

**HUMANITARIAN WAR IN THEORY  
AND PRACTICE: A CASE STUDY OF THE  
NATO INTERVENTION IN KOSOVO**

**Owen Michael Godfrey, MA**

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## Thesis Abstract

**TITLE: Humanitarian War in Theory and Practice: A**

**Case Study of the NATO Intervention in Kosovo**

This thesis aims to test and refine the theory of humanitarian war through the medium of a case study of the NATO intervention in Kosovo in 1999. Key research questions include: Is 'humanitarian war' a contradiction in terms? To what extent can military force be an appropriate and effective instrument for solving or averting humanitarian crises and ensuring respect for human rights? Is the concept, as some critics argue, too easily abused by powerful states seeking to justify wars fought for self-interested reasons?

The thesis will look at the arguments of both proponents and critics of the concept of humanitarian war. The aim is to provide an immanent critique of the theory, judging it on its own terms; therefore when the arguments of critics are considered, the main emphasis will be on critics who come from within the liberal spectrum, rather than on realists or communitarians. It will examine the theory in terms of its three aspects- the *jus ad bellum*, *jus in bello* and *jus post bellum*- with the aim of taking a 'longer view' of intervention than is often the case in the existing literature, viewing it not as a discrete event but as part of a complex long-term process.

The case of Kosovo was chosen as a recent intervention that has often been cited as a good example of a humanitarian war, and one which most proponents of the concept supported, at least in principle.

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# Introduction

The idea of 'Humanitarian War' - of the use of military force to defend the human rights of oppressed groups, to force an oppressive regime to change its policies or to avert a humanitarian catastrophe- has gained considerable currency in the study of international relations in the period since the end of the Cold War. The concept is, however, an extremely controversial one- indeed, it may be regarded as being doubly contested. Firstly, it is contested from outside the liberal tradition of international relations theory, by communitarians who argue that 'human rights' are culturally specific to the West and by realists who argue that state sovereignty should not be violated on grounds of humanitarianism- because moral action is only truly possible within the state, not in the anarchical global society, and because a right to humanitarian intervention would be abused by unscrupulous governments acting in their own interest.

More intriguing, however, is the debate that is occurring within the liberal and progressive spectrum. Some scholars have argued that the rise of the idea of 'humanitarian war' marks a positive development- even the creation of a new system of international relations, in which "power is used to do justice" (Michael Glennon)<sup>1</sup>- replacing the old system, under which justice was always trumped by order. Others, however, remain sceptical. They argue that military force is too destructive and indiscriminating an instrument to be used for humanitarian ends;

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<sup>1</sup> M. Glennon, 'The New Interventionism: The Search for a Just International Law', *Foreign Affairs* Vol.78/3 (May/June 1999), p.6

that the idea of humanitarian war merely serves to legitimise war; that forcible intervention by outsiders is only likely to exacerbate internal conflicts rather than solve them; and that the concept is far too easily abused by powerful states to serve their own ends. Fundamentally, they argue that ‘humanitarian war’ is a contradiction in terms.

The intention of this thesis is to provide a contribution to these debates within the liberal and progressive spectrum by analysing and evaluating the theory of humanitarian war through the medium of a case study. The case chosen is the NATO intervention in Kosovo of March-June 1999.

The intention of this thesis is to provide an immanent critique of the theory of humanitarian war, judging it largely on its own terms, to see whether it lives up to its own claims. Therefore, when the various schools of criticism of the idea of humanitarian war are considered, the main emphasis will be on those critics who accept the basic liberal principles of human rights, rather than on those critics who come from outside the liberal tradition (for example, communitarians, who reject the universality of human rights, and classical realists who reject even the possibility of morality playing a role in international relations).

A single case study approach has been adopted in part because most existing studies of humanitarian war consist of fairly brief examinations of multiple cases, and it was felt that, despite the potential drawbacks of studying only one case (these matters will be explored in more detail in Chapter Two), the gain in depth would enable a greater contribution. The reasons why the Kosovo intervention was chosen as the case to will, again, be looked at more fully in Chapter Two.

However, it may be worth making some preliminary remarks here on the special peculiarities of this war which make it particularly appropriate for use as a case study in a thesis such as this.

When the North Atlantic Treaty Organisation launched air strikes against Serbia in March 1999, justifying this as an action to avert a humanitarian catastrophe in the province of Kosovo, many hailed this as the first true humanitarian war. The debate over the Kosovo conflict mirrored the broader debate over humanitarian war, with supporters praising NATO for implementing its noble values by force, while opponents argued that the intervention was making the situation worse or that humanitarian rhetoric was being used as a cover for state interests. A prominent supporter described the conflict as “the first war that has not been waged in the name of ‘national interests’ but rather in the name of principles and values” (Vaclav Havel)<sup>2</sup>, while an opponent called it “an epilogue to another ‘Low and Dishonest Decade’” (Ken Booth).<sup>3</sup>

The NATO intervention in Kosovo marked an important milestone in the history of humanitarian intervention as it was the first time that a full-scale military intervention against a functioning sovereign state had won a significant degree of international support specifically as a humanitarian war. Though the intervention was neither authorised nor officially endorsed by the UN Security Council, when Russia and China introduced a resolution condemning the bombing it was defeated by 12 votes to 3. In all of the main previous cases that have been

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<sup>2</sup> V. Havel, cit. in R. Falk, ‘Kosovo, World Order and the Future of International Law’, *American Journal of International Law* Vol.93/4 (1999), p.848

<sup>3</sup> From title of article in K. Booth ed. *The Kosovo Tragedy: the Human Rights Dimensions*, London, Frank Cass, 2001

widely cited in international relations literature as examples of humanitarian war, either the intervening power officially justified its actions on the grounds of self-defence rather than humanitarian concern (as with India's invasion of Pakistan in 1971, Vietnam's invasion of Cambodia in 1978-9 and Tanzania's invasion of Uganda at the same time), or else intervention took place in a 'failed state' where there was no legitimate governing authority, so questions of sovereignty did not arise (as with the US intervention in Somalia in 1992-3).

In contrast, in the case of the Kosovo intervention spokesmen for the NATO powers consistently cited the humanitarian aims and motives for their actions. British Prime Minister Tony Blair said of NATO's intervention that "we are fighting for a world where dictators are no longer able to visit horrific punishments on their own peoples.... We are fighting not for territory but for values. For a new internationalism where the brutal repression of whole ethnic groups will no longer be tolerated."<sup>4</sup>

Therefore, the war in Kosovo provides the best single piece of evidence for those who argue that a right to humanitarian intervention may now be said to have become accepted in international customary law. This debate is a long-standing one, and the answer is still by no means clear-cut, but with the war in Kosovo, the momentum of the debate did seem to shift in favour of those arguing that the right to humanitarian intervention did exist (although that momentum may since have been reversed by the Iraq war).

This thesis will not attempt to touch on the very involved- and, at the time of writing, probably unanswerable- legal question of whether the right to

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<sup>4</sup> T. Blair, 'A New Generation Draws the Line', *Newsweek* 19 April 1999

humanitarian intervention exists. Rather, it has a normative focus; it deals with the question of whether a right to forcible humanitarian intervention *should* exist, and what the consequences of the use of such a right are likely to be.

Another major aim of this thesis is to examine a case of humanitarian war from a long-term perspective (or at least, longer than is the case in much of the existing literature), taking into account not only the military intervention itself, but its aftermath and events preceding it- in both cases, over a timescale of several years. In most existing examinations of humanitarian intervention, the timescale employed tends to be fairly restricted; the events immediately preceding an intervention are looked at, and sometimes the immediate aftermath, but in general the focus is very much on the intervention as a discrete event. In particular, though some theorists are beginning to examine the issue of *jus post bellum*, the question of what should happen after an intervention has not been touched on to any great degree, despite its obvious importance (consider the widespread condemnation of the disastrous aftermath of the Iraq war and the failure of the US government to draw up a coherent plan for what should happen after its forces had overthrown the Hussein regime). Equally, it will be argued in this project that the conventional understanding of the *jus ad bellum* in cases of humanitarian intervention is not sufficiently complex. The existing literature concentrates on the actions of intervening powers, aiming to arrive at a list of criteria for when it may be legitimate for them to use military force to prevent or end a humanitarian crisis. Where intervention occurs in an internal conflict, as was the case in Kosovo, the two conflicts- the civil war and the international intervention- tend to be viewed as

separate. The actors directly involved in the crisis- whether those seen as responsible for it or those made to suffer by it- tend to be viewed as ‘villains’ and ‘victims’ who must be stopped or saved. The ‘victims’ in particular tend to be viewed in a rather passive way. This thesis will aim to take a more rounded view of the events preceding an intervention, showing how the prospect of a military intervention occurring in the future can have an impact on the strategies pursued by actors in an internal conflict. The aim, then, is to show how military intervention by outsiders is only a part of a complex and long-term process in which the strategies pursued by all of the actors involved can each be influenced by the strategies pursued by other actors.

For primary materials, this thesis relies mainly on media reports and on the documentary evidence, drawn from such sources as government and parliamentary reports, reports by international organisations such as the UN and OSCE, and by international NGOs such as the Red Cross, Human Rights Watch (an organisation supportive in principle of the idea of humanitarian intervention, and hence concerned to ensure that it is not abused) and the International Crisis Group.

Chapter One sets out the theoretical background to the project. It begins by providing an overview of the historical and ethical background of humanitarian war. The main body of the chapter is concerned with the details of the theory itself, attempting to draw out from the literature a composite set of *jus ad bellum*, *jus in bello* and *jus post bellum* criteria for a legitimate humanitarian war that might be acceptable to most theorists in the area. It then details the arguments of five schools of critics of the concept; these will be used as countertheories when

we come to the case study. The section on *jus post bellum* will of necessity be less definitive as much less theoretical work has been done on the matter of what intervening powers should do after the military phase of their action is over, compared to the issues of what they should do before or during it. Therefore in the area of *jus post bellum* the aim will be to set out a tentative list of possible positions on this issue, rather than a solid list of criteria.

Chapter Two has two parts. The first section sets out the methodological approach used in the project and establishes the reasons for choosing a single case study approach rather than the multiple-case approaches that are more commonly used in studies on this subject. The second section lists the main conflicts in recent history that have been cited in at least some quarters as examples of humanitarian war, in an attempt to show the reasons why the NATO intervention in Kosovo was chosen as the case study over all of these other possible examples.

Chapter Three consists of a case history of the development of the conflict in Kosovo prior to the NATO intervention, with detailed coverage beginning from the time of Milosevic's rise to power in the late 1980s. It concentrates mainly on internal events, although the actions of outsiders are mentioned where these had an impact on the strategies pursued by the internal actors in the conflict. It will be seen that this impact was considerable.

Chapter Four deals with the international prehistory of the conflict, attempting to fit Kosovo to the set of *jus ad bellum* criteria for a humanitarian war arrived at in Chapter One- particularly those of 'last resort', 'supreme emergency' and

'humanitarian motives' - and to see what the case tells us about how these criteria relate to reality.

Chapter Five deals with the course and conduct of the intervention itself- between the launching of the first bombing raids on 24 March and the signing of the Paris Peace Accords in early June- and its relation to the established criteria for *jus in bello*. Sections in the chapter will focus on the most controversial elements of the methods used by NATO- for example, the bombing of a Serbian TV station and the use of cluster munitions- and on the debate over whether NATO should have used ground forces rather than relying purely on aerial bombing.

Chapter Six deals with the aftermath of the military intervention in Kosovo, the main focus being on the period between the end of the bombing and the riots of March 2004, with briefer coverage of more recent events up to the time of writing. These events will be related to the concept of *jus post bellum* in an attempt to draw out lessons for this important but currently under-theorised aspect of humanitarian intervention.

## Chapter One

# The Theory of Humanitarian War

Adam Roberts describes “humanitarian war” as “an oxymoron which may yet become a reality”.<sup>1</sup>

The phrase itself is a relatively new one- it has only really entered the lexicon of international relations theory in the past decade, although the idea of humanitarian intervention has been around for much longer. This concept itself grows out of a particularly ancient tradition: that of Just War theory, which has been around, in one form or another, for well over a thousand years.

The aim of this chapter is to explore and analyse the theory of ‘humanitarian war’. This will be done firstly by situating the concept in its wider theoretical and ethical framework. This will require not only an analysis of Just War theory, but also an exploration of the wider liberal and human-rights traditions of ethics in international relations, which have produced the idea that morality has a place in warfare. Having established this background, the chapter will then move on to a close analysis of the theory of humanitarian war itself.

It will be seen that, although there are some disagreements among theorists- for example, with regard to the importance of motive in assessing the legitimacy of intervention- in general, theorists are in broad agreement on the criteria for a

legitimate humanitarian war. The problem, then, for this thesis lies not in defining the ideal of humanitarian war but in evaluating it. To this end, this chapter will also detail the arguments of the leading critics of the theory. This criticism comes from many quarters- for example, from realists who reject the relevance of moral standards to foreign policy, from communitarians who doubt the universal applicability of liberal ideals of human rights, and from pragmatists who argue that the idea collapses under the weight of its own contradictions. However, as stated in the Introduction, the intention of this study is essentially to evaluate the theory of humanitarian war on its own terms: i.e. by accepting the fundamental assumptions of the liberal tradition. Therefore, although criticisms from outside this tradition- for example, those based on the argument that the concept of 'human rights' is a fundamentally Western construct with no validity across cultures- will be noted at the appropriate point, they will not be dealt with at length as they do not form an important part of the argument of this project. Most attention will be paid to criticisms from a liberal or 'hedged realist' point of view- that is, from theorists who accept such liberal nostrums as the value of basic human rights and the possibility of judging state action in moral terms. It will be found that, even with these restrictions, one can still find a number of powerful lines of critique of the whole idea of fighting wars in the name of the protection of human rights.

Conventional Just War theory has two parts: the *jus ad bellum*, (justice of war), which deals with questions of what the appropriate reasons are for justifying the

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<sup>1</sup> A. Roberts, 'Humanitarian War': Military Intervention and Human Rights', *International Affairs* Vol.69/3 (1993), p.429

use of military force, and the *jus in bello*, ('justice in war') which concerns the rules of conduct for belligerents. Both of these will be dealt with in this chapter, but it will be argued that to be complete, the theory of humanitarian war also requires a third element: the *jus post bellum* (justice after war).

### **1.1 The Wider Background: Ethics and International Relations**

The concept of humanitarian war belongs firmly within the liberal tradition of international ethics, although it is a highly contested idea even among liberals. Indeed, Smith argues that the predominant strand in the liberal tradition has been that of noninterventionists who believe that freedom is best promoted by example rather than force.<sup>2</sup> But all of the main theorists of humanitarian war argue their case from a fundamentally liberal (or social constructivist) standpoint. Therefore, in order to fully understand the concept, it is necessary to at least briefly explore the ethical background to the liberal approach to IR.

Central to the liberal tradition of international ethics are ideas of human rights- usually understood in a negative sense, as rights of liberty against the state- and of the authority of reason.<sup>3</sup> From these is argued that it is possible to judge the actions of states in terms of moral standards arrived at through reason, and in some measure to regulate the actions of states in order to promote and ensure the protection of human rights worldwide. The existence of such rights is typically taken as given; rights are seen as morally fundamental, their protection to be

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<sup>2</sup> M. Smith, 'Liberalism and International Reform', in T. Nardin & D. Mapel, eds. *Traditions of International Ethics*, Cambridge, Cambridge University Press, 1992, p.213

<sup>3</sup> T. Mapel & D. Nardin, 'Convergence and Divergence in International Ethics', in *Ibid* p.313

observed as a matter of course rather than as an occasion for gratitude. In the liberal view, these ideals are placed above the concept of state sovereignty, the main organising principle of the Westphalian state system. Although most liberals do not wish to abolish states- largely because of their fears of the potential coercive power of a single world state- they believe that, at least in some measure, their actions can and should be subject to regulation.

The significance of these founding principles can easily be understood by comparing them with the founding principles of the rival realist tradition. Though their reasons differ, theorists from the various schools of realism agree that the first principle of international politics is that of the sovereignty of states; this takes precedence over moral judgements of their actions. At least, this is how the realist position is usually presented in liberal literature. Some realists would argue that this is a caricature, and that realism is merely based on a different kind of morality morality to the liberal tradition- the ‘morality of states’.<sup>4</sup> I will deal with this issue later.

Under the classical realist view, as espoused most famously by Machiavelli and Hobbes, there is no morality in foreign policy. The idea that the exercise of reason can produce a more peaceful global order is rejected, since a powerful state may ‘reason’, entirely correctly, that it in its interests to subjugate other states: “Reason may as easily enlarge the realm of the dominion of an imperial self, as mitigate expansive desires in the interests of the harmony of the whole” (Niebuhr).<sup>5</sup> States exist within a completely anarchic system; a Hobbesian state of nature, the result

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<sup>4</sup> C. Thomas, ‘The Pragmatic Case Against Intervention’, in I. Forbes & M. Hoffman, eds. *Political Theory, International Relations and the Ethics of Intervention*, London, Macmillan, 1993, p.92

of which is a constant struggle for power, fuelled by “competition”, “diffidence”, and “glory”.<sup>6</sup> Morgenthau writes that “foreign policy, like all politics, is in its essence a struggle for power, waged by sovereign nations for national advantage.... By its very nature this struggle is never ended, because the lust for power, and the fear of it, is never stilled.”<sup>7</sup> The nature of the system therefore absolves states of any moral duties whatsoever. There is no distinction between ‘just’ and ‘unjust’ wars; immoral acts are not merely permissible but positively required,<sup>8</sup> since any state whose rulers attempt to live by moral standards will simply not survive. Machiavelli argues that it is impossible for a prince to be both good and successful, so he must be prepared to do evil: it is, however, important that he should avoid the bad reputation attached to vices.<sup>9</sup> Therefore, morals are only of use in an instrumental sense; a Machiavellian prince pretends to be acting morally in order to reassure his followers, thus adopting a policy of deceit and hypocrisy.<sup>10</sup>

The idea that morality in IR is of purely instrumental importance has endured as a strand in modern realism. For example, Henry Kissinger argued that the real aim of the ‘human rights’ policy of the Carter administration- supposedly an attempt to inject morality into foreign policy- was “to give the American people, after the traumas of Vietnam and Watergate, a renewed sense of the basic decency

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<sup>5</sup> Niebuhr in J. Donnelly, ‘Twentieth Century Realism’, in Nardin & Mapel op.cit. pp.92-3

<sup>6</sup> S. Hoffmann, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics*, Syracuse, Syracuse University Press, 1981, p.11

<sup>7</sup> H. Morgenthau, *In Defense of the National Interest: A Critical Examination of American Foreign Policy*, London, Macmillan, 1951, p.92

<sup>8</sup> S. Forde, ‘Classical Realism’, in Nardin & Mapel op.cit. p.64

<sup>9</sup> N. Machiavelli, *The Prince*, London, Penguin, 1961, p.50

<sup>10</sup> Forde in Nardin & Mapel op.cit. p.69

of this country.”<sup>11</sup> Mertus makes a similar point in more convoluted language by describing the use by the US of human rights language as a “bait and switch tactic.... Politicians champion human rights in order to induce desired behaviour in others and to nurture a positive self-image.”<sup>12</sup>

If any state were ever to adopt in good faith a genuine policy of human rights promotion, then it would be doomed to fail, since human rights violations result from ineradicable flaws in human nature- understood by realists as essentially egoistic- and are unlikely ever to end. The best that can be hoped for is for states to follow a rational and prudent course in pursuit of their own self-interest.<sup>13</sup> George Kennan writes of US foreign policy in this context that, since the primary obligation of government “is to the *interests* of the national society it represents, not to the moral impulses that individual elements of that society may experience”<sup>14</sup>, humanitarian interventions “can be formally defensible only if the practices against which they are directed are seriously injurious to our interests, rather than just our sensibilities.”<sup>15</sup>

On this view, there is no reason for a state to be ashamed about acting only in its own self-interest. Indeed, that is the only sane course to pursue, since any attempts by a state to base foreign policy on universalist moral precepts are bound to end in failure, and to have serious adverse consequences for that state. This leads some to doubt the idea that morals are even of instrumental importance.

