



COMMENTARY & OPINION

What Should Have Been Done in Kosovo?

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The crisis in Kosovo developed slowly and painfully, and everyone in a position to watch the lines being drawn knew what was coming. Beginning in early 1998, fact-finding teams from Physicians for Human Rights (PHR), particularly concerned with the brutal treatment of doctors, other health care workers, and their patients in the former Yugoslavia, recognized that the stage was being set for one of the most repugantly named practices of the late 20th century: "ethnic cleansing." PHR, Human Rights Watch, the International Committee of the Red Cross, the UN High Commissioner for Refugees, and concerned governments and non-governmental organizations on the ground spent several desperate months trying to stop the escalation of a war against civilian populations in Kosovo.

Serbian troops under Yugoslav president Slobodan Milosevic were amassing their forces in Kosovo in early 1999 even as negotiators were working around the clock to get the Serbs and representatives of the Kosovo Liberation Army (KLA) to accept the

terms of what would come to be known as the Rambouillet Agreement. When the failure of the negotiations seemed imminent and ethnic cleansing, if not genocide, loomed on the horizon, PHR and a coalition of human rights and humanitarian groups called upon the international community to deploy a force of peacekeeping troops into Kosovo in order to protect the Kosovar Albanians. When NATO eventually did intervene it was with a three-month campaign of air strikes that inflicted massive damage not only on Milosevic's military assets, but on the civilian infrastructure and the environment of Serbia, Kosovo, and neighboring countries.

Whether or not the air strikes triggered the ethnic cleansing that escalated over the next two months, as many opponents of the NATO strategy claimed, they certainly did nothing to prevent it, as US President Clinton said they were intended to do. By the time Milosevic capitulated and a ceasefire was declared in early June, as many as a million Kosovar Albanians had been driven from their homes. More than three-quarters of a million were living in refugee camps and with host families in Albania, Macedonia, and Montenegro [1]; hundreds of thousands of others had fled into the mountains as internally displaced persons; tens of thousands had been evacuated to countries outside the region. Atrocities against women, adult men, and the elderly, although difficult to document once Kosovo was sealed off, were widely and credibly reported by refugees as they flooded over the borders.

Given the brutality of Milosevic's policies, it is not hard to understand why groups such as PHR and Human Rights Watch, which had been extremely reluctant to

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endorse military intervention in the past, would do so this time, with the failures of Rwanda and Somalia still so fresh in their memories. What they asked the international community to do in response, controversial in itself, was a far cry from the form of intervention the US and NATO chose. The campaign of air strikes was wrong for three principal reasons:

1) war in the nuclear age—even a war with an arguably “just” cause—is no longer a viable option for resolving conflict or dealing with aggression;

2) the means employed by the U.S.-led NATO forces were disproportionate to the stated ends and, therefore, were unacceptable regardless of the outcome; and

3) even if a multinational peacekeeping force was required to prevent ethnic cleansing, that force should have been deployed far sooner and under a UN flag, not by NATO.

The Risks of War in the Nuclear Age

Whatever arguments one might choose to make for the appropriate uses of military force in a just cause—and those arguments have been made by honorable people—war as an institution became simultaneously obsolete and potentially catastrophic in the age of weapons of mass destruction. The world has yet to catch up to that reality, with the result that more than 100 armed conflicts, most of them internal, have taken place since the end of the Cold War [2]. About 90% of the casualties of these conflicts have been among civilians [3]. While some of these conflicts—most notably Chechnya, Bosnia, and now Kosovo—have involved one or more nations armed with nuclear weapons, the most serious and prolonged conflicts—in the Middle East, Africa, South Asia, and Europe—have been internal struggles among parties without weapons of mass destruction. Even so, the means used to pursue these wars, including landmines, have become increasingly vicious and indiscriminate, though they are largely incapable of resolving the conflicts that have prompted their use.

Many difficult questions remain unanswered in the wake of this new reality, in particular the question of how to prevent genocide or its evil cousin, ethnic cleansing. Nevertheless, the reason for the obsolescence of war is simple: no nation can be expected to forego the acquisition and use of weapons of mass destruction if it believes its survival is at stake. This means that in the long term we must find effective means other than war to respond to these humanitarian crises and massive human rights violations, or risk the survival of every living creature on the earth.

The problem is that this long term goal

does not help us decide how to act when peacebuilding measures fail, negotiations collapse, and ethnic cleansing or genocide loom in the immediate future.

Supporters of the NATO air strikes point to the outcome of the war and argue that a massively armed military alliance, led by the world’s predominant superpower, inflicted unsustainable damage on a relatively small and isolated non-nuclear nation from a distance, rightly expecting that eventually it would either surrender or collapse. Yet one question is only now being asked, though not by those who carried out and supported the NATO strategy: Would the outcome have been so certain—would the air strikes have commenced at all—had Milosevic had control of even a small nuclear arsenal?

