraw his forces from Kosovo. Gross abuses against Kosovar Albanians accelerated throughout the period, culminating in the massacre of 45 civilians at Racak in January. The massacre galvanized the US, Russia, and the European Union to convene in Rambouillet, France to develop a peace agreement which was presented to President Milosevic as an ultimatum. When he refused to accept its terms (which included the deployment of NATO troops within Kosovo and limited autonomy

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for Kosovar Albanians) the 19 NATO governments responded with a campaign of targeted aerial bombardment beginning on March 24.

The early weeks of bombing did not persuade President Milosevic to pull back his forces from Kosovo, as NATO had hoped. On the contrary, he accelerated enormously his well-orchestrated military campaign to forcibly remove a considerable portion of the Albanian population from their homes and homeland. Hundreds of thousands were forcibly deported and thousands killed. NATO gradually expanded its targets, including many sites in and around Belgrade and targeted facilities used by civilians, such as the electrical grid. After 11 weeks of bombing, during which time an estimated 2,000 Serbian civilians were killed and 5,000 injured, Milosevic acceded to the West's demands, withdrew his forces from Kosovo, and a UN force, with NATO at its core, occupied Kosovo. By July, 1999 some 650,000 of the estimated 800,000 Kosovar Albanians who had fled over the past year had returned.

A Successful But Troubling Intervention

The intervention in Kosovo was a welcome indication that the world had learned something from its shameful inaction in Rwanda and this time was ready to do what was necessary, including deploy military force, for the explicit purpose of stopping a sovereign from plundering and destroying his own people within his own country. Moreover, the intervention can be, in many ways, considered a success. The bombing campaign achieved in a matter of a few months what a year of intensive diplomacy and two Security Council resolutions failed to produce: the near-complete withdrawal of Serbian forces from the province and thereafter the swift return of a large number of the Kosovar Albanians.

Notwithstanding the fact that NATO achieved those desirable outcomes, however, the intervention was deeply troubling from a human rights perspective. Most significantly, the refusal of the US and Europe to deploy troops on the ground to protect civilians early in the conflict permitted Milosevic to bulk up Serbian forces in Kosovo massively in the year since he began his brutal counterinsurgency. Thus by March 1999, when fruitless diplomacy was finally abandoned, the military situation was very different from Rwanda where, if

Commander Dallaire is correct, humanitarian objectives could have been accomplished at little cost. In Kosovo, NATO forces could have expected to face at least some combat and casualties. Moreover, NATO's long delay in acting forcibly against Milosevic (though it had issued threats for a year) meant that his troops had free rein to kill thousands of civilians in the interim.

A second and related concern is that NATO regularly and publicly promised that an invasion force was not under consideration and when force was ultimately—and belatedly—employed against Milosevic, it was exclusively in the form of aerial bombardment. Moreover, because of the assumption that neither Americans nor Europeans would tolerate casualties in the course of a humanitarian intervention, the rules of engagement for NATO pilots was to fly above 15,000 feet and thus out of range of Serbian anti-aircraft fire. That strategy was successful in that the alliance suffered not one single combat casualty, but it was costly in other terms. NATO pilots inevitably hit civilian targets because they were not able to distinguish them from military targets at the height and speed at which they were flying. Rules of engagement which enhance the risk to civilians in order to minimize combat casualties are a violation of international humanitarian law.

Moreover, the refusal to use low-flying helicopters, which might have permitted allied pilots to lock on tanks and soldiers, meant that Milosevic's forces were able to operate relatively unscathed in Kosovo throughout most of the conflict. Deprived of visible military targets that it could hit three miles up, NATO expanded considerably its bombing of civilian (or, more accurately, dual-use) targets, such as the electrical grid. Many experts believe that bombing the civilian infrastructure of Serbia was key to Milosevic's finally coming to terms, but such a tactic is not compatible with humanitarian law, however useful it might have been in achieving a humanitarian objective.

Deploying Force When No Good Options Remain

Human rights groups were right to criticize the allies' tactics and to have demanded compliance with international law standards in the course of the Kosovo intervention. But those who favored intervention to stop Milosevic's crimes in Kosovo are obliged to acknowledge that by March 24, when the bombing campaign began, all the options in Kosovo were bad ones. Given the political constraints under which NATO operated (i.e., the "zero casualty" policy and the lack

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of support for a ground force among the allies, which had the practical effect of denying a staging ground for such a force), the high-altitude bombing campaign may well have been the only option at hand. Though flawed, this was greatly preferable from a human rights perspective than the alternative, which was a Serbian reign of terror in Kosovo indefinitely.

Fortunately, the world did not permit in Kosovo what it watched and tolerated in Rwanda. Yet the massive use of force against Milosevic was deployed so belatedly that thousands of Kosovar Albanians were killed in the interim. And it was deployed so cautiously, in terms of NATO combat casualties, that thousands of Serbian civilians died unnecessarily. Delaying military action until 40,000 strong perpetrators were thoroughly dug in significantly limited the options for constraining their abuses because of NATO's unwillingness to engage in what would have likely been a bloody ground war. Perhaps deploying force much earlier might have accomplished the expulsion of Serbian forces when their numbers were greatly smaller. Since that would have required a more modest military undertaking, the goal might have been achieved with less destruction in Serbia, with far fewer Serbian casualties, and without the loss of some of the 10,000 Albanians who died at the hands of the Serbian police and soldiers during their year of terror in Kosovo.

On the other hand, there might have been significant civilian casualties if a ground force had invaded Kosovo and engaged with Serbian forces there at any point in the conflict. Milosevic's forces might have continued to murder and to deport civilians, and might have accelerated the destruction of Kosovar Albanian villages on his orders, just as they did throughout the bombing campaign. Moreover, the military task for NATO forces of expelling his troops from Kosovo would have been greatly complicated by the need to protect and defend civilians at the same time.

There is no humanitarian intervention strategy that can be developed for the next conflict that is based on the last one, because each such occasion is unique. But scrupulous adherence to humanitarian law is required in any military operation, even if it places soldiers at higher risk. One hopes that our government does not judge that risk to be so high that it refuses to intervene to stop the next Kosovo or Rwanda.

Convention on the Prevention and Punishment of the Crime of Genocide

Resolution 260(III)A of the UN General Assembly, December 9, 1948

[Editor's note: The following are the first nine articles of the Convention. Articles 10-19 deal with administrative issues of accession and ratification by the signatories and have not been included for reasons of space.]

The Contracting Parties,

- Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;
- Recognizing that at all periods of history genocide has inflicted great losses on humanity; and
- Being convinced that, in order to liberate mankind from such an odious scourge, international cooperation is required;

Hereby agree as hereinafter provided.

Article 1. 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 to punish.

Article 2. In the present Convention, 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.

Article 3. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 4. Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article 5. The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3.

Article 6. Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article 7. Genocide and the other acts enumerated in Article 3 shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article 8. Any Contracting Party may 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 suppression of acts of genocide or any of the other acts enumerated in Article 3.

Article 9. Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

[UNTS No. 1021, vol. 78 (1951), p. 277]