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<sup>11</sup> Kissinger cit. in Donnelly in Ibid pp.103-4

<sup>12</sup> J. Mertus, ‘Bait and Switch? Human Rights and US Foreign Policy’, Foreign Policy in Focus Policy Report, Mar 2004, <http://www.fpif.org/papers/2004/rights.html>

<sup>13</sup> Donnelly in Nardin & Mapel op.cit. p.93

<sup>14</sup> G. Kennan, ‘Morality and Foreign Policy’, *Foreign Affairs* Vol.64 (2), 1985-6, p. 206

<sup>15</sup> Ibid p.209

Morgenthau and Kennan agree that it is best for a government to be open about the fact that it is acting in its own self-interest rather than relying on moral rhetoric to justify its actions, as the latter course may lead to unexpected complications. Morgenthau gives the example of the Truman doctrine, formulated by the US government to justify providing aid to anti-Communist forces in Greece and Turkey in the late 1940s. Morgenthau argues that the US should have justified these operations as being in its own national interest. Instead Truman relied on universal moral principles- supporting democracy against tyranny- which meant he committed the US to the onerous task of resisting Communist expansion at any time, anywhere in the world- even in places that had no strategic importance for the US. He concludes that a moral approach to foreign policy puts into jeopardy “the objective, be it moral or political, for which the political action is being undertaken.”<sup>16</sup> Kennan states similarly that “where measures taken by foreign governments affect adversely American interests rather than just American moral sensibilities, protests and retaliation are obviously in order; but they should be carried forward frankly for what they are, and not allowed to masquerade under the mantle of moral principle.”<sup>17</sup>

Liberals reject this view on two grounds; one normative, the other empirical. They argue firstly that the extreme realist view is unacceptable since it leads to absolute moral nihilism<sup>18</sup>; secondly, that “it is based on a conception of international ‘state of war’ that is not the permanent reality- and... to follow its

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<sup>16</sup> Morgenthau op.cit. pp.115-6

<sup>17</sup> Kennan loc.cit. p.211

<sup>18</sup> L. McCarthy, ‘International Anarchy, Realism and Non-Intervention’, in Forbes & Hoffman op.cit. p.87

precepts could turn international politics into such a state of war, and leave little room for improvement.” (Stanley Hoffmann)<sup>19</sup> “Most of the time,” argues, Brown, “international law is effective, the underlying institutional fabric of international life holds together.”<sup>20</sup> This does not mean that the system is perfect, nor that states always act altruistically; but “the norms and practices of international society mandate enlightened, rather than narrow, self-interest”, and “an ethical dimension to foreign policy...is actually part of what is involved in the very idea of membership in international society.”<sup>21</sup> In *The Law of Peoples*, a classic statement of the liberal view of international ethics, John Rawls argues that world politics has fundamentally changed since the days of classical realists like Thucydides, Machiavelli and Hobbes, partly due to the rise of ideas of social reform and also due to the growth of commerce, which creates a more interdependent world and therefore tends to encourage peace by increasing the costs of war.<sup>22</sup>

Rawls, like other liberals, sets great store in the idea of ‘democratic peace’; the argument that the spread of liberal democratic regimes should make war less and less likely, since it can be empirically shown that settled liberal democracies do not go to war against each other.<sup>23</sup> From this it is argued that liberal states do not act in the way that realists postulate, seeking dominance and glory, since they are

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<sup>19</sup> Hoffmann op.cit. p.191

<sup>20</sup> C. Brown, ‘Ethics, Interests and Foreign Policy’, in K. Smith & M. Light, eds. *Ethics and Foreign Policy*, Cambridge, Cambridge University Press, 2001, p.52

<sup>21</sup> Ibid pp.25-6

<sup>22</sup> J. Rawls, *The Law of Peoples*, Cambridge (Mass.), Harvard University Press, 1999, p.47

<sup>23</sup> Ibid p.51 Of course, the mere fact that there is a correlation between democratic systems of government and peaceful relations between these governments does not prove that the one causes the other. Until recently, it could also be empirically shown that states with at least one McDonald’s outlet within their borders never went to war with each other, producing the so-called ‘Golden Arches Theory of Conflict Prevention’ (associated with Thomas Friedman, the columnist

“satisfied peoples” with “nothing to go to war about”- except when their existence is threatened by an “outlaw state”.<sup>24</sup> One can argue about the extent to which the ‘democratic peace’ thesis actually holds true in the real world- a number of Cold War-era interventions by the United States in Latin American countries such as Guatemala, Chile and Nicaragua could be seen as invalidating the argument, depending on how one defines a liberal democracy (and how one defines a war). And a realist might argue the converse- following Rousseau, who believed that even a state with the most just internal arrangements might engage in an aggressive war, and that increasing commerce was more likely to promote competition and conflict between states than it was to lead to greater cooperation. But this argument is still seen as providing important ballast for the liberal position.<sup>25</sup>

It is the case that many self-styled realists do not accept what Brown describes as ‘pop realism’- the idea that states only ever act in a self-interested fashion.<sup>26</sup> The more nuanced realist view, that morals have a place in international politics if they do not conflict with the interests of power, or that morals are “operative but not controlling” (Thompson), has been called “hedged realism”.<sup>27</sup> Other realists adopt a moral standpoint themselves, basing their support for the sovereignty principle on the idea of the “morality of states”. On this view, which can be dated back to Hobbes, only a social contract can make moral action possible; and social

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and world-class windbag). This theory was, however, disproved by the war in Kosovo: the NATO bombing took place despite the presence of a McDonald’s in Belgrade.

<sup>24</sup> Ibid p.48

<sup>25</sup> Forde in Nardin & Mapel op.cit. p.78

<sup>26</sup> Brown in Smith & Light op.cit. p.24

<sup>27</sup> Donnelly in Nardin & Mapel op.cit. p.96

contracts only exist at the state level. Therefore states have a moral duty to preserve their own existence above all else. Modern-day adherents of this thesis tend to adopt a utilitarian position, arguing that the state is the only real common value in international politics, and that “experience suggests that the morality of states does not result in any greater hardship to people than the international moralities which have been propounded during this century.”<sup>28</sup> Liberals attack these arguments as being self-contradictory- attempting to defend on moral grounds the rejection of moral standards- or incoherent. Attempting to defend state sovereignty on the grounds of the ‘morality of states’ runs up against the obvious problem of how this applies to those states where the government flouts every conceivable moral code. Are such states entitled to sovereignty? If they are not, this makes the realist point of view virtually indistinguishable from the liberal one; and if they are, the whole idea of the state as a moral entity would seem to collapse.

The other main line of attack on the liberal ethical tradition has come from those who see liberal values as culturally specific and non-applicable to societies outside the West. In the field of international relations theory, this argument is reflected in the debate between liberal ‘cosmopolitans’, who argue that ethical principles must apply to all human beings equally, and ‘communitarians’, who “argue that the category ‘human’ is meaningless and that concrete categories such as ‘liberal’, ‘Muslim’, ‘American’ or ‘Slavic’ have far more content and should

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<sup>28</sup> C. Thomas, ‘The Pragmatic Case Against Intervention’, in Forbes & Hoffman op.cit. p.92

thus be accorded ethical superiority.”<sup>29</sup> On this argument, the universalisation of liberal values is either undesirable- since there is no means of knowing a priori that liberal values are superior to all other traditions<sup>30</sup>- or else simply unenforceable.

Many liberals accept, at least in some measure, that, in Sutch’s words, “there is nothing in the logic of ethical theory that requires that we ignore the existent plurality of political and ethical value-systems”<sup>31</sup>, and that, given this plurality, a cosmopolitan liberal utopia is in any case impossible in the international system as it currently stands. Hence liberal theorists have expended considerable effort in producing an ethical project for international relations that would be acceptable to- to use Rawls’s term- “reasonable non-liberal peoples”. This is done by reducing the liberal list of human rights to a minimalist set of basic rights which can be seen as genuinely universal while still being meaningful- that is, they are “sufficiently extensive to ensure that their universal realisation would safeguard a basic level of decency in all societies; and they are sufficiently restricted so ensure that they do not upset national and cultural sensibilities.”<sup>32</sup> Rawls expends considerable effort in showing how what he calls a “decent hierarchical society”<sup>33</sup> would freely accept a system of international law in which such basic rights were protected.

In recent times, liberal accounts of international ethics have tended to be characterised by an optimism that the liberal project is, if still far from being realised, at least in the process of being accepted. Perhaps historically, as

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<sup>29</sup> P. Sutch, *Ethics, Justice and International Relations: Constructing an International Community*, London, Routledge, 2001, pp.2-3

<sup>30</sup> Ibid p.207

<sup>31</sup> Ibid p.110

<sup>32</sup> R.J. Vincent & P. Wilson, ‘Beyond Non-Intervention’, in Forbes & Hoffman op.cit. p.92

<sup>33</sup> Rawls op.cit. p.63

Hoffmann has said, “international affairs have been the nemesis of liberalism”; the international system has proved very resistant to reform.<sup>34</sup> But there are signs, it is said, that this is changing. The increase in the number of liberal democratic governments is itself a good thing, since this should lead to less conflict, for reasons stated above. But more than that, liberal optimists discern that “there has developed within sovereign states a realm that may now be legitimately scrutinised by other sovereign states.”<sup>35</sup> That is, the cloak of sovereignty is no longer so opaque as to allow a state to get away with violating basic human rights without facing criticism, or indeed action, from other states. Just what forms this action can legitimately take, and how effective it is likely to be, are central questions to the debate over humanitarian intervention- and, as will be seen later, even liberals are deeply divided on these issues. But before moving on to a direct discussion of the question of intervention, it would be wise to say a few words about Just War theory.

### **1.2 The Justice of Injustice: Just War Theory**

Before exploring the subject of Just War theory, it should be noted that, although most theorists of humanitarian intervention see themselves as working within the Just War tradition, there are at least a few who deny the relevance of these theories to their work. Frost, for example, argues that “humanitarian intervention is not best understood as an action which fits into theories of just warfare”, since it does not inherently involve states. Instead, humanitarian intervention “is undertaken by

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<sup>34</sup> Smith in Nardin & Mapel op.cit. p.201

<sup>35</sup> Vincent & Wilson in Forbes & Hoffman op.cit. pp.126-7

rights holders seeking to protect fellow rights holders”- they may use states to achieve this end, but such states are only acting on behalf of global civil society.<sup>36</sup> However, this view does not seem to be particularly convincing. Firstly, however much the autonomy and power of the state is being eroded in the modern world, states and alliances of states are still the essential actors in the instigation and conduct of warfare: ‘global civil society’ does not yet have an army. In any case, even if one accepts Frost’s contention that humanitarian warfare is conducted on behalf of non-state actors, there seems to be no reason why the tenets of Just War theory should only apply to states. Rawls, in *The Law of Peoples*, treats ‘peoples’ rather than states as the key actors in his scheme of international order, but sees no problem in arguing that ‘peoples’ are bound by the rules of just warfare.<sup>37</sup> In any case, having made his argument, Frost then goes on to list a series of criteria for humanitarian intervention, which with one exception- discussed below- do not differ greatly from those arrived at by theorists expressly working from within the Just War tradition. So, for practical purposes, the distinction can be regarded as unimportant.

If the idea of a humanitarian war seems strange at first hearing, then the term “Just War” appears equally oxymoronic. Even if fought with the best of intentions and with the most advanced technology, war remains unavoidably an unjust activity in terms of its impact on individuals. There is no act more unjust than the killing of innocent people, and this occurs routinely in war; indeed, in most of the wars in the second half of the twentieth Century, civilian deaths far outnumbered

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<sup>36</sup> M. Frost, ‘The Ethics of Humanitarian Intervention: Protecting Civilians to Make Democratic Citizenship Possible’, in Smith & Light op.cit. p.52

military deaths. Wells points out that the notion of the “Just War” is essentially an attempt to show that under some circumstances it is ‘just’ to perform immoral acts and to contribute to evil consequences- thus indicating an inherent contradiction.<sup>38</sup>

But, puzzling and possibly incoherent as it may be, the term is an ancient one; the idea of the ‘Just War’ was around long before International Relations was established as a discipline. Philosophising on the morality of conflict can be traced back at least as far as St. Augustine in the 6th century AD. The subject was at first treated as a question of religious philosophy, but it was still some 400 years ago that political and legal scholars first began to establish a secular version of the ‘Just War’ doctrine. It would not be relevant here- nor is there the space available- to provide a narrative history of the development of Just War doctrine. However, since the basic tenets of the theory have remained relatively unchanged over time, the contributions of some of the early theorists are worth mentioning; particularly those of Hugo Grotius (1583-1645). Grotius removed the subject from its previous grounding in theology by arguing that war could not justly be made against those who refused to accept Christianity.<sup>39</sup> He also established one of the basic principles of the doctrine- that of noncombatant immunity. He argued that noncombatants are almost certainly ‘innocent’ in terms of responsibility for any given conflict, that harming them does no good and that sparing them may be practically useful as it creates an appearance of humanity and compassion<sup>40</sup>

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<sup>37</sup> Rawls op.cit. p.3

<sup>38</sup> D. Wells, ‘How Much Can the Just War Justify?’, *Journal of Philosophy* Vol.66/23 (1969), p.834

<sup>39</sup> S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford, Oxford University Press, 2001, p.11

<sup>40</sup> G. Best, *War and Law Since 1945*, Oxford, Clarendon Press, 1994, p.26

(evidence that the concept of perception management in war- a major and much-remarked upon feature of the Kosovo conflict- is by no means a recent invention).

In the last thirty years, Just War theorising has enjoyed something of a renaissance, with theorists such as Michael Walzer formulating contemporary Just War doctrines. This development can be ascribed partly to the Vietnam War, which led to a huge upsurge of liberal agonising in American academic circles over the rights and wrongs of that particular conflict- and therefore, by extension, over the morality of war in general.<sup>41</sup> Another important factor has been the rise of the mass media, and particularly the virtual universalisation of TV ownership in Western states. Whatever the imperfections of war coverage on television, and however sanitised and distorted the picture provided has tended to be, TV has- to use the usual cliché- “brought the horrors of war into people’s homes”. Thereby it has produced a growth in humanitarian public sentiment, a factor of which governments have been forced to take note. There is of course nothing remotely new about governments seeking to obtain the ‘moral high ground’ in any given concept in order to ensure popular approval; but the message now has to be more sophisticated than it once was.

In its modern form, Just War theory has been largely secularised. Though some contemporary work still does come from a religious standpoint, the concept has been effectively adopted by liberals, so that its tenets reflect the liberal ethical tradition in IR. But Just War theory has from its early days faced criticism from those who argue that war is too inherently unjust an activity for it ever to be

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<sup>41</sup> M. Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (2<sup>nd</sup> ed.), New York, Basic Books, 1992, p.xi

'justified'. Perhaps the most prominent such critic was Immanuel Kant, according to whom "the concept of international right becomes meaningless if interpreted as a right to go to war. For this would make it a right to determine what is lawful not by means of universally valid external laws, but by one-sided maxims backed up by physical force."<sup>42</sup> For Kant, the ultimate aim was to abolish war altogether as an instrument of politics. So while, on a case-by-case basis, one might reluctantly conclude that a particular war was either necessary or excusable, no war can ever be called 'just'; and one should never attempt to legitimise concept of war in the way that Just War theory does. The recent renaissance of the theory has also provoked a Kantian backlash from scholars such as Ken Booth, who criticises Just Wars for, among other things, honouring and legitimising war, promoting militarisation and feeding self-righteousness.<sup>43</sup>

The other main strand of criticism has come from realists, who- reflecting the view of morals as only being of instrumental importance in IR- have tended to see Just War theories merely as ways of cloaking the pursuit of state self-interest. They are "scarcely distinguishable from mere ideologies the purpose of which is to provide a spurious justification for almost any use of force."<sup>44</sup>

### 1.2.1 The Key Tenets of Just War Theory

Although there has unsurprisingly been considerable change and controversy over the detail of the theory (for example, over what exceptions there might be to the

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<sup>42</sup> I. Kant, 'Perpetual Peace: A Philosophical Sketch', in *Political Writings*, ed. H. Reiss, Cambridge, Cambridge University Press, 1991, p.106

<sup>43</sup> K. Booth, 'Ten Flaws of Just Wars', in K. Booth ed. *The Kosovo Tragedy: The Human Rights Dimensions*, London, Frank Cass, 2001, p.323

principle of noncombatant immunity), the basic principles of Just War theory have not changed much over the centuries. The first of these is that any war, to be called just, must be justified twice. The first justification takes place in terms of the reasons the states involved have for going to war (the *jus ad bellum* or ‘justice of war’); and the second in terms of the means they use to fight the war (the *jus in bello* or ‘justice in war’).<sup>45</sup> This dichotomy will be used in this thesis to provide a structure for the case study. But there will be added to these a third justification, the *jus post bellum* or justice after war, which, it will be argued, should be added to the usual two- at least in the case of humanitarian wars.

### **1.3 The *Jus ad Bellum***

Just War theorists generally posit three acceptable reasons for going to war: self-defence, response to aggression and humanitarian intervention.<sup>46</sup> The first two are uncontroversial, at least in principle (unless one rejects the whole concept of the state system), being just as acceptable to realists as they are to liberals. Both have been enshrined in the UN Charter. This project, however, deals with the third justification. This has always been highly controversial; because, unlike the first two, it involves the violation of the key organising principle of the modern international system: state sovereignty.

At around the same time that religion was losing its place at the core of Just War theory, the emergence of the Westphalian state system saw sovereignty replace theology as the organising principle of international relations. The norm-

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<sup>44</sup> Donnelly in Nardin & Mapel op.cit. p.10

<sup>45</sup> Walzer op.cit. p.21

in theory anyway- was now that one state should not interfere in the affairs of another. So, a key question for theorists became, whether there any circumstances under which the principle of non-intervention could be justly overridden- and if so, what were they? As the controversy over Kosovo illustrates, this question remains a central one in IR.

### 1.3.1 Humanitarian Intervention

Humanitarian intervention is defined by Ian Brownlie as “the threat or use of armed force by a state, a belligerent community, or an international organisation, with the object of protecting human rights”.<sup>47</sup> The term was first used by Edward Hall in 1880, though the history of the concept goes back much further.<sup>48</sup> ‘Solidarist’ international theorists (to use Wheeler’s term) argue that “states that massively violate human rights should forfeit their right to be treated as legitimate sovereigns, thereby morally entitling other states to use force to stop the oppression”.<sup>49</sup> The case for the necessity of humanitarian intervention rests on the moral idea that extreme abuse of human rights creates a right- or even, perhaps, a duty- of response from the international community, and that, if necessary, states must be prepared to back up their values with military force. In the simplest and most common formation of the argument, one cannot ‘do nothing’ when faced with suffering which it is within one’s power to alleviate.<sup>50</sup>

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<sup>46</sup> Chesterman op.cit. p.9

<sup>47</sup> Ibid p.1

<sup>48</sup> Ibid p.24

<sup>49</sup> N. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford, Oxford University Press, 2000, p.11

<sup>50</sup> It might be noted that the ‘we must do something’ argument is often used by political leaders as though it in itself constitutes a sufficient justification for going to war- although clearly it does not,

A distinction should be made here between ‘humanitarian intervention’, which can encompass a whole range of operations, including quite small-scale ones, which seek to use- or in some cases, merely threaten to use- military force in some form for a humanitarian end; and ‘humanitarian war’, which involves the full-scale application of military might. The latter is the strongest form of the former, and thus its most problematic and controversial formulation- which is why it is of particular interest as a phenomenon.

Theorists disagree over some of the details of what should constitute a legitimate humanitarian intervention. However, the various theoretical works on this concept show many elements of commonality. In general, when dealing with the basic criteria for a legitimate humanitarian intervention, the various works in this area produce lists that are very similar, although there are wide differences over how some of these criteria are to be interpreted. Therefore, the aim of the following section is to produce a composite list of criteria for a legitimate humanitarian intervention, drawn from a number of different sources, which would be generally accepted by most theorists in this area. Where there is a significant degree of disagreement, this will be noted.

As would be expected, the established criteria for a legitimate humanitarian war are influenced by the Just War tradition, and contain many elements that are common also to ‘Just Wars’ fought in self-defence or in response to aggression (for example, the requirement for force to be a ‘last resort’). There are some

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since there might in any given case be many things that ‘we’ can do short of using force. In the BBC TV series *Yes Minister*, this particular line of reasoning was given the name of the “Politicians’ Syllogism”. It runs as follows:

“1. We must do something 2. This is something. 3. Therefore we must do this.”

features, however, that are unique to the theory of humanitarian war; for example, a state fighting a war in self-defence is not required to seek wide international backing before it does so, but theorists often make this a requirement for humanitarian wars.

The first generally-accepted criterion is that intervention should be restricted to cases of particularly extreme abuse of human rights- in Walzer's phrase, acts "that shock the moral conscience of mankind".<sup>51</sup> These would include such acts as genocide, state-sponsored mass murder, mass population expulsions and state breakdown.<sup>52</sup> Vincent advocates restricting humanitarian intervention to those cases where "basic rights"- those rights without which no others can be enjoyed, such as the right to life and to subsistence- are being denied.<sup>53</sup> These are the minimal 'basic rights' which, as we saw earlier, liberals argue can and should be protected even by decent non-liberal societies.

This point of view is not universally accepted. Chesterman notes that some theorists adopt the position that intervention can be justified merely on the basis of the target government not being a liberal democracy. Michael Reisman, for example, has argued that undemocratic states have no right to sovereignty since "traditional concepts of sovereignty (are) being replaced by a 'popular sovereignty' vested in the individual citizens of a state."<sup>54</sup> Therefore intervention to institute or restore democracy cannot be a violation of sovereignty given that by

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<sup>51</sup> Walzer op.cit. p.107

<sup>52</sup> Wheeler op.cit. p.33

<sup>53</sup> R.J. Vincent, *Human Rights and International Relations*, Cambridge, Cambridge University Press, 1986, p.125

<sup>54</sup> Reisman in Chesterman op.cit. p.91

their very existence, authoritarian governments are violating *popular* sovereignty.<sup>55</sup>

However, the majority of theorists do not go this far. Given the difficulty of assessing which governments should be considered liberal democracies and which should not, a right of pro-democratic intervention would be exceptionally open to abuse, and could potentially allow states to go to war simply because they objected to the ideology of another government.<sup>56</sup> Certainly when in the 1980s the US government proclaimed a right to pro-democratic intervention under the ‘Reagan doctrine’, it was applied in a highly selective fashion, being directed against “Soviet-supported” governments such as Grenada but not against right-wing dictatorships.<sup>57</sup> To further illustrate the slipperiness of the idea, the Reagan administration argued that it was promoting democracy in its proxy war against the Sandinista government in Nicaragua: a government which some who did not share Reagan’s ideological position regarded as closer to being a democracy than many of the US’s Latin American allies. So, as it is a minority position among theorists, arguments over the right to pro-democratic intervention will not be addressed at great length in this thesis.