The lesson other countries may draw is that they could easily become the next target of NATO cruise missiles, cluster bombs, depleted uranium weapons. Russia, already upset over NATO expansion and without the resources to maintain its conventional military forces at Cold War levels, has already backed away from nuclear arms control and is threatening to rebuild its nuclear arsenals.

Unable to match the larger powers in conventional force, some less powerful countries, already chafing under the discriminatory implementation of the Non-Proliferation Treaty, will now find even more reason to acquire a nuclear “deterrent” of their own. Failing that, they will look to chemical or biological weapons as alternatives. The military advantage held by the US and NATO obscures this reality only for as long as that advantage lasts.

Clinton and UK Prime Minister Tony Blair, among others, argued that NATO was compelled to stop Milosevic for the same reasons that the European allies should have stopped Hitler before 1939. The analogy fails for many reasons, not the least of which is the credibility of those making the claim. The US and NATO are seen by an uncomfortable majority of the world’s people—with some justification—as the principal bullies of the new millennium. This is certainly true of the Serbians themselves, who must now become persuaded that they were not the targets of NATO aggression and that they will not be left defenseless against KLA revenge killings. This negative view of the US and its allies is doubly sad, since so many Americans and Europeans, including many serving in the military, seek to uphold a regime of democracy and human rights.

There will be other repercussions, some of them local, some regional, a few remediable in the short term, others that will reverberate for years to come:

Intervention, the UN Charter, and International Humanitarian Law

The fundamental contradiction in international and humanitarian law that led to the NATO intervention in Kosovo through the bombing of Serbia, and to the controversy surrounding it, was in part created three-and-a-half centuries ago.

In Westphalia, a region of what is now northwestern Germany near the Netherlands border, treaties were negotiated in 1648 that marked the beginning of the modern nation state.

The Peace of Westphalia, as the treaties have been collectively called, brought only a temporary respite in the wars of Europe.

Representatives of European nations and a few others met 250 years later in the 1899 and 1907 Hague peace conferences to discuss limitations on inhumane methods of waging war. The League of Nations, founded in 1919, and the United Nations, in 1945, intended to “save succeeding generations from the scourge of war,” were not surprisingly based on national sovereignty, with representation of nations rather than of the people of the world.

✦ The failure of NATO to obtain approval by the UN Security Council to form an international force or, failing that, to call for an extraordinary meeting of the General Assembly to authorize the intervention, undermined the authority of the UN and will make it more difficult to obtain timely UN action the next time it is needed.

✦ The medical, environmental, and social effects of the destroyed domestic infrastructure will persist for decades. Unexploded munitions will continue to claim civilian lives. In the short run, medical care was made more difficult and the substitution of medical care by an occupying army is a poor substitute for an indigenous medical care system. An increased number of cancers and other illnesses can be expected.

✦ NATO—and the US—failed to act in other humanitarian emergencies, including those affecting the Kurdish people of Turkey and the people of Rwanda. This raises serious concerns about how race, class, and economic factors enter into Western decisions to intervene.

✦ Many people in Europe still carry—more than 50 years later—vivid recollections of World War II. Although international and regional media were mobilized during the period of the NATO air strikes in an effort to bolster public support for the bombing, many of those who recalled World War II and who suffered through 40 years of the Cold War suspected NATO’s motives. Many Europeans perceived this as an attack launched by the West against the East. Media from East and West gave different versions of the same bombings and Europe was once again divided.

In the long term, the rehabilitation of war as an instrument of foreign policy is a formula for catastrophe in a world where even a relatively poor government can acquire the means to cause unprecedented destruction and where many governments may now feel an obligation to do so.

Just Ends Require Proportional Means

One does not have to accept the argument that war is obsolete—as, indeed, few nation states have—to acknowledge the principle that the means employed in war must be proportionate to the ends. This principle is

embedded in the Geneva Conventions and in the texts of international humanitarian law and international human rights law by which all of the NATO countries, the US included, are bound.

The sanitized language used in NATO briefings to describe the campaign of air strikes against Serbia and Kosovo was designed to shield the public from the human, economic, and environmental consequences of the bombings. Nevertheless, the effects of the bombing campaign—and the strategies by which it was pursued—must be scrutinized carefully. The Geneva Conventions prohibit the intentional targeting of civilian populations and non-military assets unless there is clear military necessity. To do so is a war crime and NATO, if it did not cross this line intentionally, skirted it perilously with each formulaic expression of regret over civilian casualties, whether among Serbs, foreign nationals, or Kosovars whom NATO forces were supposed to protect.

While a full accounting is not yet available, large numbers of civilians were killed by the NATO bombings and enormous damage was done to the economic infrastructure and natural environment of the region [see “UN to Assess Environmental Damage from Balkans War,” page 4].

The nature of the air strikes raises another ethical issue. To the extent possible, NATO pursued a no-risk strategy with regard to its own forces. It bombed Serbia and Kosovo from a distance, explicitly to reduce or eliminate casualties among its own troops. The strategy succeeded, but was no less immoral for its effectiveness. Even seasoned military leaders were very uneasy with the notion that they should be willing to kill for their beliefs, but not risk dying for them [4]. Moreover, this reckless strategy could only be implemented by flying high over targets, widening the circles of damage, and increasing the casualty rates among civilians.

The humanitarian NGOs that called for the use of military force to protect the Kosovars did not ask for a protracted campaign of air strikes but for the insertion of ground troops to stand between the Serbian army and its intended Kosovar victims. The world will never know whether such a force could have been configured and employed in such a way to prevent a war and to motivate the Serbians and Kosovars to negotiate a political resolution to their conflict, or whether the result would have been a major European war involving Russia. What we got was an air campaign in which “collateral damage” became a euphemism for the destruction of two suffering peoples.

Noting that “It is an obligation under international humanitarian law to avoid civil-

ian casualties as far as possible," the ICRC worried that "as the air campaign...intensified" there was "a corresponding rise in the number of Serbian civilian victims and increased damage to civilian objects...The destruction of industrial installations has deprived hundreds of thousands of civilians of their livelihood" [5].

Leonard Rubinstein, the executive director of PHR, in a letter to President Clinton dated May 21, 1999 said that while NATO may not have been directly targeting civilians, this rationale "does not justify military operations that are implicitly designed to minimize harm to NATO soldiers at the expense of civilians. Indeed, such rules of engagement, under which NATO appears to be operating, are clearly prohibited under international humanitarian law" [6].

Whose Responsibility to Intervene?

The first casualty of war is the truth, and the first truth to get buried in the Kosovo crisis, by Milosevic himself, was the extent of the atrocities being committed by Serbian troops under his authority. The second was the purpose of the air war as described by NATO. We can take Clinton, Blair, and the other NATO leaders at their word when they say they wanted to create the conditions for a safe and secure return of the refugees and internally displaced people to their homes. But we should not mistake this as NATO's entire, or even primary, agenda. The Clinton administration emphasized three goals at the outset of the air strikes and the President repeated them frequently: defending the Kosovars, ensuring the stability of Europe in the 21st century, and preserving the integrity of NATO [7]. That last goal, conditioned in many respects by the meaning of the second, should give everyone serious pause.

Until the Kosovo crisis became inflamed, NATO found itself in the uncomfortable position of preparing to celebrate its 50th anniversary as an artifact of the Cold War. Even with its expanded membership and its attempts to mollify Russia, the reason for a military alliance on the scale of NATO was becoming increasingly obscure.

The UN, with all its flaws and hampered by a serious lack of financial support, was gaining stature as the umbrella for multinational peacekeeping operations under international law, while the Organization for Security and Cooperation in Europe (OSCE), though underfunded and searching for its niche, was becoming an attractive alternative model for democratic power sharing and conflict mediation.

NATO, however, has one thing nobody else has: control (though essentially US con-

trol) over the world's largest force of conventional and nuclear weapons. The rationale for such forces had become thinner as the Cold War receded into the past and a united Europe with no serious external enemies rose on the horizon. So had the rationale for the amount of money being spent on new generations of high-tech weapon systems. NATO needed a reason to use all but its nuclear weapons (and to retain those) and Milosevic handed it one.

NGOs with the single noble purpose of preventing ethnic cleansing or worse came to the tragic conclusion that NATO presented the only effective means to accomplish this, and so facilitated, like it or not, NATO's entire agenda for the war, including its own self-preservation, its unquestioned dominance as a regional and global military alliance, and its continued ability to bankroll the military-industrial complex, which has depended on NATO for much of its business.

In the cover article of the *New York Times* magazine on March 28, 1999, Thomas Friedman made the role of US and, by extension, NATO military power transparent. In a world defined by global trade, in which national governments find themselves schizophrenically catering to the needs of transnational corporations while doing what they can to protect citizens from the brutalizing effects of globalization, military forces, in particular those of the one remaining superpower, have become the "hidden fist" behind the "hidden hand" of the marketplace [8]. In other words, ensuring a stable Europe at the beginning of a new century—Clinton's second goal for the Kosovo intervention—requires an international police force to remove threats to the smooth running of global business and financial institutions. Such a prospect should horrify anyone who cares about peace, disarmament, human rights, self determination, protection of the environment, democratic values, and civil society.

What Should Have Been Done?