Some who adopt the more restrictive position on when intervention can be legitimate have argued that humanitarian intervention should be treated as an exception, reserved for rare cases, and thus outside the ordinary rules and conventions of international law.<sup>58</sup> However, abuses of human rights- even

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<sup>55</sup> Chesterman op.cit. p.91

<sup>56</sup> Ibid p.107

<sup>57</sup> Ibid p.93

<sup>58</sup> Ibid p.40

extreme abuses- are depressingly common, so common in some countries as “to seem almost like facts of nature”<sup>59</sup>- so even on the most restrictive basis, there are likely to be many possible cases where humanitarian intervention potentially could be justified. Clearly, then, it is not enough to avoid the issue by regarding humanitarian intervention as somehow outside ordinary custom and calculation. Some criteria for judging intervention need to be found.

The idea that force can only be used as a “last resort” is a widely accepted criterion for all Just Wars, and thus also occurs in lists of criteria for humanitarian intervention. The idea has been criticised, since it can never be known for certain that the “last resort” has been reached- there is always the possibility, extremely remote as it may be in some cases, that more negotiation might bring results. Walzer states that “the notion of lastness is cautionary” rather than to be taken absolutely literally- war is said to be the last resort because of the “unpredictable, unexpected, unintended and unavoidable horrors it regularly brings”- therefore one should always be warned to look hard for alternatives before waging it.<sup>60</sup> Waiting for the “last resort” can mean that intervention does not take place until it is too late to stop the abuses. This leads to extremely difficult questions over the circumstances in which it might be possible to justify pre-emptive intervention. Wheeler suggests that it is “too demanding to require politicians to exhaust all peaceful remedies: rather, what is required is that they are confident that they have explored all avenues that are likely to prove successful in stopping the violence.”<sup>61</sup> This, unfortunately, is a rather weak formulation, given that politicians who for

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<sup>59</sup> Best op.cit. p.411

<sup>60</sup> M. Walzer, *Arguing About War*, New Haven, Yale University Press, 2004, p.155

their own reasons desire war with another state may perhaps persuade themselves that all avenues have been explored when in fact they have not been. Perhaps the first ‘they’ in Wheeler’s formulation should be changed to a “we”.

One theoretical dissident should be mentioned here. In place of the ‘last resort’ criterion, Mervyn Frost- who, as has been mentioned, professes to work from outside the ‘Just War’ tradition- makes the argument that, in any given case, “what kind of intervention would be justified depends of the severity of the infringements of basic rights”. Severe infringements justify a military response; lesser violations would justify lighter forms of intervention such as sanctions.<sup>62</sup> This argument is strange since there have certainly been instances of even the most severely abusive governments being overthrown or persuaded to change their ways without military intervention- apartheid South Africa would be one obvious example. It would seem very difficult to justify war, even in the presence of extreme abuses of basic rights, where a real possibility exists that these abuses can be ended by peaceful means. Equally it is possible to imagine a case of a government which is only committing moderate abuses, but which is so firmly entrenched in power and so resistant to persuasion that there might be no means other than war of improving the situation. Therefore Frost’s criterion does not seem to stand up.

It is also sometimes argued that the motives of the intervening power or powers must be humanitarian rather than self-interested. The International Law Association, when drafting a protocol for judging the legality of armed

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<sup>61</sup> Wheeler op.cit. p.34

<sup>62</sup> Frost in Smith & Light op.cit. p.54

intervention, included a requirement that the “primary goal” be humanitarian.<sup>63</sup> This controversy relates to the divide in ethical theory between consequentialists, who argue that the moral acceptability of an action should be judged mainly in terms of its consequences, and deontologists (such as Kant) who argue that motives are more important. (This is not necessarily an absolute divide. Under some circumstances one might argue that motives are important because they tend to have a strong impact on outcomes. This may well be true of humanitarian intervention, particularly as with respect to the *jus post bellum*- as we will see in later chapters.)

Liberalism has historically tended to straddle both sides of the divide<sup>64</sup>, but theorists of humanitarian intervention theorists tend to adopt the consequentialist view, arguing that whether an intervention leads to an acceptably humanitarian outcome is more important than the motives, humanitarian or otherwise, of those who conducted it. One suspects that this is largely because there are virtually no historical examples of genuinely non-self-interested intervention taking place. Even in the historical examples most often cited as the ‘best cases’ of humanitarian intervention, the intervening government has always had some self-interested motive for its actions. For example, India’s intervention in Bangladesh (then East Pakistan) in 1971 was conducted with the aim of weakening Pakistan as well as of helping the Bangladeshis.<sup>65</sup> Walzer attempts to solve this problem by stating that intervention must take place in order to allow the oppressed to achieve their purpose (ie the intervening power must not claim any prerogative over them

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<sup>63</sup> Wheeler op.cit. pp.42-3

<sup>64</sup> Mapel & Nardin in Nardin & Mapel op.cit. p.297

once hostilities have ceased)<sup>66</sup>; Ramsbotham and Woodhouse by stating that the interests of the intervenors must at least not be incompatible with the humanitarian purpose.<sup>67</sup>

A fourth condition might be loosely termed ‘proportionality’. This term can encompass a number of different concepts. It is often interpreted as a requirement for a reasonable expectation that the intervention will produce a “surplus of good over harm”. That is, that the damage caused by the use of force will probably be less than the gravity of the human rights violations that would have occurred if intervention had not taken place.<sup>68</sup> This criterion has been criticised for being excessively uncertain, as there are so many imponderables involved that, as Wheeler admits, “even if intervention produces a surplus of good over harm, it will never be known whether non-violent alternatives might have achieved the same result at less cost.”<sup>69</sup> No-one can be sure in advance that more lives will be saved than will be lost.

‘Proportionality’, though it is listed among the accepted criteria for the *jus ad bellum* in a humanitarian war, is also used to refer to concepts that have more to do with the *jus in bello* and the *jus post bellum*, such as the idea that a humanitarian intervention must be limited in purpose, for example merely to rescuing the victims of oppression, not to imposing a long-term settlement.

Another criterion which is usually taken to apply to ‘Just Wars’ in general is that of “reasonable expectation of victory”. This is largely self-explanatory:

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<sup>65</sup> Walzer (1992) op.cit. p.105

<sup>66</sup> Ibid p.104

<sup>67</sup> Ramsbotham & Woodhouse cit. in Wheeler op.cit. p.33

<sup>68</sup> Wheeler op.cit. p.35

decisionmakers must believe (and, presumably, must be able to persuade others) that the use of force is likely to produce a humanitarian outcome.

The final main criterion which is frequently mentioned in the literature is that of “due authority”. A humanitarian intervention should win international support, or at least acquiescence- and, ideally, should gain authorisation from the UN Security Council. Unilateral intervention is permitted, if at all, only if the Council is for some reason unable or unwilling to act.<sup>70</sup> If UN authorisation cannot be obtained, then it is preferable for an intervention to be undertaken by a regional organisation rather than a single power. This requirement for international support, it is argued, should help to keep a single state from abusing the concept of humanitarian intervention for its own ends; although a problem arises if a superpower is able to browbeat its allies into offering support against their better judgement.

Some other, more minor, conditions are added by individual theorists. Frost, for example, adds requirements that intervening powers should avoid propagandising, and that "care should be taken not to label the entire people or ethnic groups as the enemy, but only specific, named people". This is because it is, he argues, political leaders of 'outlaw states' who are responsible for human rights violations, not ordinary civilians.<sup>71</sup> These leaders and their henchmen are the ones who should be demonised.

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<sup>69</sup> Ibid p.37

<sup>70</sup> Ibid pp.42-3

### 1.3.2 Critics of Humanitarian Intervention

The concept of humanitarian intervention remains a highly controversial one. Three main lines of criticism of the concept can be discerned: communitarian criticism, realist criticism and criticism from within the liberal tradition.

The communitarian view of international relations rejects the concept of universal human rights, believing the human rights tradition to be purely Western in origin and application; this, for obvious reasons, leads directly to a rejection of the legitimacy of humanitarian intervention. This critique is related to realism in that both question ideas of moral universalism. For reasons already stated, this project will not attempt to deal in depth with this particular line of critique.

Realist critics argue that allowing the right of humanitarian intervention erodes the fundamental principle of non-intervention, which, they argue, “has not served badly as an ordering principle of international relations.”<sup>72</sup> Although adhering to non-intervention means that at times serious abuses of human rights must be left unpunished, the principle at least helps to limit the number of wars and ensures respect for different societies. Hedley Bull writes that “the basic compact of coexistence between states, expressed in the exchange of recognition of sovereign jurisdictions, implies a conspiracy of silence entered into by governments about the rights and duties of their respective citizens”- therefore ideas of universal human rights are subversive of this compact if any attempt is made to enforce them.<sup>73</sup> From this point of view, realism- which is often caricatured as the doctrine

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<sup>71</sup> Frost in Smith & Light op.cit. p.53

<sup>72</sup> Roberts loc.cit. p.434

<sup>73</sup> H. Bull, *The Anarchical Society: A Study of Order in World Politics*, London, Macmillan, 1977, p.83

of war, amorally justifying the use of state power- becomes instead the doctrine of peace, seeking to limit the legitimate use of military force to cases of self-defence. Liberals, popularly regarded as seekers of peace, instead stand accused of eroding legal and doctrinal safeguards against the use of force, and thereby making war more likely.

As we have seen, realist international relations theory suggests that foreign policy is driven more by national interest and power calculations rather than by ethical concerns. Thus, from this point of view, there can be little utility in granting a 'right' of humanitarian intervention, since states would only rarely, if ever, choose to exercise such a right in good faith. As F.E. Smith put it: "In theory no doubt it is regrettable that international law should prohibit... the suppression of outrage, but in practice the number of national Don Quixotes is not found to be considerable."<sup>74</sup>

The concept, it is argued, is merely likely to be abused by powerful states using it to serve their own ends. It clearly has been abused in the past: some of the most blatant acts of aggression in history have been justified on humanitarian grounds, Hitler's occupation of Bohemia and Moravia (ostensibly an intervention to protect the rights of the Sudeten Germans from "assaults on life and liberty" by the "intolerable terroristic regime of Czechoslovakia")<sup>75</sup> being the most famous example. More recently, the war in Iraq has been widely cited as a case of the concept being abused. Humanitarian grounds formed only a part of the justification given at the time of the invasion, but have been more frequently cited

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<sup>74</sup> Smith cit. in Chesterman op.cit. p.38

<sup>75</sup> Ibid p.26

since as the other justifications for the war have collapsed. Some theorists (eg Michael Ignatieff) did view Iraq as a legitimate humanitarian war, but probably the majority view, even at the time of the invasion, was that this was not the case, since, though the Hussein regime was undeniably brutal, there was no imminent or ongoing humanitarian crisis in Iraq in 2003.<sup>76</sup> Walzer states that the Iraq war was unjustified as a humanitarian intervention since the regime's most serious crimes had occurred more than a decade before the invasion, and the Kurds- who had been the main targets of the massacres of the 1980s and early 1990s- had already been fairly well protected by the enforcement of no-fly zones.<sup>77</sup> Kenneth Roth, the director of Human Rights Watch, warned in 2004 that the war in Iraq could taint calls for humanitarian war in the future.<sup>78</sup>

Chesterman states that that seeking to give states a right of humanitarian intervention addresses the wrong problem because it suggests that states are too reluctant to intervene, when in fact they are only too willing to intervene on all kinds of dubious bases. Louis Henkin puts the core of the 'realist' case against humanitarian intervention in succinct fashion when he states that: "pressures eroding the prohibition on the use of force are deplorable... even 'humanitarian intervention' can too readily be used as the occasion or pretext for aggression. Violations of human rights are indeed all too common, and if it were permissible to remedy them by external use of force, there would be no law to forbid the use of force by almost any state against any other." From this Henkin concludes that humanitarian intervention "should be sharply limited to actions the purpose of

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<sup>76</sup> Walzer (2004) op.cit. p.147

<sup>77</sup> Ibid p.149

which is unambiguous and limited, for example, to release hostages or execute other emergency evacuations.”<sup>79</sup> It could be added that when such operations have been conducted- at least when involving citizens of the intervening state, as is usually the case- they have tended to be considered as justified under the right to self-defence granted by the UN Charter, rather than as cases of humanitarian intervention.

Those first two schools of criticism clearly involve non-liberal assumptions about international ethics. However, many liberals, who accept the importance of human rights and see no problem in principle with placing moral values above the rule of non-intervention, have still nevertheless had serious doubts about- or rejected outright- the legitimacy of the idea of forceful humanitarian intervention. There are again three main lines of criticism from within the liberal tradition. The first involves the view that humanitarian intervention is unacceptable in principle since it denies to a people the right of self-determination; the second argues that humanitarian intervention is undesirable on pragmatic grounds, since, however well-intentioned such interventions might be, they are usually counterproductive in their effects; and the third consists of the argument that military force is too destructive and indiscriminating an instrument to be legitimately used to further humanitarian ends.

The theorist most often cited with regard to the first line of criticism mentioned above is indeed a renowned liberal: John Stuart Mill. Mill argued that intervention was necessarily wrong since it negated the right to self-determination,

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<sup>78</sup> E. MacAskill, ‘Iraq War Unjustified Says Human Rights Group’, *The Guardian* 27 January 2004

which he defined as the right of a people “to become free by their own efforts”.<sup>80</sup> Kant adopts a similar position in his Fifth Principle for Perpetual Peace when he says that intervening in an internal conflict is “a violation of the rights of an independent people which is merely struggling with its internal ills.”<sup>81</sup>

Mill's argument- which is based on the idea that political freedom depends on the existence of individual virtue and which seems to imply that those who suffer violation of their rights bring it upon themselves through their own weakness- sounds excessively harsh to modern ears. But we will see later in this project that there is a serious critique of humanitarian intervention to be made on the grounds that it removes incentives for local groups to negotiate a solution to a conflict by themselves, and may indeed provide encouragement for representatives of the perceived ‘victims’ in a conflict to escalate it in order to provoke outside intervention. It is also the case that humanitarian intervention involves the imposition of an artificial conclusion to a conflict by outsiders who may or may not have a clear idea of the hows and whys of that conflict. The humanitarian rhetoric of political leaders and journalists- and, sometimes, of academic theorists- tends to label one side in a conflict as ‘victims’ and the other as ‘villains’, which may not always reflect the true situation.

Some other liberals criticise humanitarian intervention on pragmatic grounds, arguing that although intervention by force to protect human rights may be an attractive idea to those who wish to salve their consciences, it is unlikely to do

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<sup>79</sup> L. Henkin, *How Nations Behave: Law and Foreign Policy* (2<sup>nd</sup> ed.), New York, Columbia University Press for the Council on Foreign Relations, 1979, pp.144-5

<sup>80</sup> Walzer (1992) op.cit. p.188

<sup>81</sup> Kant op.cit. p.96

much good in the long term. This critique has a long history: in 1854, Bright, speaking of British foreign policy, argued that “the past events of our history have taught us that the intervention of this country in European wars is not only unnecessary, but calamitous....We have left Europe at least as much in chains as before a single effort was made to rescue her from tyranny.”<sup>82</sup> Among contemporary theorists, Booth argues that “the desire to ‘do something’ has to be tempered by the knowledge that not only may it not be possible to ‘solve’ a historic military conflict by a short and dramatic military intervention, but that it may well make matters worse”.<sup>83</sup> Intervention by outsiders cannot by itself address the underlying causes of a conflict; at most, it can deal with the immediate symptoms and provide a better environment for longer-term attempts to deal with the causes. Even that cannot be relied upon. By destroying infrastructure and exacerbating divisions between warring groups, military intervention in an internal conflict may only serve to further stoke mutual hatred. This is one reason why, as stated above, some humanitarian intervention theorists make it a condition of a legitimate intervention that there should be no demonisation of entire peoples, but only of individuals.<sup>84</sup> However, critics argue that, in the heated atmosphere of war, such conditions are unlikely to be fulfilled. Even if governments are careful, as is usually the case nowadays, to say that their argument is with the leader of the offending state rather than with his people, media commentators often are not so scrupulous.

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<sup>82</sup> Smith in Nardin & Mapel op.cit. p.213

<sup>83</sup> K. Booth, ‘Human Wrongs and International Relations’, *International Affairs* Vol.71/1 (1995), pp.120-1

<sup>84</sup> Frost in Smith & Light op.cit p.53

A related potential danger is that excessive moral certainty may cause states to rush to war in cases where peaceful methods might still have borne fruit. In an article decrying “the new craze for humanitarian intervention”, Jonathan Steele argues that “if a conflict is projected as a struggle against evildoers, then there is not a moment to lose. Delay itself becomes a form of moral appeasement and wickedness.”<sup>85</sup>

Critics can provide many examples of the sad effects of misplaced moralism in international relations. One of the most compelling would be that of the Versailles Conference, where the Allied powers- led by Woodrow Wilson, a convinced liberal interventionist- decided that Germany bore the moral guilt for causing the First World War and that she should therefore be punished.<sup>86</sup> Even a seemingly successful intervention may in fact only produce a short-term settlement, while the resentments that it creates may serve to further reduce the prospect of a long-term solution- mutual ethnic hatreds may be inflamed, or the ‘liberated’ population may become resentful at being left dependent on those who ‘saved’ them. Moreover, it is argued, interventions promote self-righteousness in the states that conduct them. Once a state has convinced itself that its own foreign policy is impeccably moral, it will no longer be able to see that other states may have decent and defensible reasons for opposing it. Morgenthau warned in the 1950s of how this attitude had come to infect US foreign policy: “Since American foreign policy is by definition

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<sup>85</sup> J. Steele, ‘Diplomacy is Forgotten in the Mania for Intervention’, *The Guardian* 6 August 2004

<sup>86</sup> Thomas in Forbes & Hoffman op.cit. p.96

selfless and moral, the foreign policies of nations opposing it are by definition selfish and immoral.”<sup>87</sup>

Indeed, if one accepts Booth's argument that Just Wars legitimise war and promote militarisation, the effects may be even more wide-ranging. A humanitarian war which is perceived as having been successful may well encourage states to pursue more such wars- and, perhaps, to resort to force with less reluctance than before. To quote A.J. Muste: “The problem after a war is with the victor. He thinks he has just proved that war and violence pay.”<sup>88</sup>

The final line of critique of which we shall treat in this chapter concerns the nature of force itself. Critics such as Ken Booth and Richard Falk argue that military force can never (or hardly ever) be an appropriate instrument for achieving humanitarian objectives; it is too destructive and unjust in its effects. Even modern precision weapons do not make it possible to fight a ‘clean’ war; and, however good the intentions of the intervenors, the one thing that can be said with near-certainty before an intervention begins is that a considerable number of innocent civilians will end up dead. This might be acceptable if the number of innocent deaths is significantly less than would have occurred without an intervention, distasteful as such counting games are; but such things cannot be known in advance, and are often virtually impossible to judge even in retrospect. On top of this, ‘humane’ critics argue, if an intervention is not immediately successful, the powers involved will likely be forced to turn to harsher and harsher tactics until they end up closely resembling their supposedly

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<sup>87</sup> Morgenthau op.cit. p.93

evil opponents. The ultimate tyranny in war, says Walzer, is that resisters of aggression are forced to imitate, and perhaps even to exceed, the brutality of the aggressor in order to win. General Sherman made this point with stark simplicity when he said that “war is hell.”<sup>89</sup> If this is so, then the inherent contradiction in the phrase ‘humanitarian war’ is too deep to be reconciled.

And yet despite this, critics argue, the military option is dangerously seductive. It seems to provide a neat and dramatic solution to humanitarian crises, free from the lengthy and complex negotiations, possibly involving messy compromises, that are associated with attempts to find diplomatic solutions. Steele argues that, particularly in the modern TV age, “political negotiations are...inherently dull, if not irrelevant, compared to the visual drama of war.”<sup>90</sup>

Another element of this critique has to do with the principle of impartiality that has traditionally governed the work of those involved in humanitarian aid. For example, the founding principles of the International Committee of the Red Cross include impartiality (“It (the ICRC) makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours only to relieve suffering”) and neutrality (the ICRC “may not take sides in hostilities” under any circumstances).<sup>91</sup> Humanitarian wars, some argue, tend to violate these principles in the manner in which they are justified and fought. Governments, says former aid worker Tony Vaux, “are much less concerned than aid agencies about

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<sup>88</sup> Muste cit. in N. Chomsky, *The New Military Humanism: Lessons from Kosovo*, London, Pluto Press, 1999, p.10

<sup>89</sup> Sherman cit. in Walzer op.cit. p.32

<sup>90</sup> Steele loc.cit.