Much more effort should have been made to find a peaceful solution—through the UN, through mediation by Russia and Greece, and through the OSCE—before military action was begun. Instead of removing the 1,400 OSCE observers in Kosovo 20,000 more should have been added. In an unescalated situation their safety would have been greater than the safety of soldiers will now be in an escalated situation. Because there would have been few casualties, public acceptance would have been obtained. Media support could have been stimulated. If necessary appropriate UN sanctions—of a far different type than those imposed on Iraq—could have been imposed on the Milosevic government.

At the time of the formation of the United Nations, however, the world was beginning to understand the horrendous series of human rights violations that had occurred during the 1930s and during the Second World War.

These outrages cut across national borders. The UN Charter, despite the fact that it was drafted by representatives of nation states, begins with the words "We the peoples of the United Nations . . ." and gives as one of the purposes of the UN the determination "to reaffirm faith in fundamental human rights."

The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, enumerates a series of human rights that are intended to be secured for all the people of the world without regard to the nation in which they reside.

The fundamental contradiction in international law and in the procedures of international organizations is seen in the struggle to balance guarantees of national sovereignty of with guarantees of the human rights of all of a nation's inhabitants.

This has led inexorably to the current problems in implementing intervention for humanitarian purposes.

International Humanitarian Law (cont.)

The UN Charter permits military force to be used only under two conditions: (1) as part of enforcement action by a United Nations force (Article 42); or (2) self-defense by an individual nation or a group of nations (Article 51). The use of military force against a nation by another nation or group of nations in order to protect the human rights of a group of people within the borders of an offending nation would therefore only be legitimate under the UN Charter when it is exercised by an international force authorized by the United Nations. This is of course very difficult to achieve within the current UN structure. Perhaps more important, certain types of military force, even if authorized by the UN, are likely only to exacerbate the destruction of the rights, the lives and the health of the people of the nations against which military force is used.

What should be done in the future to resolve humanitarian emergencies and to avoid illegal military action? What follow are some suggestions that point toward long term solutions in a preventive mode, with an understanding that, in the short term, hard choices will have to be made when situations deteriorate.

1) *Ethnic, racial, and class hatred within nations is in part remediable.* Health facilities are viewed as neutral and can be a bridge to both sides of a conflict. (This was a difficult issue in Kosovo since for a decade there has been a sharp divide between the Serbian and ethnic Albanian medical communities, but such an effort may be successful in other regions.)

2) *Conflict based on the vast gap between rich and poor within and among nations is in part remediable.* Funds being spent for war could be used instead for peaceful purposes, such as health programs. Local health projects in conflict regions can bring motivated doctors and other health workers together. To prevent war, a "Marshal Plan" for the main conflict zones needs to be set in motion, but with the goal of greater equity relation between rich and poor than is possible with IMF and World Bank funding.

3) *The Hague Agenda for Peace and Justice* [see page 7] *and the campaigns initiated at the Hague conference in May 1999 offer promise for reducing conflict and preventing war.*

4) *The media must be persuaded to carefully balance news coverage of war.* Editors should be made aware of the importance of including coverage of peace and the successes of peacebuilding.

5) *Governments, NGOs, and the media must inform the public about the extraordinary costs of war—in financial resources, in environmental damage, and in loss of health and life.* We should devote comparable resources to disarmament, international security, just income distribution, conflict mediation, and other methods of avoiding war.

Repairing Progressive Bridges

Peace and disarmament groups largely parted company with human rights and humanitarian groups such as PHR over how to respond to the Kosovo crisis, calling for a ceasefire and a halt to ethnic cleansing, but offering no specific non-military strategies for ensuring the latter. The destruction of the bridge between these two parts of the progressive movement would be more devastating than the destruction of all the bridges crossing the Danube by NATO warplanes. In the end there can be no prospect for peace and disarmament without a guarantee of

human rights and respect for humanitarian principles among parties to conflict. The Geneva Conventions, the Universal Declaration of Human Rights, the Genocide Convention, all the other texts of international human rights and humanitarian law, and the International Criminal Court, to which Milosevic must be delivered as an indicted war criminal, exist for good reason.

Unless peace groups can find common ground with groups such as PHR, which have reluctantly come to the conclusion that some kind of military force may be required to prevent the worst assaults on human dignity and security, people who should be natural allies will find themselves more and more seriously divided over the response to impending humanitarian crises. In the present state of the world, we should at least be open to the possibility that armed peacekeepers under a UN flag will not necessarily perpetuate the war system, but could prepare the way for as-yet-imperfectly-developed means of effective nonviolent conflict resolution. If the peace and disarmament groups are willing to participate in the hard collaborative work of developing real, effective, and not merely rhetorical responses to the actions of a monster such as Milosevic, the human rights and humanitarian groups may not find it necessary to turn to US-led NATO forces in the future.

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