<sup>91</sup> J. Pictet, ‘The Fundamental Principles of the Red Cross: Commentary’, ICRC publication, 1979, from <http://www.icrc.org>

impartiality. They intervene, on one hand, and demonise on the other.... Politicians can only cope with situations where there is a winner and a loser, a right and a wrong”.<sup>92</sup> The result is that, in humanitarian wars- as we have seen- outsiders arbitrarily divide up populations into those who are seen as deserving help and those seen as being responsible, actively or tacitly, for atrocities, and help is handed out according to ethnicity rather than need. Humanitarian crises are rarely so morally simple. Pictet says of the Red Cross principles that “ a man who follows this arduous path (of neutrality) will discover that it is rare in a controversy to find that one party is completely right and the other is completely wrong. He will sense the futility of the reasons commonly invoked to launch one nation into war against another. In this respect it is reasonable to say that neutrality constitutes a first step towards peace.”<sup>93</sup>

#### **1.4 The *Jus in Bello***

The *in bello* aspect of ‘Just War’ has often been ignored by humanitarian intervention theorists. Roberts states that “in the long history of legal debates about humanitarian intervention, there has been a consistent failure to address directly the question of the methods used in such interventions.”<sup>94</sup> And yet humanitarian interventions, because of their declared moral purpose, should surely be expected to abide by even more stringent *in bello* criteria than other types of war. A state that is fighting to defend its very existence may be permitted the odd divergence from pure chivalry. Indeed, this is expressly permitted in secular Just

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<sup>92</sup> T. Vaux, *The Selfish Altruist: Relief Work in Famine and War*, London, Earthscan, 2001, p.17

<sup>93</sup> Pictet op.cit.

War doctrines by the so-called ‘supreme emergency exemption’, which entitles a state to suspend the usual ban on direct attacks on civilians if it is facing an imminent danger of “an unusual and horrifying” kind.<sup>95</sup> A state which is fighting “for principles and values” should- even if only for reasons of PR- be sure that its methods don't start to look indistinguishable from those of its perfidious opponent.

The concept of *jus in bello* centres around the idea that “just wars are limited wars”.<sup>96</sup> Its most important principle is that of noncombatant immunity. Soldiers forfeit their rights to life and liberty in war simply by being soldiers (though this stipulation can lead to difficult dilemmas if the soldiers are conscripts). But civilians retain their rights, and the belligerent forces are obliged to take at least some care not to harm them- even if this involves increasing the risks of casualties among their own soldiers.<sup>97</sup> Attacks on purely civilian targets are thus prohibited.

There are differing schools of thought over the extent to which noncombatant immunity should apply. The doctrine of ‘double effect’ holds that harm to civilians is permissible as long as it occurs only as an unintended consequence of an otherwise acceptable military action, pursued with good intentions- and as long as the action is sufficiently effective to compensate for the harm done. However, while ‘double effect’ was easy enough to apply in the Middle Ages, when weapon technology was primitive, wars were fought by sieges and pitched ground battles and civilians could remain largely as spectators unless military leaders specifically

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<sup>94</sup> Roberts cit. in Wheeler op.cit. p.36

<sup>95</sup> Walzer (1992) op.cit. pp.251-3

<sup>96</sup> Ibid p.xvii

<sup>97</sup> Ibid p.151

chose to harm them, it is highly problematic when applied to today's conflicts.<sup>98</sup> When innocent lives are lost due to, for example, a 'smart' missile going astray, this is usually described by those who are waging the war as being no more than an unfortunate mistake, since there was no intention to harm civilians. But the military decisionmakers were well aware beforehand that such events do occur, but still chose to launch the raid; so can they be absolved completely of guilt? In an attempt to resolve this problem, Walzer adds the condition that the perpetrator seeks to minimise such unintended effects as far as possible, even to the extent of "accepting costs to himself."<sup>99</sup> Whether perpetrators will in practice actually be willing to do this is another matter; and if the realist conception of state behaviour is even partially correct it would seem logical to expect that those fighting wars will be less willing to accept costs to themselves if they are fighting for morals rather than concrete interests.

The incomplete nature of noncombatant immunity is one factor which leads critics to reject the idea of describing a war as 'just'. Critics also commonly make the argument that the very idea of a just war negates the concept of *jus in bello*. Just wars are moral crusades, and as such have to be won at any cost: thus they tend to be needlessly extended in the search for total victory.<sup>100</sup> The 'forces of good' may, in their search for victory, adopt methods little different from those of the 'forces of evil': but they will justify every atrocity by pointing out that they are fighting for a noble cause. The temptation may arise to excuse the inflicting of civilian casualties by the use of arguments of collective guilt, demonising whole

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<sup>98</sup> Wells loc.cit. p.827

<sup>99</sup> Walzer (1992) op.cit. p.155

populations because of the actions of their leaders. Something like this did in fact occur during the intervention in Kosovo. Politicians or official spokesmen always insisted that NATO's argument was with Milosevic, not the population of Serbia; but some media pundits described the Serbs as 'Milosevic's Willing Executioners', stating that their failure to protest strongly enough against the atrocities committed by the government forces made them collectively guilty- and therefore, by inference, unworthy of full protection as civilians.<sup>101</sup> Referring to the application of just war doctrines to nuclear deterrence, Wells concludes that "today it is hard to imagine what an unjustly fought war would look like that is not already exhibited in the just variety....Today the just war justifies Armageddon if our hearts be pure, and that is to justify too much."<sup>102</sup>

### **1.5 The *Jus Post Bellum***

The question of what should happen *after* a war has taken place is not explicitly addressed in the mainstream tradition of Just War theory. This is presumably partly because the types of war that have historically been most likely to be regarded as 'just'- those which are fought in self-defence or in response to aggression- have as their central aim a restoration of the *status quo ante* before the specific disturbance to the balance of power took place. The aggressor is hopefully defeated, and then things- at least in theory- return to normal.<sup>103</sup>

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<sup>100</sup> Ibid p.110

<sup>101</sup> See eg. S. Sullivan, 'Milosevic's Willing Executioners', *The New Republic* 10 May 1999

<sup>102</sup> Wells loc.cit. p.829

<sup>103</sup> Walzer (2004) op.cit. p.18

In practice this is not entirely true. Those fighting wars justified on the grounds of self-defence or response to aggression do at times judge it necessary- in order to ensure that the aggression does not recur- to conduct a military occupation of the territory of the aggressor state once that state has been defeated. That occupation may be for a prolonged period. In the case most often regarded as a paradigmatic example of a Just War- World War II- Germany and Japan were both occupied by the Allied powers for some years afterwards, and at the behest of the Allies drastic changes were made in the political systems of both countries. However, despite such cases, the idea of the *status quo ante* has continued to exercise a hold on theoretical accounts of Just War.

This kind of thinking feeds through into the widely-espoused idea- noted above in the section on the *jus ad bellum* criterion of ‘proportionality’- that humanitarian interventions should be short-term, focused on achieving a specific and limited objective and not on imposing any long-term settlement. This produces, for example, Arend and Beck’s requirement that a humanitarian intervention must involve no regime change and no prolonged military presence by the intervening state or states in the target state.<sup>104</sup> Frost shares this view, describing humanitarian intervention as “short-term and instrumental”, adding that ideas of “victory” and “the enemy” therefore are out of place in such circumstances.<sup>105</sup> Some consider this formation to be excessively restrictive, and would allow regime change and occupation in extreme circumstances; but at least at present, this remains a minority view.

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<sup>104</sup> Wheeler op.cit. p.44

<sup>105</sup> Frost in Smith & Light op.cit. pp.53-4

The idea of humanitarian intervention as short-term and limited in its objectives may well be tenable in cases where the intervention itself is small-scale and limited and designed to achieve a very specific goal. But when it is applied to operations involving the full-scale use of military might- as has increasingly been the case in recent years- some serious problems arise. Firstly, even if a humanitarian war is successful in achieving its stated objectives, along the way it will inevitably cause serious destruction, not only in terms of civilian casualties but in terms of damage to the infrastructure and economy of the area in which the military action takes place. The intervenors, however, do not suffer the consequences of their actions: these are borne by the people of the target state. Kennan concludes from this that when “we” (referring to the US government) proclaim our right to launch a humanitarian war against another state, “we are demanding, in effect, a species of veto power over those of their practices that we dislike, while denying responsibility for whatever may flow from the acceptance of our demands.”<sup>106</sup> Surely, then, intervening powers must at the very least bear responsibility for providing the money to repair whatever damage they have inflicted in the course of the fighting.

Then there is the question of the damage that will have been inflicted by the perpetrators of the human rights abuses that prompted the war. Particularly since, more often than not, the most severe cases of human rights abuse occur in states that are economically weak (and such states tend to be the targets of humanitarian wars, since an authoritarian but strong state- such as, say, modern China- makes too difficult an enemy), the situation for the population of a humanitarian warzone

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<sup>106</sup> Kennan loc.cit. p.210

in the aftermath of the conflict is unlikely to be very good. If, say, a group of people are liberated from a brutal dictatorship but are then left to fend for themselves in a state that has had its infrastructure ravaged by war and so is completely unable to support itself economically, this would not seem to be a legitimate conclusion to a war fought on the grounds of promoting human rights. Classical liberals who believe in the ‘democratic peace’ thesis may hope that merely setting up elected governments and encouraging free-market reforms in post-conflict states should automatically lead those states towards peace and prosperity; but as Paris has pointed out, the evidence of history contradicts this.<sup>107</sup> Liberalising economic reforms, though they may be desirable in the long run (depending on which school of economic theory one favours), can undoubtedly have serious destabilising effects in the short run. The experience of 1980s Yugoslavia, where market reforms set the separate republics competing against each other for diminishing resources, hence contributing to the situation that caused the eventual breakup of the federation, illustrates this.<sup>108</sup> Equally, elections, when held in the inflamed and unstable atmosphere that usually exists in the aftermath of a war- perhaps with members of the ‘victorious’ group hoping for revenge while the defeated nurse their grievances- can also be destabilising. In such an atmosphere, moderate peace-loving politicians are unlikely to flourish.<sup>109</sup>

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<sup>107</sup> R. Paris, *At War's End: Building Peace After Civil Conflict*, Cambridge, Cambridge University Press, 2004, p.151

<sup>108</sup> This is a very brief *precis* of a complex argument. See eg A. Orford, ‘Locating the International: Military and Monetary Interventions After the Cold War’, *Harvard International Law Journal* Vol.38/2, Spring 1997, and S. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War*, Washington DC, Brookings Institution, 1995

<sup>109</sup> Paris op.cit. p.189

Even if one takes an extremely restrictive view of human rights as consisting purely of the classic liberal ‘negative freedoms’- freedom of speech, freedom of religion, etc- these freedoms are unlikely to prove sustainable in a state that has been ravaged by war unless some serious rebuilding work is undertaken. In the absence of such work, the most likely result of the war will be a classic ‘failed state’ of the Somalia variety- not the sort of outcome that theorists of humanitarian war would wish for.

Equally, if a humanitarian war is successful in averting an immediate crisis, but fighting then resumes- whether between the same set of actors or different ones- the moment the outside forces leave, it is hard to argue that this war has been successful.

There is also a purely empirical reason for discarding the conventional view of humanitarian wars as “short-term and instrumental”. While this conception reflected quite well the nature of such wars in the past (such as India’s invasion of East Pakistan/ Bangladesh in 1970, when all troops were withdrawn soon after the intervention ended) it is no longer factually accurate in the post-Cold War world. All of the commonly-cited cases of humanitarian war occurring since the end of the Cold War have been followed by a period of military occupation of the target state or province, accompanied by a long-term effort to create a stable liberal democratic government- and a liberal free-market economy- in the area concerned. The only possible exception to this is the case of the intervention in Somalia, where military occupation was abruptly terminated- through perceived political necessity, rather than by choice- before the post-conflict stage could really begin.

In the other cases- Kosovo, Afghanistan, Iraq- the affected areas are still occupied by foreign troops, and still partially governed by international authorities, up to the time of writing.

The above suggests the need for some kind of concept of *jus post bellum*- to define the responsibilities that humanitarian warriors should bear after military intervention has ended, and to set out the nature of a just long-term settlement in a case of humanitarian war. As yet few theorists have made any specific attempt to explore this area, but having posited the idea of *jus post bellum* we might then construct a minimalist position, involving a minimal understanding of justice, and a maximalist (or 'substantive justice') position. The minimalist position would restrict the obligations of intervening states merely to seeing that war damage is repaired and providing sufficient security to ensure that conflict does not break out again. The maximalist position would give intervenors the duty- in cases where this is necessary- to occupy and to perform all actions of government until such time as stable liberal democratic governments have been installed and are ready to take power in the state or states where the war has taken place; and in cases where intervention has occurred in a civil war or a territorial dispute, to facilitate negotiations for, or if necessary to impose, a sustainable final settlement on the issues that have caused the conflict. These are general rules only. Exceptions would have to be made in cases where a humanitarian war is conducted by a poor country that does not possess the resources for the prolonged occupation of another state; in such cases, if the war has received international approval, reconstruction might become an international responsibility.

It is difficult- and possibly unwise- to draw up a general list of criteria for the *jus post bellum*, since situations in post-conflict states may differ widely, and thus the optimum policies to be followed for ensuring a just outcome will also differ. At one extreme, there might be a case of a humanitarian war which is conducted to depose an oppressive regime in a state which has few or no significant internal ethnic cleavages and no substantial core of support for the displaced regime, and hence little potential for internal conflict in the aftermath of the intervention. In such a case, it would almost certainly be best for intervening powers to withdraw troops quickly and for their postwar role to be confined to providing economic aid. At the other extreme, where intervention occurs in a civil war- as been the case with most interventions in recent times, it may end the immediate conflict but it cannot by itself deal with whatever underlying grievances have sparked that conflict- indeed, it may well increase the level of resentment that exists between the parties. In such a case a prolonged occupation is likely to be required to prevent a resumption of conflict.

The most obvious potential drawback with the minimalist position on the *jus post bellum* is that it does not aim at providing a permanent solution, being content merely with containing the problem. If there are territorial questions at stake, and local leaders are not able or willing to work out a settlement by themselves, then the area where intervention has taken place may be left in a state of limbo, which in the long run is unlikely to be a sustainable situation. Also, as we have said, humanitarian interventions tend to occur in states and regions that are very weak economically, and the added factor of war damage tends to produce post-conflict

states that are unable to support themselves without considerable outside help. Economic impoverishment can be a very powerful contributing factor in causing conflict, so there would seem to be a strong case for adding the provision of help for economic reconstruction to the post-conflict obligations of humanitarian warriors. The rest of this section will explore the maximalist position, as this is the one that most theorists working in this area (or at least, those of them who are sympathetic to the idea of humanitarian intervention) have tended to take; and the one which comes closer to describing the operations that have in fact occurred in the aftermath of recent humanitarian wars.

In the last few years, theorists have been beginning to address the neglect of the period after an intervention. The rise in interest in this question can be ascribed to the frustrations encountered in the aftermath of recent interventions such as those Kosovo and Afghanistan- and, of course, to the disastrous aftermath of the war in Iraq. Such events have served to point up the problems that can occur if states undertake a war with humanitarian overtones (I use this term since the invasions of Afghanistan and Iraq were not justified solely on humanitarian grounds) without any clear plan for what is to happen afterwards. Indeed, a recent report by the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, calls for the “responsibility to rebuild” to be seen as an integral part of any intervention. “When an intervention is completed, a post-intervention strategy is both an operational necessity and an ethical imperative.”<sup>110</sup>

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<sup>110</sup> S. Chesterman, ‘Transitional Administration, State-Building and the United Nations’, in S. Chesterman, M. Ignatieff & R. Thakur, eds. *Making States Work: State Failure and the Crisis of Governance*, Tokyo, United Nations University Press, 2004, p.348

One theorist who has explored this area- albeit not as yet at great length- is Michael Walzer, who in his recent book *Arguing About War* puts forward two criteria for the *jus post bellum*: ‘legitimacy’ and ‘closure’. ‘Legitimacy’ involves the established principles of democratic theory; ideas of self-determination, popular legitimacy, civil rights and the common good. Humanitarian wars should end with decent legitimate governments in the defeated states, with minority populations protected and neighbouring states secure from aggression.<sup>111</sup> ‘Closure’ encompasses responsibilities on the part of those who wage humanitarian wars to think seriously about post-victory actions and to expend sufficient funds on reconstruction.<sup>112</sup> Although Walzer does not mention this, ‘closure’ might also be taken to include the setting up of a judicial tribunal along the lines of those set up in places like South Africa and the former Yugoslavia, to ensure accountability for crimes committed during the period of conflict.

Walzer gives two models for long-lasting intervention: ‘trusteeship’, under which the intervening power occupies and actually rules the country it has invaded, holding it in trust for its occupants for an indefinite period until it judges that they are ready to take over, and the ‘protectorate’, under which the intervention brings a local group or groups to power, and then is sustained only defensively.<sup>113</sup> In practice, post-intervention arrangements have tended to fall somewhere between these two models (for example, in the aftermath of the Kosovo war- as we will see later- the international authority assumed extensive powers over government at the provincial level, but the intervention caused a

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<sup>111</sup> Walzer (2004) op.cit. p.164

<sup>112</sup> P. Steinfels, ‘Justice After War’, *New York Times* 4 September 2004

power vacuum in the lower levels of government which was swiftly filled by local groups). Although he seems to be advocating a fairly expansive conception of the *jus post bellum*, on the question of minimal versus substantive justice Walzer nevertheless states that “postwar justice is probably best understood in a minimalist way. It is not as if victors in war have been all that successful at achieving the minimum.”<sup>114</sup>

Our doctrine of *jus post bellum* can be fleshed out a little more by drawing on some of the work that has been done in recent years on post-conflict reconstruction by authors such as Simon Chesterman, William Bain and Roland Paris. Works in this area have tended to focus on a broad spectrum of case studies of post-conflict societies, with societies that have just been the subject of a humanitarian war forming a sub-group within the field. While there are certain issues that are specific to the aftermath of a humanitarian war (such as the repair of damage directly caused by the intervention itself) that might lead a general set of *jus post bellum* criteria to differ somewhat from the criteria that might apply to reconstruction in a case where there has been no military intervention, some general ideas can still be drawn out.

As an example of a ‘maximalist’ position on *jus post bellum*, one might look at the work of Roland Paris, who advocates what he calls the ‘Institutionalisation Before Liberalisation’ approach to reconstruction in post-conflict societies. For “peacebuilders”, this strategy has six elements:

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<sup>113</sup> Walzer (2004) op.cit. p.76

<sup>114</sup> Ibid p.163

- 1) Wait until conditions are ripe for elections
- 2) Design electoral systems that reward moderation
- 3) Promote good civil society
- 4) Control hate speech
- 5) Adopt conflict-reducing economic policies
- 6) Rebuild effective state institutions<sup>115</sup>

As can be seen, while this strategy has the aim in the long run of returning the government of the affected area to its inhabitants, in the short term it gives the international authorities (or the intervening powers) a fairly open-ended mandate to control the administration of the affected territory until they judge that the local population is able to take over (Paris states that “no time limits should be placed on peacebuilding missions”<sup>116</sup>). Most specifically, Paris advocates that peacebuilders should delay the holding of elections to allow passions to cool, and that when elections are held, peacebuilders should control who is able to take part in them by a “carrots and sticks” approach- giving financial aid to parties that adopt moderate rhetoric, while banning those that “preach violence or hatred.”<sup>117</sup>

The most obvious problem with the maximalist position is that it is open to abuse by powers with an imperialist agenda, who may keep their troops in for longer than is necessary and seek to manipulate the composition and actions of any new government. (Paris does note three possible criticisms of his strategy, but oddly they do not include this one- he seems to take the good intentions of

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<sup>115</sup> Paris op.cit. p.188

<sup>116</sup> Ibid p.207

occupying powers as a given. Perhaps this is because he deals mainly with UN-controlled reconstruction missions from the 1980s and 90s rather than the essentially US-controlled missions that have been set up in the last few years.) The provision of economic aid, too, often proves to be an invitation to cronyism and/or to the imposition of an economic agenda by outsiders. Walzer attempts to deal with this problem by stating that “what determines the overall justice of a military occupation is... its political direction and the distribution of benefits it provides. If its steady tendency is to empower the locals and if its benefits are widely distributed, the occupying power can plausibly be called just.” On the other hand, “if power is tightly held and the procedures and motives of decision-making are concealed; if resources accumulated for the occupation end up in the hands of foreign companies and local favourites, then the occupation is unjust. A just occupation costs money; it doesn’t make money.”<sup>118</sup>

This brings in the issue of motive. As we have seen, theorists of humanitarian war are reluctant to stipulate that the motives of intervening states must be purely altruistic because in practice this is never the case. However, leaving aside for the moment the question of whether truly humanitarian motives are required for the *ad bellum* and *in bello* aspects of a humanitarian war (we will return to this in later chapters), it seems certain, going by Walzer’s stipulations, that a genuine altruism is required for the *jus post bellum*. The legitimate form of occupation envisaged by Walzer- one that costs money rather than making it- will go directly against at least the short-term economic interests of the powers conducting it. Walzer states

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<sup>117</sup> Ibid p.189

<sup>118</sup> Walzer (2004) op.cit. pp.165-6

that “the work of the virtuous is never finished”<sup>119</sup>; but are states likely to be willing in practice to bear such burdens?

In a wider context, we have already seen that one criticism made of the concept of humanitarian war is that it encourages (or assumes) feelings of moral superiority on the part of the intervening powers. A maximalist position on *jus post bellum* necessarily involves such an assumption of moral superiority, as it assumes that outside powers will be able to discern what modes and forms of government should be adopted in a society better than those who actually live there; or, as Bain puts it, “trusteeship rules out dialogue about what is thought to be good, right or just. A trustee acts on behalf of someone who is thought to be incapable of navigating the choices, dilemmas and responsibilities of ordinary life... Thus, trusteeship answers the call of humanity by treating states, and the peoples residing within them, as if they have no will of their own”.<sup>120</sup>

The danger of legitimising occupation is a serious one, then, even if occupiers abide by Walzer’s strictures. Military occupation, even if conducted with genuine good intentions, has serious drawbacks in any situation- it creates resentments on the part of the occupied, which may feed through into renewed conflict. Thus even in a situation where occupation may seem to be necessary due to the potential for conflict if the troops leave, it may in fact make things worse rather than better. Walzer admits that the history of protectorates and trusteeships is “not particularly encouraging”.<sup>121</sup> The history he mentions is that of empire, and this is perhaps one reason why theorists have been reluctant to consider the question of *jus post*

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<sup>119</sup> Ibid p.20

<sup>120</sup> Bain op.cit. p.172

*bellum*. If it becomes the accepted norm for humanitarian wars to be succeeded by prolonged military occupation, the concept begins to bear a decided resemblance to old-style European imperialism. Bain writes that “the idea of trusteeship cannot escape its imperial past, no matter how enlightened or well-intentioned it might be, because it belongs to a mode of conduct that is imperial by its nature (and) is fundamentally irreconcilable with the idea that we should respect the dignity of all human beings.... It is the iniquity of denying the absolute sanctity of the human personality that shattered the legitimacy of empire and, along with it, trusteeship in international society.”<sup>122</sup> The attempts that have been made in recent times to rehabilitate the idea of empire- most notably by Niall Ferguson- have not as yet won wide enough acceptance for all liberals to be comfortable with this parallel.

Indeed, the whole area is a rather difficult one for liberals, as Chesterman notes: “state-building operations combine an unusual mix of idealism and realism: the idealist project that a people can be saved from themselves through education, economic incentives and the space to develop mature political institutions; the realist basis for that project in what is ultimately military occupation.”<sup>123</sup>

This points up the serious principled objections to military occupation that exist alongside the pragmatic ones. Legitimising military occupation means assuming that some people are incapable of fully realising their own interests and need to be ruled over for their own good; so denying them a full status as autonomous human beings. Humanitarian intervention itself may not necessarily

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<sup>121</sup> Ibid p.76

<sup>122</sup> W. Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power*, Oxford, Oxford University Press, 2003, p.192

<sup>123</sup> Chesterman in Chesterman, Ignatieff & Thakur op.cit. p.339

involve an assumption of moral superiority on the part of the intervenors (although critics argue that in practice it leads to such attitudes), since it can be argued that they are merely helping people to realise their freedom; but, as has been stated, once the *jus post bellum* moves beyond matters of basic reconstruction and the repair of war damage and adopts the concept of trusteeship, the assumption of moral superiority becomes a clear part of the theory. Bain argues that “the idea of trusteeship stands fundamentally opposed to the demands of human dignity as we have come to understand it in contemporary international society”, as “giving every man his due means that we must respect his right to seek his own salvation and to make mistakes in doing so.”<sup>124</sup> If one takes the view that, for these reasons, even a well-intentioned military occupation is unacceptable in principle, then it is difficult to see how humanitarian war can be acceptable as an idea when it cannot be restricted to being a purely short-term matter. So the *jus post bellum* is at least potentially subversive of the concept of humanitarian war.

There are potential problems, too, with Walzer’s criterion of ‘legitimacy’. This, as we have seen, states that the end of the *jus post bellum* should be the setting up of liberal democratic governments in the states where intervention has taken place; but what if the people of these states freely choose to be ruled by governments that outsiders consider to be illiberal? Equally- and this proves to be very important in the case that will be the focus of this thesis- the encouragement or imposition of liberal democracy may come into conflict with one of Walzer’s other criteria- the protection of minority rights. The problem of the “tyranny of the majority” is a very old and familiar one to students of democratic theory, but it

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<sup>124</sup> Bain op.cit. p.192

may be expected to assume far greater proportions than usual in the aftermath of a humanitarian war.

There is also the risk of the doctrine being used to provide retrospective justification for wars that were not legitimate either in terms of the *jus ad bellum* or the *jus in bello*. Walzer equivocates slightly on this question, stating that “wars of conquest are unjust both *ad bellum* and *post bellum*”, but also that a misguided intervention may still produce a decent outcome, which would not retrospectively justify the war but might be just in itself. A critic might reply that it is naïve to expect that a state that is willing to fight a war of aggression to then be capable of showing genuine humanitarian concern in the aftermath of that war.

### **1.3 Conclusion**

The idea of the humanitarian war, then, can be seen to be a particular formulation of the Just War doctrine, applied to a case of humanitarian intervention that involves the full-scale use of military force (a more exact term, then, might be Just Humanitarian War). Hence it is possible to use established theory to arrive at a general set of criteria for such a conflict. As has already been seen, theorists disagree on exactly what criteria should apply, particularly with regard to the *jus ad bellum*, but a list which might win reasonably wide acceptance is detailed below.

A legitimate humanitarian war, then, might be said to be:

- 1) A war which is pursued in response to a major humanitarian emergency (ie something considerably more severe than the 'routine' abuse of human rights that occurs on a daily basis in many countries;
- 2) A war in which force is used only after all peaceful avenues which promised a genuine chance of success have been explored, and have proven fruitless;
- 3) A war in which the motives of the intervenors, if not entirely altruistic, at least do not hinder the prospect of a humanitarian outcome;
- 4) A proportionate war, using means which are likely to result in considerably less harm than would have occurred if human rights violations had been allowed to continue unchecked;
- 5) A war with a reasonable chance of success;
- 6) Hopefully, a war with a degree of international approval, and- ideally- authorisation from the UN Security Council.

Any such war must be fought in accordance with the established doctrine of *jus in bello*, indeed the doctrine will perhaps apply more strongly than in a war fought in self-defence. There is as yet no generally accepted list of criteria for the *jus post bellum*, but various principles- the responsibility of humanitarian warriors to repair war damage, to provide economic aid and to facilitate the setting up of stable democratic governments- may be tentatively set out.

Scholars such as Wheeler regard the rise of the idea of the humanitarian war as a positive development: a sign that the international community (of liberal states)

is finally becoming prepared to translate the noble rhetoric of Human Rights into reality. The erosion of the doctrine of nonintervention, and the willingness of liberal states to use force to spread their values, mean that oppressed peoples now at last have some meaningful hope of outside help.

However, as we have seen, other scholars distrust the whole concept, though they do so for widely differing reasons depending on their ethical position. Many who accept the basic ethical assumptions of liberal international theory still see humanitarian war as a dangerous idea; one that is far too open to abuse, or which risks legitimising the use of military force when the real aim should be to banish war as an instrument of politics. They argue that military force is neither an appropriate nor an effective instrument for protecting humanitarian values.

In order to assess the relative truth of these two positions, it is necessary to look at a real-world example of a conflict that has been described as a 'humanitarian war'. Hence the next chapter- after an initial methodological discussion- will enumerate and discuss the potential cases that might be chosen for a project of this kind.

## Chapter Two

# **Methodology and Case Selection**

The aims of this chapter are twofold. The first section lays out the methodological approach used in this project,. The theoretical background of the project has already been laid out; here I explain why I decided to use a case study approach to investigate the theoretical questions posed in the introduction and Chapter 1.

The second section of the chapter is devoted to a series of examinations of nine conflicts which have been described in at least some quarters as humanitarian wars, and which hence might be chosen as case studies for a project of this kind. The intention here is not to provide a detailed history of each case, but rather to evaluate in brief terms how closely each fits with the theoretical criteria for a humanitarian war as laid out in Chapter 1, with the overall aim of explaining why, out of all these cases, the NATO intervention in Kosovo was the one chosen for detailed examination in this project.

### **2.1 Methodology: The Case Study**

This thesis uses a case study approach; a case being, according to Robert Stake, anything that can be defined as a “specific, unique, bounded system”.<sup>1</sup> Gillham defines a case as “a unit of activity embedded in the real world which... merges in

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<sup>1</sup> R. Stake, ‘Case Studies’, in N. Denzin & Y. Lincoln, eds. *Handbook of Qualitative Research*, (2<sup>nd</sup> ed.), Thousand Oaks, SAGE, 2000, p.436

with its context so that precise boundaries are difficult to draw.”<sup>2</sup> Stake states that there are three different types of case study: the “intrinsic case study”, where the case itself is seen as the main object of interest and no attempt is made to draw wider generalisations; the “instrumental case study”, under which a case is used to “provide insight into an issue or redraw a generalisation... the case is of secondary interest; it plays a supporting role and facilitates our understanding of something else”, and the “collective case study” (where multiple cases are studied together).<sup>3</sup>

Yin also gives three types of case study, two of which essentially coincide with the first two in Stake’s classification: the “unique case”, an extreme case which has an intrinsic interest (hence this is similar to Stake’s “intrinsic case”); the “critical case”, where “the researcher has a clearly specified hypothesis and a case is chosen on the grounds that it will allow a better understanding of the circumstances in which the hypothesis will and will not hold” (analogous to Stake’s “instrumental case”), and the “revelatory case”, where an investigator has the opportunity to study a previously inaccessible phenomenon.<sup>4</sup>

This thesis is an example of the second type, the critical or instrumental case study; in this instance, the “something else” we are trying to understand is the theory of humanitarian war.

There is no general agreement in the literature on whether it is possible or desirable to generalise from a single case study. Bryman states that “case study researchers argue strenuously that (generalisation) is not the purpose of their

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<sup>2</sup> B. Gillham, *Case Study Research Methods*, London, Continuum, 2000, p.1

<sup>3</sup> Stake in Denzin & Lincoln op.cit. p437

<sup>4</sup> Cit. in A. Bryman, *Social Research Methods* (2<sup>nd</sup> ed.), Oxford, Oxford University Press, 2004, p.57

craft.”<sup>5</sup> According to some schools of thought, case studies are useful only in terms of describing and intuitively interpreting the particular case which is studied; or only for discovering questions or hypotheses which should then be tested by large-N experimental studies.<sup>6</sup> However, there are some theorists who argue against this. Eckstein states that the objectives of case studies “can certainly be the development of general propositions rather than portraiture of the particular and unique.”<sup>7</sup>

Case study researchers often state that their aim is to generalise to theory rather than fact: “they aim to generate an intensive examination of a single case, in relation to which they then engage in a theoretical analysis.”<sup>8</sup> Silverman argues that the generalisability of a single case study can be improved by applying methods of “theoretical sampling”. This can be done by, for example, choosing ‘deviant’ cases, or by comparing one’s own study with others already existing in the public domain.<sup>9</sup> From this point of view, case studies are more useful for building theory than for testing it.

Eckstein, however, argues that “case studies... are valuable at all stages of the theory-building process, but most valuable at that stage of theory-building where least value is generally attached to them: the stage at which candidate theories are ‘tested’.”<sup>10</sup> That is the approach which is to be used here.

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<sup>5</sup> Ibid p.52

<sup>6</sup> H. Eckstein, ‘Case Study and Theory in Political Science’, in F. Greenstein & N. Polsby, eds. *Handbook of Political Science Vol.7: Strategies of Inquiry*, Reading (Mass.), Addison-Wesley, 1975, p.92

<sup>7</sup> Ibid p.80

<sup>8</sup> Bryman op.cit p.53

<sup>9</sup> D. Silverman, *Doing Qualitative Research* (2<sup>nd</sup> ed.), Thousand Oaks, SAGE, 2005, p.129

<sup>10</sup> Eckstein in Greenstein & Polsby op.cit. p.83

So, though it may be doubted whether a single case can offer good grounds for sweeping generalisation, a strong school of thought does state that such a study can be of value for testing and refining theory<sup>11</sup> - which is the aim of this project.

### 2.1.1. Reasons for Choosing a Case Study Approach

A case study approach seems logical for a thesis on humanitarian war, since there are only a small number of potential cases available for exploration. Opinions differ on the number of reasonably good cases of humanitarian war that have occurred in world history, but the number is not large. If one wished to do a large-N sample study, one would have to considerably widen the criteria for choosing cases; for example by looking at dubious cases, at cases of humanitarian intervention that only involved a very small-scale use of military force, or conceivably at cases where intervention did not take place despite the presence of a humanitarian crisis. In doing this, one would risk a loss of focus on the central questions of the thesis.

An important justification for choosing to study just one case is that there have already been a number of books which have explored this theoretical area using multiple case studies; for example, Chesterman's *Just War or Just Peace?*, Wheeler's *Saving Strangers* and Garrett's *Doing Good and Doing Well*. However, full-length studies that focus closely on a single case of humanitarian war are much rarer. There have been a number of books written about the war in Kosovo, but most are narrative-based and/or polemical and do not explore the issue of the implications of the war for IR theory.

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<sup>11</sup> Stake in Denzin & Lincoln op.cit. p.448

The advantages of choosing a multiple-case study approach for a question such as this centre mainly on the question of representativeness: a single case may not properly represent all the aspects of a phenomenon as complex as that of humanitarian war. However, this may not be a clinching argument. Eckstein states that, for reasons of practicality, a single case study may be preferable to a multiple case study for the purposes of theory-testing, particularly when the phenomenon to be investigated is a large and complex one. A researcher will be able to study a single case in considerably greater depth, and a single case chosen carefully may prove to be more useful in addressing the questions at issue than a number of cases chosen in haphazard fashion.<sup>12</sup>

It was felt, then, that, given that much of the existing literature consists of relatively brief explorations of multiple cases, there would be more chance of making a meaningful contribution to the debate by focusing on a single case, and that the gain in depth from concentration on just one case would more than compensate for any possible loss in representativeness.

### 2.1.2. Criteria for Choosing the Case

Obviously, having decided to adopt a single case study approach for a project, it is necessary to take great care in choosing one's case. Stake states that the case study approach involves 'purposive' sampling (as opposed to random sampling); the case chosen should be the one from which most can be learnt, rather than necessarily the most typical case.<sup>13</sup> Plainly there is a danger with a single case

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<sup>12</sup> Eckstein in Greenstein & Polsby op.cit. pp.121-2

<sup>13</sup> Stake in Denzin & Lincoln op.cit. p.445

study that one may- consciously or otherwise- select a case which is likely to confirm one's own pre-existing prejudices<sup>14</sup> - another reason why it is necessary to establish solid theoretical grounds for the case that one has chosen.

My aim in this thesis is to test the theory of humanitarian war on its own terms; therefore it was necessary to pick a case which generally seemed to meet at least reasonably closely the criteria for a legitimate example of humanitarian war as laid out in Chapter One, in order to provide the fairest opportunity to test the theory. It would be easy to dismiss the theory by choosing one of the many examples of wars where states have claimed to be fighting for humanitarian goals when evidence suggests that they were pursuing their own self-interested ends; but while such a case would show that there is the potential for the idea of humanitarian war to be abused, it would be unlikely to satisfy a supporter of the theory, who would argue that there were many better cases that might be studied. To adopt the terms used by Eckstein, the intention was to choose a 'crucial case' to provide the greatest opportunity for falsification of the theory of humanitarian war, and for the confirmation of its countertheories (ie the arguments of the various schools of critics of the concept, as detailed in Chapter One).<sup>15</sup>

Eckstein states that in a crucial case, "it must be extremely difficult, or clearly petulant, to dismiss any finding contrary to theory as simply 'deviant'... and equally difficult to hold that any finding confirming theory might just as well express quite different regularities."<sup>16</sup> He goes on to add, however, that such cases are rare in the field of political science, and that proved to be true of the

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<sup>14</sup> Silverman op.cit.p.132

<sup>15</sup> Eckstein in Greenstein & Polsby op.cit. p.116

<sup>16</sup> Ibid p.118

phenomenon of humanitarian war. As we will see, none of the possible cases of humanitarian war can be viewed as purely paradigmatic. In the absence of an ideal crucial case, Eckstein states that one should “focus inquiry on ‘most-likely’ or ‘least-likely’ cases- cases that ought, or ought not, to invalidate or confirm theories if any cases can be expected to do so.”<sup>17</sup>

Having made the decision to use a single case study, there was a strong presumption in favour of choosing a recent case, since one of the central issues to be explored in this thesis is whether it is possible for a war to be fought in a genuinely humanitarian manner today. The answer to this may conceivably change over time as advances in military technology alter the nature of war. One obvious example of this would be the difference between the two World Wars; the development of techniques of aerial bombing, and other changes in favoured military tactics, meant that civilians formed a much higher proportion of the total casualties in the Second World War than in the First. Also, much of the theoretical work on the idea of humanitarian war has been done quite recently. If one wishes to test a theory it is best to choose a case that did not play a part in establishing that theory in the first place, since “testing involves efforts to falsify, and anything giving rise to a theory will certainly not falsify it.... Nothing that suggests a theory, therefore, can also test it.”<sup>18</sup> True, no particular case can be said to have ‘given rise’ to the theory of humanitarian war, since it is a theory of a normative type, but theorists have evaluated the various past cases in their works and hence these have played a part in influencing the structure of the theory.

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<sup>17</sup> Ibid p.118

<sup>18</sup> Ibid p.116

The intention, then, was to choose the recent case of humanitarian war that seems to best meet the theoretical criteria set out in Chapter One, though allowance has to be made for the fact that no case is likely to be perfect.

## **2.2 Possible Cases of Humanitarian War**

In this section I list nine cases which might be considered suitable to be studied in a project such as this. The intention here is not to offer a detailed history and evaluation of each of the various possible cases of humanitarian war that could conceivably have been chosen as the central case study for this project. Rather, the central aim of this section is to show why Kosovo was chosen as the case study and the other possible cases were not.

The cases considered below do not constitute an exhaustive list. I leave out some marginal examples such as the US intervention in Haiti in 1994 (when actual military action was averted at the last minute after members of the military junta agreed to leave peacefully in return for certain concessions), and in Panama in 1989 (this has been cited as an example of ‘pro-democratic intervention’<sup>19</sup>, but as we saw in Chapter One this type of intervention has not as yet gained general recognition as an acceptable variety of humanitarian war).

There have been a number of wars over the past two centuries that have been cited in one quarter or another as being humanitarian in their purpose. The earliest example is probably the war of 1827 in which the UK, France and Russia intervened to aid Greek insurgents in their fight for independence from the

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<sup>19</sup> S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford, Oxford University Press, 2001, p.99

Ottoman Empire, is often cited as the first humanitarian war. However, this war may also be cited as a case of 19th Century power politics- it is generally agreed that Russian involvement in Greece had little to do with humanitarian concerns, and fear of a unilateral Russian invasion led the UK and France to get involved.<sup>20</sup> But whatever one's conclusion on this matter, cases from so long ago, though potentially important with regard to the question of whether a right of humanitarian intervention exists in international customary law, are not suitable for study in a project such as this. As has already been mentioned, one of the central questions at issue for us here is that of whether it is possible today for a humanitarian war to be fought in a genuinely 'humanitarian' manner, and the technological nature of war has changed out of all recognition since the 1800s. The same would go for other possible early examples such as the US intervention in Cuba in 1898 (another dubious case since the US had economic interests in Cuban sugar and, though the stated goal of the war was Cuban independence<sup>21</sup>, it ended with the island as a US protectorate. Walzer describes it as being at best a case of "benevolent imperialism"<sup>22</sup>). Therefore in the process of choosing the case study for this project, it was decided to restrict the possible universe of choices to those cases that have occurred since World War II, and to favour recent cases even within that group.

It is interesting to note that the main post-World War II cases of humanitarian war mentioned in the literature fall into two very clear groups. The first group

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<sup>20</sup> Ibid p.29

<sup>21</sup> Ibid p.34

<sup>22</sup> M. Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (2<sup>nd</sup> ed), New York, Basic Books, 1992, pp.103-4

consists of three wars in the 1970s: India's invasion of Bangladesh (then East Pakistan) in 1971; Vietnam's invasion of Cambodia in 1978-9 and Tanzania's invasion of Uganda in 1978-9. Although there are many differences between these cases, they do share a number of basic features in common. Each case concerns a unilateral invasion by a Third World state of one of its immediate neighbours to overthrow a government that had been responsible for extremely serious human rights abuses (although in each case there were other, non-humanitarian motives involved). Also, in each case the outcome is generally seen as having been broadly positive. One other notable fact is that in two of the three cases, the intervening government was not a liberal democracy but a single-party state- not what one would expect from reading accounts of the theory of humanitarian war, which are based, as we have seen, squarely within the liberal tradition in international relations.

If one discounts the very dubious case of the American invasion of Panama in 1989- which can only be regarded as humanitarian if one takes the extreme position that intervention can be justified merely by the undemocratic nature of the target government,<sup>23</sup> and which in any case, given the level of civilian casualties incurred, would probably fail on the criterion of proportionality- humanitarian wars then effectively disappear from the scene for more than a decade. Then, moving into the period after the end of the Cold War, we encounter the second group of possible cases, which again have significant features in common in that each was undertaken by the USA supported by a greater or lesser number of allies: Somalia, Iraqi Kurdistan, Kosovo, Afghanistan, the second Gulf War. (Often cited

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<sup>23</sup> Chesterman op.cit. p.91

alongside these is the Australian-led peacekeeping force sent into East Timor in 1999; but as will be shown below, this was not really an intervention at all.)

While it is possible that this is a coincidence, it does seem that there has been a change in the identity of the principal prosecutors of humanitarian wars, from individual Third World states to the USA and its allies. Many Third World states do of course continue to conduct smaller-scale humanitarian interventions (as, for example, in regionally-organised peacekeeping forces such as that operating in the Darfur region of Sudan); but since 1979 none has launched anything that could be considered a humanitarian *war*. Presuming that this trend continues, this constitutes an argument for choosing a case study from the second group of wars, as these are perhaps more likely to be typical of any humanitarian wars that may take place in the future.

As an aside, it might be argued that it shows a western-centric perspective among international relations theorists that the idea of humanitarian war only really entered the mainstream once Western states took to fighting such wars. Humanitarian intervention became one of the central concerns for IR theory in the 1990s, but the earlier cases- fought, as we have seen, by developing countries- did not attract the same level of interest, except retrospectively.

The rest of this section, then, will focus on each of the potential cases in turn, providing a brief summary of how well each one seems to fit the established *jus ad bellum*, *in bello* and *post bellum* criteria for a humanitarian war.

### 2.2.1. India's Invasion of East Pakistan, 1971

India's invasion of Bangladesh is generally placed among the 'best' historical cases of humanitarian war . It meets the criterion of 'supreme emergency', having been pursued in response to a humanitarian crisis of considerable magnitude: in the months leading up to the war, the province of East Pakistan had been under a brutal military occupation, with at least one million people killed and up to ten million refugees fleeing to India.<sup>24</sup> The war also seems to meet the criterion of proportionality, as it was brief- lasting only two weeks- and successful in terms of ending the killing, giving self-determination to the people of the liberated state and allowing the return of refugees. The level of casualties was also fairly limited.<sup>25</sup> According to Wheeler, the war also meets the criterion of last resort, as there were no alternative strategies that could have ended the repression, and the UN Security Council was prevented by Cold War power politics from agreeing on any collective action.<sup>26</sup> The war involved a regime change- East Pakistan was replaced by the new independent state of Bangladesh- which conflicts with some theoretical accounts of humanitarian intervention, but in this case (Wheeler again) a change of regime was the only possible way to end the oppression.<sup>27</sup> India also claimed to be acting from humanitarian motives; the Indian ambassador told the UN that "we have on this particular occasion absolutely nothing but the purest of motives and

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<sup>24</sup> Ibid p.72

<sup>25</sup> S. Garrett, *Doing Good and Doing Well: An Examination of Humanitarian Intervention*, Westport, Praeger, 1999, p.108

<sup>26</sup> N. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford, Oxford University Press, 2000, p.74

<sup>27</sup> Ibid p.75

the purest of intentions; to rescue the people of East Bengal from what they are suffering.”<sup>28</sup>

However, India did also claim to be acting in self-defence. There was some justification for this- the war had been preceded by a “pre-emptive” attack on Indian bases by the Pakistani air force, and India also raised the novel charge of “refugee aggression” against Pakistan- but purely on that basis, India’s response was grossly disproportionate, so the war can only really be justified on humanitarian grounds.<sup>29</sup>

Where the war falls down is on the criterion of ‘broad international support’. India’s invasion was unilateral, and was opposed by all the states in the UN Security Council except for the USSR and Poland. As stated above, Cold War power politics- Pakistan being a key US ally- were dominant over humanitarian concerns.<sup>30</sup>

India’s invasion of Bangladesh is regarded by Walzer as a good example of humanitarian intervention since, although the motives of the intervening power were not pure- India’s government was probably more concerned with gaining the upper hand in its long-running dispute with Pakistan than with helping the Bangladeshis- this did not effect the outcome since, once the Indians had defeated the Pakistani army, they left and imposed no political controls on the new state.<sup>31</sup> This is a reflection of the idea of humanitarian intervention as being ‘short-term and instrumental’; we saw in Chapter One that there are problems with this. In this

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<sup>28</sup> Garrett op.cit. p.15

<sup>29</sup> Wheeler op.cit. p.59

<sup>30</sup> Wheeler op.cit. p.65

<sup>31</sup> Walzer op.cit. p.104

India's quick exit- which means that there was no *jus post bellum* in this war, one reason for not choosing it as the case study for this thesis- seems to have been less due to scruples over imperialism than to the fact that it did not want to be left responsible for a very poor country.<sup>32</sup>

### 2.2.2. Vietnam's Invasion of Cambodia, 1978-9

Vietnam's invasion of Cambodia in 1978-9 clearly meets the criterion of 'supreme emergency'- it is estimated that about 1-2 million people died due to the actions of the Pol Pot regime in the period 1975-9, and Amnesty International estimated about 300,000 political killings between 1975 and 1978.<sup>33</sup> Again, this is a war that is generally seen as having been positive in its effects; certainly most of the Cambodian population welcomed the Vietnamese troops as liberators.<sup>34</sup> One thinker who generally takes a very sceptical position on humanitarian war nevertheless defines this invasion as "one of the few actions in modern history that might plausibly be called a humanitarian intervention."<sup>35</sup>

In some ways, however, this is rather a strange case. Firstly, Vietnam's credentials for fighting a humanitarian war have been doubted since it was a non-democratic government with a distinctly dubious record of its own on human rights. Secondly, Vietnam never in fact attempted to defend the war on humanitarian grounds. This was probably because Vietnam had no interest in creating a precedent for the establishment of a norm of a right to humanitarian

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<sup>32</sup> Ibid p.105

<sup>33</sup> Wheeler op.cit. p.78

<sup>34</sup> Ibid p.100

<sup>35</sup> N. Chomsky, *Imperial Ambitions*, London, Hamish Hamilton, 2005, p.76

intervention, since if one became established in international law, it might well at some stage be applied against Vietnam and its allies.<sup>36</sup> Wheeler states categorically that the war fails on the criterion of humanitarian motives: “there is no evidence that Pol Pot’s human rights violations played any part in the decision to invade Cambodia. Vietnam criticised these only when it became politically convenient to do so, and, had a diplomatic settlement been secured with the DK (Cambodia) on its borders, it would have coexisted with its murderous neighbour.”<sup>37</sup> Vietnam’s Foreign Minister told a US Congressman that “human rights was not a question; that was their problem.... we were concerned only with security.”<sup>38</sup>

Vietnam’s representative at the UN told the Security Council that there were two wars going on, the first being a Vietnamese/Cambodian border war in which Vietnam was merely exercising its right to self-defence, and the second an internal revolutionary war being fought by the Cambodian people. Vietnam’s invading forces did in fact include members of an exiled insurgent group<sup>39</sup>, but, in the words of Wheeler, the claim of “two wars” was “easily exposed as a sham” by the presence of over 100,000 Vietnamese soldiers in Cambodia.<sup>40</sup>

Again, the war fails on the criterion of ‘broad international backing’: apart from the Soviet bloc, it attracted almost universal condemnation- and indeed, the UN General Assembly denied recognition to the new Vietnamese-backed

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<sup>36</sup> Wheeler op.cit. p.107

<sup>37</sup> Ibid. p.105

<sup>38</sup> Garrett op.cit. p.120

<sup>39</sup> Chesterman op.cit. p.79

<sup>40</sup> Wheeler op.cit. p.85

Cambodian government, preferring to give Cambodia's seat at the UN to a guerrilla organisation led by remnants of the Khmer Rouge.<sup>41</sup>

The *jus post bellum* became an issue in this conflict, as Vietnamese troops remained in Cambodia for a decade afterwards; this was criticised, but can be viewed as having been necessary to prevent the return to power of the Khmer Rouge which, as indicated, remained active as a guerrilla force (Garrett dissents from this argument, stating that it was the presence of Vietnamese troops itself that led to the resistance, but this is not the general view)<sup>42</sup>. Vietnam also made creditable efforts at reconstruction, for example by rebuilding infrastructure and providing training for Cambodian doctors and other professionals (a class that had been virtually wiped out by Pol Pot). However, Vietnam was also criticised for replacing the Khmer Rouge with a puppet government favourable to its own interests rather than a more broad-based coalition<sup>43</sup>. And, perhaps not surprisingly given Vietnam's own domestic record, the new government it helped to set up in Cambodia was itself accused of serious human rights abuses- including arbitrary arrest, detention and torture- though nothing remotely on the scale of what had gone before.<sup>44</sup>

### 2.2.3. Tanzania's Invasion of Uganda, 1978-9

It is generally agreed that the contemporaneous Tanzanian invasion of Uganda also meets the criterion of 'supreme emergency'- its target was the notorious

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<sup>41</sup> Ibid p.79

<sup>42</sup> Garrett op.cit. p.121

<sup>43</sup> Ibid p.121

<sup>44</sup> Wheeler op.cit. p.103

regime of Idi Amin, which according to Amnesty International was responsible for the deaths of 300,000 people between 1971 and 1979<sup>45</sup>- and that of proportionality; again it involved a regime change, with Amin being replaced as the head of state by his predecessor Milton Obote, but it is hard to see how Amin's abuses could have been halted without his removal.

It also meets the criterion of 'broad international support' better than the previous two cases, since, while there was little active enthusiasm expressed about Tanzania's action either by other African states or by the great powers, nor was there much opposition. Nigeria and Sudan both denounced the invasion, but the great majority of African states did not.<sup>46</sup> In the case of the great powers, the lack of opposition can probably be ascribed to the fact that- in contrast to the previous two cases- neither of the countries involved was a key Cold War ally for either side.<sup>47</sup> Equally, Wheeler argues that the lack of opposition expressed by other African states probably had less to do with concern for the humanitarian situation inside Uganda than with the fact that Amin had broken the norms of sovereignty and non-aggression by invading Uganda. Also, Tanzania's President Julius Nyerere was an "outspoken advocate of humanitarian values" (Wheeler)<sup>48</sup>, who had been condemning the actions of Amin's regime for some years, so it might be expected that this war would also meet the criterion of 'humanitarian motives'.

However, as in the previous case, such motives were not cited. Nyerere preferred to rest the justification for the war on self-defence; some six months

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<sup>45</sup> Ibid p.111

<sup>46</sup> Garrett op.cit. p.125

<sup>47</sup> Wheeler op.cit. p.134

<sup>48</sup> Ibid p.133

previously, Ugandan troops had invaded a border area of Tanzania, although the claim of self-defence was not entirely convincing since those troops had already been withdrawn. Like the government of Vietnam, Nyerere argued that two wars were taking place: one a war of self-defence and the other being fought by Ugandan dissidents to depose Amin<sup>49</sup> - although again, there was little justification for this claim.

Some have expressed doubt over whether the war can be said to have had a successful outcome as, in its aftermath, several Ugandan governments came and went- some of them as oppressive as Amin's had been- and there was also a civil war between Obote's restored government and left-wing guerrillas.<sup>50</sup>

#### 2.2.3.1. Overview of the 1970s Cases

The three cases from the 1970s are described by Chesterman as the 'best cases' of humanitarian intervention since all were pursued in response to a major crisis, all had "broadly positive" outcomes, and in each case the prospect of a "realistic alternative polity" was present (which Chesterman believes was not the case in Kosovo).<sup>51</sup>

However, although all these three cases have been widely cited as examples of humanitarian war, in none of them did the intervening government actually cite humanitarian motives as the main reason for its action.

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<sup>49</sup> Chesterman op.cit. pp.77-8

<sup>50</sup> C. Thomas, 'The Pragmatic Case Against Intervention', in I. Forbes & M. Hoffman, eds. *Political Theory, International Relations and the Ethics of Intervention*, London, Macmillan, 1993, p.93

<sup>51</sup> Chesterman op.cit. p.222

Another reason for not choosing one of these three wars as the case study for this thesis is that in the 1970s, theoretical doctrines of humanitarian war were not as developed, nor as widely accepted as they are now. Indeed, the term ‘humanitarian war’ had not at that time been coined. The fact that in each case the intervening power proved reluctant to cite humanitarian justifications for its action is an indication of this. The list of *jus ad bellum* criteria for a humanitarian war that was laid out in Chapter 1 only really became settled in the 1990s.

There is also a further good reason, to do with the *jus post bellum*, for choosing a war fought by the USA and European powers- ie one of the examples from the 1990s- as the case study. These countries are the richest in the world and therefore should be expected to have sufficient resources to devote to the *jus post bellum* if they are genuinely committed to it. In the case of a humanitarian war fought by a developing nation (as in the three cases of the 1970s), it would seem unfair to criticise the intervening state for not carrying out reconstruction in the liberated territory, given that it is unlikely to possess the wealth to do so without the risk of bankrupting its own economy. It is unsurprising, then, to find that in two of the three cases from the 70s, there was no post-war occupation, and in the third (Vietnam’s invasion of Cambodia) the continued presence of Vietnamese troops could, given continued activity by the Khmer Rouge, have been justified on the grounds of self-defence, just as the war was. In contrast, in all of the main post-Cold War cases, the initial intervention was followed by a military occupation of the target state, with outsiders (to varying degrees in each case) taking over the functions of government. In the case of Somalia, the occupying force soon

departed after facing resistance; in the cases of Kosovo, Afghanistan and Iraq, the troops remain up to the time of writing.

Hence we now move on to the second group of possible cases of humanitarian war: those from the post-Cold War era.

#### 2.2.4. 'Safe Havens' for Kurds in Iraq, 1991

The first of the often-cited humanitarian interventions of the 1990s, the enforcement of no-fly zones in Iraq and the setting up of 'safe havens' for the Kurdish population, is not a suitable case study for this project, as though it was possibly a humanitarian intervention, the level of force used was not really sufficient for it to be classified as a humanitarian war. Nevertheless a brief exploration of some of the issues raised by it may be worthwhile here.

Freedman and Boren state that the case of the safe havens "was an important precedent but the circumstances were exceptional and the long-term impact of the action was mixed."<sup>52</sup> The exceptional nature of the circumstances stems in part from the fact that Western governments were widely accused in the media of being responsible for Saddam Hussein's oppression of the Kurds, given that they had supported him in the 1980s and had then abandoned the Iraqi population in the aftermath of the first Gulf War after encouraging them to overthrow their leader. Hence some prefer to define this as a case of 'imperial responsibility' rather than humanitarian intervention. Roberts, too, states that Kurdistan was a special case since Saddam (like Idi Amin) had broken the established rules of the game by

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<sup>52</sup> L. Freedman & D. Boren, 'Safe Havens for Kurds in Post-War Iraq', in N. Rodley, ed. *To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights*, London, Brassey's, 1992, p.82

invading another country, and was hence seen as having at least partially lost his own right to sovereignty.<sup>53</sup>

#### 2.2.5. Somalia, 1992-3

The US-led intervention in the civil war in Somalia in 1992-3 has been described as “the first modern case of the military occupation of a country for avowedly humanitarian reasons alone.”<sup>54</sup> In some senses, there were two interventions in Somalia: the first took place in late 1992, with a narrowly-defined mandate of ensuring the distribution of food aid, and the second followed a new eruption of fighting in early 1993; a force of 20,000 peacekeepers (about half of whom were US troops) was sent in with a much broader mandate centred around reconstruction. It is doubtful whether the first intervention can genuinely be called a humanitarian *war*; the second probably does meet the definition, although the lack of a state enemy creates some doubts according to how the term ‘intervention’ is usually understood. The first intervention is a slightly odd case since, as de Waal notes, “the intervention force was sent to protect foreign aid workers, rather than Somali civilians”<sup>55</sup> - as its main aim was to ensure the distribution of aid.

The case of Somalia is generally agreed to meet the criterion of ‘humanitarian motives’ better than most. Though the US did have non-humanitarian motives for intervening (for example, for President Bush, going into Somalia served to draw

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<sup>53</sup> A. Roberts, ‘Humanitarian War: Military Intervention and Human Rights’, *International Affairs* Vol. 69/3 (1993), p.437

<sup>54</sup> A. de Waal, ‘Dangerous Precedents? Famine Relief in Somalia 1991-93’, in J. Macrae & A. Zwi, eds. *War and Hunger: Rethinking International Responses to Complex Emergencies*, London, Zed Books, 1994, p.154

<sup>55</sup> *Ibid* p.155

attention away from his Administration's perceived failure to act in Bosnia)<sup>56</sup>, these were not obviously inconsistent with a humanitarian purpose. The US and other Western powers had no substantial strategic interest in Somalia, nor were they directly threatened by a refugee crisis.<sup>57</sup> The second intervention was accompanied by much humanitarian rhetoric from the new Clinton administration; Madeleine Albright, then US ambassador to the UN (and who we will meet again in later chapters), said the operation "aimed at nothing less than the restoration of an entire country as a proud, functioning and viable member of the community of nations."<sup>58</sup>

A case might however be made that humanitarian motives, while present, were not sufficiently strong to ensure success in the *jus post bellum*. The US, says Wheeler, was not interested in long-term reconstruction and wanted to hand over to the UN as soon as possible; "had there been any question of a protracted US commitment involving casualties, it is clear that Bush would not have launched an intervention."<sup>59</sup>

Somalia also seems to meet the criterion of 'supreme emergency': the intervention was precipitated by a civil war which, along with drought, helped to cause a famine that killed 300,000-350,000 people in 1992, and with central government having collapsed chronic lawlessness made it very difficult for aid to be properly distributed.<sup>60</sup> The criterion of 'last resort' is difficult to apply to

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<sup>56</sup> Wheeler op.cit. p.181

<sup>57</sup> Garrett op.cit. p.120

<sup>58</sup> Wheeler op.cit. p.192

<sup>59</sup> Ibid p.190

<sup>60</sup> Ibid p.174

Somalia because there was no legitimate internal authority with which outsiders could negotiate.

It could be argued that it would be unfair to choose Somalia as a case study since the situation there- with the complete collapse of institutions of government- was even more intractable than most cases of civil war, meaning that it was always highly unlikely that the intervention would produce a successful long-term settlement. As it stands, the eventual failure of the operation seems to provide a cautionary tale against expecting too much from humanitarian interventions, particularly as far as the *jus post bellum* is concerned. Wheeler states that “the haunting question raised by Somalia is whether humanitarian intervention that tries to combine both the short term and long term goals of rescuing victims from starvation and lawlessness, and restoring legitimate authority, is *always* doomed to end in a humiliating exit.”<sup>61</sup> But Mayall writes that Somalia was an exceptional case since the society did not merely lack a functioning state but historically “was more accustomed to statelessness than statehood.... although all interventions in civil conflicts face comparably intractable problems, very few... are faced not merely with the corruption of central authority but by its total disappearance combined with powerful structural obstacles to its reconstruction.”<sup>62</sup> Included among these obstacles was the fact that, according to Vaux, Somalis “were not necessarily unhappy with being a failed state; their previous unhappy experience with the authoritarian Western-backed regime of Said Barre meant that many in

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<sup>61</sup> Ibid p.207

<sup>62</sup> J. Mayall, ‘Humanitarian Intervention and International Society: Lessons from Africa’, in J. Welsh ed. *Humanitarian Intervention and International Relations*, Oxford, Oxford University Press, 2004, p.134

Somalia preferred statelessness to the alternative of the imposition of a new pro-Western regime.”<sup>63</sup> This meant that the Western paradigm of humanitarian intervention, which focused on restoring the institutional framework of a conventional nation state, was particularly ill-suited to Somalia. So, if the intervention in Somalia is judged a failure, the highly unusual nature of the case means that this does not provide evidence that all humanitarian interventions are doomed to fail.

Not all observers are agreed that the Somalia intervention should be called a failure. Garrett states that “buried beneath all the rhetoric about the ‘failure’ of Operation Restore Hope is the elementary fact that a great many Somalians were saved from an early death by the efforts of the international community.”<sup>64</sup> However, there is some dispute over whether the number of lives saved was exaggerated in early reports: the UN’s initial claim that 2 million Somalis were in imminent risk of starvation was later reduced to 330,000 in a report by the Refugee Study Group.<sup>65</sup> De Waal alleges that the famine had already passed its worst point by the end of 1992; death rates were dropping, and most of the deaths that were taking place were due to disease rather than starvation.<sup>66</sup> He argues that although the military intervention did improve the movement of food aid, it made no attempt to deal with the epidemics and thus probably had no significant impact on mortality.<sup>67</sup> Indeed it may have been counterproductive in the long run: “the increased and indiscriminate supply of relief food has the predictable effect of

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<sup>63</sup> T. Vaux, *The Selfish Altruist: Relief Work in Famine and War*, London, Earthscan, 2001, p.139

<sup>64</sup> Garrett op.cit. p.171

<sup>65</sup> Wheeler op.cit. p.189

<sup>66</sup> De Waal in Macrae & Zwi op.cit. p.157

<sup>67</sup> Ibid p.158

driving the price of cereals down to very low levels and providing a serious disincentive to production.... Thus was a new season of food aid dependency created in many areas.”<sup>68</sup>

But however one chooses to judge the first intervention, the second will always be remembered as a failure. US forces sought confrontation with the warlords but ended up causing civilian casualties (leading to doubt over whether the operation meets the criterion of ‘proportionality’); this led the population, most of whom had initially welcomed the peacekeepers, to turn against them. Rising (though still small) numbers of American casualties led to a political backlash and a humiliating withdrawal of US troops.<sup>69</sup> At the time of writing- some thirteen years on- Somalia still remains effectively stateless.

The exceptional nature of the Somalia case, then, limits the amount one can learn from it. Hence, for example, the fact that- in contrast to the cases of the 1970s- there was wide international support for intervention in Somalia justified on humanitarian grounds does not signify a great change in state attitudes to humanitarian war since, in contrast to earlier cases, intervention did not take place against a functioning state. As Roberts states, the Somalia case was exceptional because it was “not a case of intervention against the will of the government, but of an intervention where there is a lack of government.”<sup>70</sup> Hence sovereignty was not an issue.

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<sup>68</sup> Ibid p.157

<sup>69</sup> Wheeler op.cit. p.196

<sup>70</sup> Roberts loc.cit. p.440

### 2.2.6. East Timor, 1999

Another often-cited recent example of humanitarian intervention is the peacekeeping operation set up in East Timor in response to the eruption of violence that followed the 1999 referendum on independence. This case and that of Kosovo are often bracketed together, as they occurred in the same year- as in the Human Rights Watch report on 1999, which records that “twice in the past year, in Kosovo and East Timor, members of the international community deployed troops to halt crimes against humanity.”<sup>71</sup> But in fact, the East Timor was not an intervention at all, since the definition of an ‘intervention’ in international relations is an operation which takes place without the consent of the target state. Troops were only sent into East Timor after the government of Indonesia had given its permission for them to enter, though in fact this permission was not legally necessary since Indonesia had taken over East Timor by force in 1975 and the UN had never recognised its sovereignty over the area.<sup>72</sup>

This case, then, has no place in a discussion of humanitarian war. East Timor should rather be seen as an example of the success of diplomacy, since Indonesia was induced to give its consent to the arrival of a peacekeeping force by non-military measures such as economic sanctions and a suspension of arms sales by the US and EU (although it might have been better had such diplomacy been attempted some 25 years earlier).

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<sup>71</sup> I. Martin, ‘International Intervention in East Timor’, in Welsh op.cit. p.142

<sup>72</sup> Chesterman op.cit. p.219

### 2.2.7. Afghanistan, 2001-

The US-led intervention in Afghanistan, which began in October 2001 and continues to the time of writing, seems to meet the test of ‘supreme emergency’. The Taliban regime, overthrown by the intervention, was a brutal medievalist dictatorship which undoubtedly ranked among the worst human rights violators in the world in recent times, although some have attempted to make at least a partial defence of the Taliban on the grounds that their brand of politicised Islam provided the only real hope for peace and unity in Afghanistan after a prolonged period of civil war.<sup>73</sup>

Claims of humanitarian motives also formed a significant element in the official justification for the invasion of Afghanistan: President Bush described the bombing as an action of “generosity of America and our allies”, in the aid of the “oppressed people of Afghanistan.” Defence Secretary Donald Rumsfeld said that, like other recent US interventions in Kuwait, Somalia and Kosovo, the war was being fought “for the purpose of denying hostile regimes the opportunity to oppress their own people and other people.”<sup>74</sup> Much in particular was made of Taliban oppression of women; US First Lady Laura Bush said after the regime fell that “because of our recent military gains in much of Afghanistan, women are no longer imprisoned in their homes. The fight against terrorism is also a fight for the rights and dignity of women.”<sup>75</sup> However, claims that the intervening powers were genuinely motivated by concern for women’s rights did lack some credibility

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<sup>73</sup> Vaux op.cit. p.132

<sup>74</sup> D. Chandler, *From Kosovo to Kabul: Human Rights and International Intervention*, London, Pluto, 2002, p.1

<sup>75</sup> M. Rawi, ‘Rule of the Rapists’, *The Guardian* 12 February 2004

given that in the 1980s, the US had armed and funded the Mujahadin- who had treated women in much the same manner as the Taliban- in their war with the Soviet-backed regime in Kabul.<sup>76</sup>

As we saw in Chapter One, humanitarian rhetoric on the part of political leaders does not a humanitarian war make; if it did, then the Japanese invasion of Manchuria and Hitler's invasion of Czechoslovakia would both have been humanitarian wars. In the case of the invasion of Afghanistan, it is clear that it would not have happened if the September 11 attacks had not taken place and Osama Bin Laden had not been hiding there. Indeed, in the months immediately preceding the attacks, there had been signs of improving relations between the US government and the Taliban; in May 2001, Secretary of State Colin Powell made a statement welcoming the ban imposed by the Taliban on opium production.<sup>77</sup> Therefore the war was not humanitarian in motivation. Moreover, these non-humanitarian motives had an adverse impact on US strategy; had humanitarian concerns prompted the war, one might have expected the US to have been more discriminating in choosing its allies among the anti-Taliban elements in Afghanistan. As it was, bad as the Taliban undoubtedly were, the alliance that the US and its allies favoured to take control of the new Afghanistan included a number of warlords whose record was little better.

The US government claimed that its good intentions were proved by the fact that American planes were dropping food parcels to hungry Afghans as well as bombs; however, the airdrops of food were generally dismissed by aid workers as

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<sup>76</sup> Vaux op.cit. p.122

<sup>77</sup> P. Marsden, *The Taliban: War and Religion in Afghanistan*, 2<sup>nd</sup> ed, London, Zed Books, 2002, p.150

a publicity stunt which had no real effect in combatting hunger. The UN special rapporteur on the right to food “condemned US airdrops... as a catastrophe for humanitarian aid and warned that the US was effectively feeding Taliban fighters.”<sup>78</sup> Nor did it help that the humanitarian rations were dropped in packages that were the same colour as cluster bombs.<sup>79</sup>

Much of the literature is dismissive of the idea that the war was fought for humanitarian reasons. Chesterman states that “the human rights of the Afghan population were not uppermost in the minds of the Bush administration.”<sup>80</sup> Similarly, Minear concludes that “the rationale for the targeting of first al Qaida and then the Taliban had nothing to do with improving the lot of Afghan civilians and everything to do with reprisals for the September 11 events.”<sup>81</sup> The war was regarded as one of self-defence; invocation of humanitarian motives was coincidental to other concerns and was put forward mainly with the aim of holding together the international coalition.

There are also serious doubts over whether the war should be regarded as meeting the test of proportionality, given the high level of civilian casualties compared to, for example, the Kosovo intervention. One study for the first nine months of the intervention estimated between 3125 and 3620 civilian deaths;<sup>82</sup> other estimates go as high as 8000, with possibly as many as 20,000 killed indirectly (for example by starvation).<sup>83</sup>

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<sup>78</sup> L. Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries*, Bloomfield, Kumarian Press, 2002, p.195

<sup>79</sup> Ibid p.202

<sup>80</sup> S. Chesterman, ‘Humanitarian Intervention and Afghanistan’, in Welsh op.cit. p.163

<sup>81</sup> Minear op.cit. p.198

<sup>82</sup> M. Herold, ‘Counting the Dead’, *The Guardian* 8 August 2002

<sup>83</sup> J. Pilger, ‘What Good Friends Left Behind’, *Guardian Weekend* 20 September 2003

As far as the *jus post bellum* is concerned, the record in Afghanistan is at best ambiguous. Although some reasonably peaceful elections have been held, much of the country is still effectively controlled by warlords, and there have been frequent complaints that, outside the capital, Kabul, the situation of women in particular has scarcely improved.<sup>84</sup>

One other reason for choosing Kosovo rather than Afghanistan as the case study has to do with the availability of literature. Several of the major contemporary works on humanitarian intervention- for example, Wheeler's *Saving Strangers* and Chesterman's *Just War or Just Peace?*- were published in the period between the war in Kosovo and that in Afghanistan, and so contain accounts of the former intervention but not the latter. Therefore there is a wider selection of perspectives available on the Kosovo war from established theorists in this area.

#### 2.2.8. Iraq, 2003-

Claims of humanitarian motives were made for the second Gulf War. Its official title was "Operation Iraqi Freedom", and members of the US and British administrations predicted that their troops would be welcomed as liberators. Vice President Dick Cheney said that the streets of Baghdad and Basra would "erupt in joy in the same way as the throngs in Kabul greeted the Americans"<sup>85</sup>, and UK Defence Minister Geoff Hoon said that "I think there is every prospect that the population will be enormously relieved by the action the international community

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<sup>84</sup> Rawi loc.cit.

<sup>85</sup> D. Hiro, *Secrets and Lies: the True Story of the Iraq War*, London, Politico's, 2005, p.51

might take.”<sup>86</sup> But these arguments were very much secondary to arguments of preventive self-defence based on Saddam’s supposed weapons arsenal and links to al Qaida. Moreover, some of the states that opposed the war based their opposition on the belief that any good humanitarian effects from the overthrow of Saddam would be outweighed by other bad consequences. France’s Prime Minister Jean-Pierre Raffarin said that “the US has erred in going to war, morally, politically and strategically. There was an alternative to war. Going to war was a moral error when one can disarm in other ways.”<sup>87</sup>

I do not intend here to go into much detail concerning the justifications for, course of and aftermath of the second Gulf War, since it has attracted far more outright opposition from avowed supporters of the idea of humanitarian war than any of the other cases listed in this chapter, and so it was not seriously considered as a potential case study for this project. The war in Iraq was not pursued in response to an immediate humanitarian emergency, nor with the aim of preventing one. The target government was undeniably a major violator of human rights, but was not in the period leading up to the war committing crimes any worse than those it had been committing for years; nor did those prosecuting the war make any claim that it was about to do so. As was mentioned in Chapter 1, in the case of Iraq Saddam Hussein’s most serious crimes against his people had occurred some 10-15 years before the war took place, and the groups who had been the main victims were already fairly effectively protected through the imposition of no-fly zones. Even more so than in the case of Afghanistan, the high level of civilian

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<sup>86</sup> J. Ashley, ‘Cool, calm, confident: the MoD’s top hawk’, *The Guardian* 10 February 2003

<sup>87</sup> Hiro op.cit. p.185

casualties makes it difficult to argue that the war meets the criterion of proportionality. As for the *jus post bellum*, it would require far more space than is available here to do justice to the well-known- and ongoing- story of the débacle of post-war Iraq.

As has been stated, this project aims to evaluate the theory of humanitarian war on its own terms. Therefore it would be unfair to pick the second Gulf war as the case study, since although a minority of the leading thinkers on the subject did support the war (Michael Ignatieff would be one example), most did not regard it as a legitimate humanitarian intervention. For example, Michael Walzer's opposition- based on the fact that there was no immediate humanitarian crisis- was noted in Chapter 1 (though he also stated at the same time that he would not march against the war).<sup>88</sup> In contrast, most theorists supported the war in Kosovo, at least in principle (though often with reservations over NATO's choice of tactics).

Some of those who initially supported the Iraq War have since changed their position, whereas those who supported the Kosovo war have generally not recanted. Even those- such as Ignatieff- who still regard the war as having been legitimate in its conception acknowledge that it was carried out in a disastrously flawed fashion. The Iraq war, then, would make an excellent case study for a project on how the concept of military humanitarianism can be abused, but that is not the question that this thesis aims to address.

### 2.2.9. Kosovo, 1999-

In contrast to earlier humanitarian wars, the alliance that conducted the Kosovo

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<sup>88</sup> M. Walzer, *Arguing About War*, New Haven, Yale University Press, 2004, p.149

war relied strongly on humanitarian motives for its official justification. NATO leaders and spokesmen also consistently cited the criteria of ‘supreme emergency’ and ‘last resort’ in justifying the bombing. All this will be explored in more detail in Chapter 4, but a couple of examples can be given here. Tony Blair told the House of Commons on 23 March 1999- the day before the bombing began- that "we must act to save thousands of innocent men, women and children from humanitarian catastrophe, from death, barbarism and ethnic cleansing by a brutal dictatorship".<sup>89</sup> Blair said after the war that “Good has triumphed over evil, justice has overcome barbarism, and the values of civilisation have prevailed.”<sup>90</sup>

NATO did have other motives for acting, such as a wish to protect its own credibility, but at first sight at least these might not seem incompatible with the humanitarian nature of the operation. Claims of other non-humanitarian motives- such as economic hegemony- have been made, but- as will be seen later- do not in general seem particularly convincing. In the aftermath of the war, Kosovo was occupied by a NATO-led force and a UN administration set up over the province, making it a useful case study for the doctrine of *jus post bellum*.

Some have doubted whether the war in Kosovo met the criterion of ‘supreme emergency’, and it must be admitted that, before the bombing began, the human rights abuses that were taking place in Kosovo were not on the scale of some of the other examples that have been listed; however, as will be shown in later chapters, the situation in the province was still undoubtedly bad.

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<sup>89</sup> T. Blair, cit. in S. Henig, ‘Britain: to War for a Just Cause’, in T. Weymouth & S. Henig, eds. *The Kosovo Crisis: The Last American War in Europe?*, London, Pearson Education Ltd, 2001, p.55

<sup>90</sup> cit. in C. Williams, ‘Kosovo: A Fuse for the Lighting’, in *Ibid*, p.32

Where Kosovo is most obviously superior to the three cases of the 1970s is in meeting the criterion of broad international backing; most obviously in the fact that it was fought by an alliance of 19 states rather than by a single government, but also in the fact that it attracted a fairly impressive degree of support from states not directly involved. Kosovo was the first full-scale war against a functioning state to attract wide international support *specifically as a humanitarian war*. As we have seen, the interventions by India and Vietnam both met with almost universal international disapproval, and while this was not the case with Tanzania's invasion of Uganda, it is unlikely that many African states would have given even tacit approval to that intervention if Uganda had not already broken the established norms of international politics by invading Tanzania. In contrast, although NATO's intervention was not authorised by the UN, nor ever explicitly endorsed by it, the Security Council did reject by 12 votes to 3 a Russian/Chinese resolution condemning the bombing. Wheeler states that the Security Council vote "was historic because, for the first time since the founding of the Charter, seven members (ie the seven states in the Security Council that were not members of the NATO alliance but voted against the resolution) either legitimated, excused or acquiesced in the use of force justified on humanitarian grounds in a context where there was no express Council authorisation."<sup>91</sup>

Most theorists of humanitarian war did support the intervention in Kosovo; Walzer, for example, said that military action seemed "entirely justified, even obligatory"<sup>92</sup>; Michael Glennon praised "America's new willingness to do what it

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<sup>91</sup> Wheeler op.cit. p.281

<sup>92</sup> M. Walzer, 'Kosovo', *Dissent* Summer 1999, p.5

thinks right”.<sup>93</sup> However, they often did so with reservations over the tactics that were used, believing that NATO should have sent in troops on the ground rather than relying on air power (see, for example, Wheeler’s comment that “NATO acted preventatively and it was right to do so, but it employed the wrong means”).<sup>94</sup> However, as we will see, no NATO state- not even the UK, generally viewed as the most hawkish of the powers involved- was at all enthusiastic about the use of ground troops, and it was only the ruling out in advance of that option that made it possible for the war to be fought at all. Hence it might be argued that despite the reservations of the theorists, Kosovo provides a true picture of what humanitarian wars- at least when fought by Western states- will tend to look like in reality.

If we descend from the world of academic theorists into that of media commentators, it can certainly be said that Kosovo created an unprecedented amount of optimism about the concept of military humanitarianism as a succession of leading liberal figures praised the noble goals of the war and the purity of NATO’s motives. Polly Toynbee, for example, said that “there was nothing in this for anyone, no political gain for any leader, no glory, only the certainty that Milosevic’s monstrous ethnic cleansing had to be stopped”, and stated that the war was a “brave and probably only chance for the West to collectively to create a more ethical foreign policy.”<sup>95</sup> John Lloyd said of the war that “it is said that we live in a selfish world, where the politics of democratic governments are

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<sup>93</sup> M. Glennon, ‘The New Interventionism: The Search for a Just International Law’, *Foreign Affairs* Vol.78/3 (May/Jun 1999), p.2

<sup>94</sup> Wheeler op.cit. p.283

<sup>95</sup> cit.in M. Curtis, *Web of Deceit: Britain’s Real Role in the World*, London, Vintage, 2003, p.151

determined solely by material interest. Yet now it seems that we have become truly good people, fighting evil in the Balkans”, and added that over Kosovo, “the further left, or the more liberal, you go, the more force is called for.”<sup>96</sup> This is overstating the case- many figures on the left opposed the war- but it is generally true as far as the liberal centre-left is concerned.

### **2.3. Conclusion: Why Kosovo?**

The main reason for choosing to study the Kosovo intervention is that, although it may be doubted whether Kosovo is actually the ‘best’ case of humanitarian war over the whole period of post-World War II history, it is quite clearly the best case since the end of the Cold War. Both Afghanistan and Iraq are best viewed as straightforward wars of *realpolitik* for which the war-making powers cited some humanitarian motives in an attempt to bolster the public justification for the invasions; and both, the latter in particular, have had very dubious outcomes. Somalia, though closer to being straightforwardly humanitarian in motivation, was essentially a failure; also, as an intervention in a stateless country it cannot be considered a representative case. And, though we can never be sure what the future holds, the three cases from the 1970s seem to represent a type of humanitarian war that has disappeared, at least for the moment, and so is less relevant to current discussion. Also, given that much of the theoretical work on humanitarian war has been done in the last fifteen years, the three cases from the 1970s tend to be viewed retrospectively in most studies on the subject. Kosovo, on

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<sup>96</sup> J. Lloyd, ‘How the Doves Turned Hawkish’, *New Statesman* 2 April 1999

the other hand, provided a contemporary test of the theory at the time when interest in the idea of humanitarian war was at its height.

## Chapter Three

# **The Kosovo Conflict: Case History**

This chapter will begin by providing a short narrative history of the conflict in Kosovo up to the launching of the NATO intervention on 24 March 1999, focusing mainly on events within the province, and will then move on to explore some theoretical issues which are raised by the internal development of the conflict.

Historical works on the conflict in Kosovo trace its origins to as far back as the defeat of Serbia by the Ottoman Turks in the 14th and 15th Centuries; the Battle of Kosovo in 1389 has acquired a central place in the historical mythology surrounding the province.<sup>1</sup> This, then, is a territorial conflict which has been going on intermittently in one form or another for a very long time, although it was temporarily frozen by the creation of Yugoslavia and by the Cold War. However, as this thesis is not directly about the origins and development of the conflict in Kosovo, but rather seeks to use the conflict as a case study for evaluating and informing the theory of humanitarian war, it is not worthwhile here- even if space permitted- to go into the deep historical background behind the conflict. The reasons why the conflict occurred are only relevant to this thesis in so far as they relate to and were influenced by NATO's decision to launch a humanitarian war.

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<sup>1</sup> M. Vickers, *Between Serb and Albanian: A History of Kosovo*, London, C. Hurst & Co., 1998, pp.12-16

Therefore this chapter will focus mainly on the period 1987-1999, beginning with the rise to power of Slobodan Milosevic.

There are many contentious aspects to the history of this period. The intention of this chapter is not to adjudicate on the rights and wrongs- legal or moral- of the dispute over the status of Kosovo, but merely to detail the development of that dispute. A number of common themes can be traced in the literature, and these will form the core of this chapter.

This chapter will focus mainly on internal events within Kosovo and Serbia, although it will mention the various international efforts to resolve the conflict where these had an impact on the perspectives and actions of internal groups. The international history of the conflict will be discussed in greater detail in the section on the 'last resort' in Chapter 4.

Once the main historical points have been set out, the final section of the chapter will deal with some wider issues raised by the development of the conflict in Kosovo which are not generally covered by the theoretical literature on humanitarian war. The most important such issue is the question of the effect of the possibility or expectation of intervention on internal conflicts.

The theoretical literature on humanitarian war tends to regard military intervention as an act which either takes place or does not, and which is decided upon by intervening powers. It will be argued, however, that the case of Kosovo demonstrates that if actors on either side in an internal conflict perceive the possibility of outside intervention in the form of a humanitarian war occurring at some point in the future, this can have a very significant impact on the way these

actors behave, and hence on the course of the conflict. Plainly the perpetrators of human rights abuses in any given situation may be encouraged or discouraged from continuing their abuses depending on whether they believe that action may be taken against them. This much is acknowledged by theorists. However, the other side in such a conflict- the perceived victims- are rarely discussed except as passive figures who may or may not be saved by the actions of outsiders. But the victims have just as strong an incentive to seek international intervention in a conflict as those perpetrating the abuses have to ensure that it does not take place. Groups acting- or claiming to act- on behalf of the victims can take action to maximise the possibility of intervention, and these actions can have a major impact on the course of the conflict.

In Kosovo, it will be argued, the possibility of a future military intervention served to destabilize the situation, to reduce the possibility of a peaceful settlement and helped to turn the conflict into an open military struggle. This was because, as the case of Kosovo demonstrates, outside intervention is far more likely to take place if there is a full-scale civil war going on in the relevant state or province than if there is one-sided abuse of human rights by government actors. As we will see, for as long as they pursued tactics of peaceful resistance to Serb repression, the Kosovo Albanians found their plight effectively ignored by the outside world since the situation inside the province, though bad, did not threaten wider regional stability and was overshadowed by larger-scale violence in neighbouring states. But once the KLA emerged with its terrorist tactics, triggering retaliatory escalation by the Serbian government, the province immediately gained a much

higher international profile- the beginning of the process which was soon to result in the international military intervention that the KLA leaders had sought. Terrorism worked, albeit at great cost to the civilian population. This leads to a concern over whether humanitarian wars may act as a destabilizing factor by removing incentives for compromise, and by encouraging oppressed groups to turn to violence in order to provoke reprisals and increase the chances of intervention occurring.

### **3.1 Preliminaries:1974-1987**

The modern history of the Kosovo conflict may be said to have begun in 1974, with the drawing up of a new constitution for Yugoslavia. This gave Kosovo the status of an “autonomous province” within Serbia,<sup>2</sup> but did not elevate it to the level of a separate constituent republic of the Yugoslav federation. Therefore, unlike these republics, Kosovo did not have the constitutional right to secede.<sup>3</sup> This was to prove important when the federation began to break up in the early 1990s; while the other constituent nations of Yugoslavia, such as the Slovenians and Croatians, won recognition from Western governments when they declared independence, the Kosovo Albanians, because their province did not have the same constitutional status, were not able to gain international backing for their own efforts to establish an independent state. In this they were in the same position as other national minorities which did not have their own republic, such as the

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<sup>2</sup> Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford, Oxford University Press, 2000, p.35

<sup>3</sup> Foreign Affairs Committee Fourth Report, *Kosovo*, Vol.I, House of Commons Stationery Office HC28-I, 1999-2000 Para.14

Krajina Serbs of Croatia. Indeed, Western governments continued officially to oppose independence for Kosovo even as they went to war in 1999, though the logic of Western policy appeared to point to independence.

Although they were denied the right to secede, in other respects the constitutional settlement of 1974 was quite favourable towards the Kosovo Albanians. In 1981, an Albanian professor at the University of Pristina claimed (admittedly, not without a certain amount of the usual communist hyperbole) that “not a single national minority in the world has achieved the rights that the Albanian nationality enjoys in socialist Yugoslavia.”<sup>4</sup> Albanian was made the official language of the province, and Albanian leaders were able to promote the Albanianisation of cultural and public life, which resulted in a marginalisation of the Serbian minority.<sup>5</sup> This was to lead to trouble when a new politicised Serbian nationalism, rejecting the notion of the unity of the federation of Yugoslavia, began to gain support in the late 1980s.

### **3.2 1987-1991: The Rise of Milosevic**

Milosevic’s ability to exploit the resentments of the Serbian minority in Kosovo played a major part in his rise to power. Malcolm writes that “it was... the issue of Kosovo that brought about his transformation from little-known Party apparatchik into demagogic political leader.” On April 24 1987, Milosevic told protesting

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<sup>4</sup> N. Chomsky, *The New Military Humanism: Lessons from Kosovo*, London, Pluto Press, 1999, p. 24

<sup>5</sup> FAC Report Vol.I op.cit. Para.14

Kosovo Serbs that “nobody should ever dare to beat you”- these were “the words on which his entire political future would be built”.<sup>6</sup>

Some 130,000 Serbs left Kosovo between 1966 and 1989 because of what Hedges describes as “frequent harassment and discrimination” by the majority Albanian population.<sup>7</sup> The Independent International Commission on Kosovo reports that the Serbs who left the province in this period “were genuinely afraid of physical violence and damage to their property; they also experienced institutional and ideological discrimination.” Wilder stories of the rape of Serbian women by Albanians circulated in Belgrade. These were not substantiated by official figures, which showed the rate of rape in Kosovo to be less than half that in greater Serbia<sup>8</sup>; but the existence of such rumours was a sign of a growing mistrust between the two ethnic groups. Unconfirmed or exaggerated stories of inter-ethnic violence have impacted on the course of the conflict in Kosovo on more than one occasion; most recently, the riots of March 2004 (see Chapter 6) were sparked by rumours- never proved- of ethnic Albanian boys drowning after being driven into a river by a gang of Serbs.

Another contributing issue was the fact that, due partly to the aforementioned emigration and partly to a higher birthrate among Albanians, the Serbian minority was declining in terms of its proportion of the total population of Kosovo; down from 23.5% in 1961 to 13.2% in 1981, and only 9.9% in 1991.<sup>9</sup>

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<sup>6</sup> N. Malcolm, *Kosovo: A Short History*, London, Macmillan, 1998, p.341

<sup>7</sup> C. Hedges, ‘Kosovo’s Next Masters?’, *Foreign Affairs* Vol.78/3 May/June 1999, p.38

<sup>8</sup> Malcolm op.cit. p.339

<sup>9</sup> Independent International Commission on Kosovo op.cit. p.39

By the end of 1987, Milosevic had been installed as President of the Serbian League of Communists. He immediately embarked on a strategy of the 'Serbianisation' of Kosovo, which was to remain in place for the next decade. Police harassment and repression of Kosovo Albanians had begun to escalate as early as 1987, but the beginning of the period of crisis in the province can probably be dated to March 2 1989, when Kosovo Albanian party leaders were arrested on the grounds that they had organised a miners' strike; this action led to massive demonstrations and the imposition of emergency rule over Kosovo.<sup>10</sup> In the same year, laws were passed preventing Albanians from buying or selling property without the permission of the authorities.<sup>11</sup>

On July 2 1990, Albanian delegates to the Kosovo Assembly declared political sovereignty for Kosovo as an independent unit in the federal system (although not, as yet, as a separate state). Three days later, the Serbian government dissolved the assembly and began a purge of Albanians in government posts and the media. This was followed in September 1990 by the proclamation of a new constitution that revoked the autonomy of Kosovo and Vojvodina<sup>12</sup> (an ethnically diverse province in northern Serbia containing a sizeable population of ethnic Hungarians<sup>13</sup> - later to be an important centre of opposition to Milosevic, a fact which did not prevent it from receiving particularly heavy bombing during the NATO intervention). The new constitution gave Serbia control over Kosovo's police, courts and civil

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<sup>10</sup> S. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War*, Washington DC, Brookings Institution, 1995, p. 98

<sup>11</sup> FAC Report Vol.I op.cit. Para.18

<sup>12</sup> Woodward op.cit. p.98

<sup>13</sup> Chomsky (1999) op.cit. p.25

defence, social and economic policy, educational policy and the choice of an official language.<sup>14</sup>

If the emerging Kosovo Albanian resistance movement had not initially advocated complete independence for the province, this was to change in 1991, as the Yugoslavian federation began to fall apart. Kosovo was to follow the example of Slovenia and Croatia in declaring independence. A clandestine referendum was held in September 1991, which produced a 99% vote in favour of independence for Kosovo on an 87% turnout.<sup>15</sup>

### **3.3 Before Dayton: Kosovar Apartheid, the LDK and Peaceful Resistance**

In the first half of the 1990s, the dominant force in the Kosovar independence movement was the Democratic League of Kosovo (LDK), led by Ibrahim Rugova, who- as the sole candidate- was elected President of Kosovo's 'shadow government' in May 1992.<sup>16</sup> The LDK favoured a strategy of peaceful resistance, aiming to deny the legitimacy of Serbian rule by such tactics as boycotting elections and censuses and creating the apparatus of a parallel state.<sup>17</sup> Rugova believed that this strategy would win Western support for independence for Kosovo; he said in 1991 that "we have learned that non-violence is the modern European preference."<sup>18</sup>

The Kosovar nationalist movement of this time has been criticised for following an unrealistic strategy of combining peaceful methods of resistance with

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<sup>14</sup> Malcolm op.cit. p.343

<sup>15</sup> Ibid p.347

<sup>16</sup> Chomsky (1999) op.cit. p.27

<sup>17</sup> Malcolm op.cit. p.348

<sup>18</sup> Vickers op.cit. p.292

an absolute refusal to compromise on its demand for independence.<sup>19</sup> Certainly the LDK's policy led it into some strange contradictions. Although the LDK refused to seek accommodation with Belgrade, on several occasions they found themselves playing a crucial role in helping to prop up the Milosevic regime. For example, the Kosovo Albanian population boycotted the presidential elections of December 1992, which Milosevic would undoubtedly have lost had they turned out against him. The Albanian population again boycotted Yugoslav elections in January 1994, meaning that extreme Serbian nationalists were elected to represent Kosovo.<sup>20</sup> Those elected included the notorious war criminal Arkan.<sup>21</sup>

The resistance preferred for Milosevic to continue in power rather than be replaced by a more reform-minded leader, because their strategy depended on Serbia continuing to seem profoundly evil- which left them as the obvious 'good guys'. Vickers writes that "it would have been a disaster for them if a peacemonger like (Milan) Panic (who became Prime Minister of Serbia in July 1992, only to be defeated by Milosevic in December) had restored human rights, since this would have left them with nothing but a bare political agenda to change borders."<sup>22</sup> LDK Vice President Fehami Agami explained that "frankly, it is better (for us) to continue with Milosevic. Milosevic was very successful in destroying Yugoslavia and in the same way, if he continues, he will destroy Serbia... [Panic] is offering enlightened hegemony."<sup>23</sup>

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<sup>19</sup> Independent International Commission on Kosovo op.cit. p.48

<sup>20</sup> Vickers op.cit. p.280

<sup>21</sup> Malcolm op.cit. p.351

<sup>22</sup> Vickers op.cit. pp.267-8

<sup>23</sup> Independent International Commission on Kosovo op.cit. p.49

This points up a crucial difference in how the Kosovo dispute was interpreted inside and outside the borders of the FRY. For the international community, when it was paying attention to what was going on in Kosovo, the issue was regarded as being one of the abuse of the human rights of one ethnic group by another, within a single state. For the Kosovo Albanians (as for the Serbs) the dispute was at root over territory and sovereignty. To Kosovo Albanian leaders, human rights abuses by the Serbian government were a symptom, the cause of which was the fact that Kosovo was not independent. As Rugova was to emphasise to US Secretary of State Madeleine Albright during the Rambouillet negotiations, the Kosovars always equated security with independence.<sup>24</sup> We will return to this issue later in the chapter.

The system that operated in the province in the 1990s has been termed ‘Kosovar Apartheid’.<sup>25</sup> The Milosevic regime pursued a ‘Serbianisation’ programme in the public sector- for example, in September 1993 the Serb authorities replaced the directors of the largest state enterprises and utilities with members of Milosevic’s Socialist Party.<sup>26</sup> The overwhelming majority of those Albanians who had held state employment- including most doctors, health workers and schoolteachers- were soon sacked on a variety of pretexts. Segregation was introduced in schools, and arbitrary arrest and police violence became routine- a Serbian law allowed the arrest and summary imprisonment for up to two months of anyone who committed a “verbal crime” such as “insulting the patriotic feelings

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<sup>24</sup> M. Albright with B. Woodward, *Madam Secretary*, London, Macmillan, 2003, p.399

<sup>25</sup> Vickers op.cit. p.277

<sup>26</sup> Woodward op.cit. p.340

of Serbian citizens.”<sup>27</sup> The authorities also made some efforts at colonising the province, for example by resettling Serbian refugees there, though these did not take place on a large enough scale to arrest the long-running decline in the Serbian minority as a proportion of the population of Kosovo.<sup>28</sup>

Meanwhile, the LDK set up its own parallel systems and institutions of government, plus its own system of tax collection. Two-thirds of children in Kosovo were taught outside the official school system.<sup>29</sup>

Despite the organisation’s espousal of peaceful resistance, LDK rule was not entirely benign. The party used its power to isolate those Albanians who tried to maintain contact with Serbs.<sup>30</sup> Judah described the LDK as “a curious mirror image to Milosevic’s SPS”, which “brooks little dissent and those that challenge it... can even be ostracised in the tight-knit Albanian community.”<sup>31</sup>

Looking back on the early 1990s, leading LDK member Xhafer Shatri acknowledged that although passive resistance had been the right strategy, the party had been too timid and had never taken it to its logical conclusion: “we should have been stronger. There should have been boycotts of Serbian goods, utility bills should never have been paid. They could arrest one or ten people but never 100,000. We had too many illusions, we did not do enough.” Chief amongst these illusions was a misplaced confidence in the goodwill of the international community.<sup>32</sup> Rugova proved to be mistaken in his belief that the LDK’s strategy

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<sup>27</sup> Malcolm op.cit. p.351

<sup>28</sup> Ibid p.353

<sup>29</sup> Vickers op.cit. p.268

<sup>30</sup> Ibid p.289

<sup>31</sup> Judah cit. in Chomsky (1999), p.27

<sup>32</sup> T. Judah, *Kosovo: War and Revenge*, New Haven, Yale University Press, 2000, p.105

would win Western support for independence for Kosovo- or even attention to the situation in the province. In fact, Kosovo was, says Vickers, “never more than a peripheral item in international talks” prior to 1998.<sup>33</sup> The US government did impose economic sanctions on the Yugoslav federal government in late 1990 and early 1991 over its decision to declare martial law in Kosovo, and the Bush and Clinton administrations in the US did periodically issue stern warnings to Milosevic. For example, in December 1992, in a letter to the Serbian leader, George Bush said that "in the event of conflict in Kosovo caused by Serbian action, the United States will be prepared to employ military force against the Serbs in Kosovo and Serbia proper".<sup>34</sup>

However, the House of Commons Foreign Affairs Committee report on the crisis concluded that such warnings "were overshadowed by the tendency to treat Milosevic as an interlocutor whom the West could not afford to alienate in its efforts to achieve a diplomatic settlement of the regional crisis."<sup>35</sup> Hence, when the EU recognized Yugoslavia in April 1996, autonomy for Kosovo was not required- merely "a constructive approach". "(A)chieving Milosevic's cooperation on Bosnia was given priority over exercising leverage on Kosovo".<sup>36</sup>

The essential elements of Western policy- the low priority given to the conflict in Kosovo except when it reached a level sufficient to threaten either a refugee crisis or the disruption of wider regional stability, and the almost total reliance on

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<sup>33</sup> Vickers op.cit. p.267

<sup>34</sup> Cit. in Woodward op.cit. p.382

<sup>35</sup> FAC Report Vol.I op.cit. Para.29

<sup>36</sup> Ibid Para.32

threats of bombing as a tool for forcing Milosevic to negotiate- were to remain constant from this point on.

The situation in this period suited Milosevic as the passive stance of the LDK meant that the situation in Kosovo was fairly stable, and thus- particularly as Western powers were at that time preoccupied with the war in Bosnia- the province's low international profile was not likely to change. There was, nevertheless, always the potential that Kosovo could become a major international issue, even more so than was the case with Bosnia. Kosovo is in a more important strategic position than Bosnia, which is located in the middle of the old Yugoslavia, with no external borders except an extremely narrow outlet to the sea. A war in Kosovo could more easily have threatened to spill over beyond the borders of the old Federation and threaten the security of countries like Albania, Bulgaria and Greece.<sup>37</sup> However, for as long as there was no active military conflict in the province, outside powers had no strategic reasons to treat the situation there as one meriting action.

### **3.4 The Turning Point: Dayton**

For these reasons, the issue of Kosovo was not dealt with at the Dayton negotiations of 1995 that decided the future of Bosnia. There were other factors involved- for example, trying to include Kosovo in the talks would have added further difficulties to an already very complex agenda- but these were relatively minor.

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<sup>37</sup> Woodward op.cit. p.295

There is general agreement in historical accounts of this period that the exclusion of Kosovo from the talks played the pivotal part in starting the sequence of events that led to the rise of the Kosovo Liberation Army, civil war in the province in 1998 and eventually to NATO intervention. After Dayton, according to Vickers, “it... became apparent to all that as long as there appeared to be relative peace in Kosovo, the international community would avoid suggesting any substantive changes.” Hence, “in response to the situation after the Dayton Accords, the Kosovars, snubbed and humiliated, were forced to re-evaluate their political stance.”<sup>38</sup>

Moreover, the nature of the agreement reached at Dayton on the future of Bosnia “convinced many Albanians that the international community understood only the language of force, and not that of non-violence” (Vickers).<sup>39</sup> For the previous five years, in the face of considerable provocation, Kosovo Albanian leaders had held to their strategy of peaceful resistance- exactly the course of action which, one would think, should have made them very popular with Western liberals and statesmen interested in the promotion of human rights. And yet their plight had been ignored. In contrast, the Bosnian Serbs- who had pursued a violent policy of ethnic cleansing in pursuit of their territorial aims- had won significant concessions at Dayton. Admittedly they had not won independence, but they had gained recognition for their own Republika Srpska as an autonomous entity within the federation of Bosnia-Herzegovina<sup>40</sup>. Unlike Kosovo- which, as we have seen,

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<sup>38</sup> Vickers op.cit. p.287

<sup>39</sup> Ibid p.294

<sup>40</sup> J. Sharp, Examination of Witnesses 18/1/2000, in FAC Report op.cit. Vol. II: Minutes of Evidence and Appendices, p.102

had been given official status as a separate province within Serbia under the old Yugoslav constitution- Republika Srpska was an entirely new entity, established by force.<sup>41</sup> It seemed clear that, if one wished to make a material alteration to the post-breakup settlement in the former Yugoslavia, the best way to achieve this was through violence rather than peaceful resistance.

A KLA fighter told Chris Hedges that “we all feel a deep, deep sense of betrayal. We mounted a peaceful, civilised protest to fight the totalitarian rule of Milosevic. We did not go down the road of nationalist hatred.... The result is that we were ignored.” The lesson drawn was that “those who want freedom must fight for it.”<sup>42</sup>

### **3.5 After Dayton: The Rise of the KLA and Civil War**

The Kosovo Liberation Army grew out of the Popular Movement for Kosovo (LPK), a small Switzerland-based emigre group formed in the early 1980s.<sup>43</sup> Although the first armed attacks by its parent organisation took place as early as May 1993<sup>44</sup>, the KLA publicly announced itself in February 1996 with simultaneous bomb attacks on five camps hosting Krajina Serb refugees who had been resettled in northern Kosovo.<sup>45</sup>

What the KLA had in common with the LDK was that both believed that independence for Kosovo was only likely to be achieved with help from the West. Where they differed was in their favoured strategy for ‘internationalising’ the

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<sup>41</sup> Vickers op.cit. p.293

<sup>42</sup> Hedges loc.cit. p.29

<sup>43</sup> FAC Report Vol.I op.cit. Para.24

<sup>44</sup> Hedges loc.cit. p.26

<sup>45</sup> FAC Report Vol.I op.cit. Para.25

issue. From 1995 onward, the evident failure of the ‘peaceful resistance’ strategy led to a rise in support for the violent tactics favoured by the KLA.

Also different was the final aim of the KLA’s ‘internationalisation’ strategy, which “became that of inducing NATO-based military intervention rather than a diplomatic compromise, as only the former would likely lead to independence rather than some form of autonomy of the pre-1989 variety.”<sup>46</sup>

The LDK was further weakened in 1997 by the collapse of the Belisha government in Albania- which had been the only government to recognise the Kosovo Republic as an independent state.<sup>47</sup> The collapse of the Albanian army at the same time- and the resultant looting of military arsenals- also gave the KLA a new source of bargain-priced weapons.<sup>48</sup>

The KLA is described by Hedges as splitting “down a bizarre ideological divide, with hints of fascism on one side and whiffs of communism on the other.”<sup>49</sup> Certainly, though in some sections of the Western media the KLA has been portrayed in rather romantic fashion as a band of freedom fighters, it is hard to argue with the US Special Envoy to the Balkans Robert Gelbard’s characterisation of the KLA (in February 1998) as “undoubtedly a terrorist group”.<sup>50</sup> Given the situation in Kosovo in the late 90s, attacks on Serbian police and troops might well have been defended as legitimate acts of resistance in the name of national self-determination, but the KLA also made a practice of attacking Serb civilians and fellow Albanians who were regarded as collaborators (or those

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<sup>46</sup> Independent International Commission on Kosovo op.cit. p.132

<sup>47</sup> Malcolm op.cit. p.354

<sup>48</sup> Hedges loc.cit. p.37

<sup>49</sup> Hedges loc.cit. p.26

<sup>50</sup> Chomsky (1999) op.cit. p.31

merely perceived to be not supporting the KLA). According to the International Criminal Tribunal for the Former Yugoslavia's indictment of KLA commander (and later Prime Minister of Kosovo) Ramush Haradinaj (for "crimes against humanity and violations of the laws and customs of war"), the KLA's victims, "including Albanian and Roma civilians believed by the KLA to be refusing to cooperate with or to be resisting the KLA by non-military means, were targeted for persecution and maltreatment, comprising intimidation, imprisonment, beating, torture and murder."<sup>51</sup> When the organisation briefly took control of the Drenica region of Kosovo in late 1997, the organisation banned all political parties and expelled Serbs, Gypsies and Gorans (Slavic Muslims).<sup>52</sup> The KLA's demands did not stop at independence for the province of Kosovo: it also officially laid claim to territory in southern Serbia as well as parts of Montenegro, Macedonia and Greece.<sup>53</sup> Macedonia and southern Serbia were both to become minor flashpoints of conflict in the years after the NATO intervention in Kosovo.

KLA attacks continued through 1996 and 1997. However, 1998 saw a dramatic change in the nature of the conflict. From February of that year, the scale of the guerrilla operations escalated sharply. The KLA gained some martyrs- and greater popular support- in March 1998 after the Serbian forces killed a KLA strongman and his entire family in an assault on the village of Donji Prekaz.<sup>54</sup>

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<sup>51</sup> ICTY, *Haradinaj et.al. Initial Indictment* 24 Feb 2005, <http://www.un.org/icty/-indictment/english/har-ii050224e.htm>, Para.16

<sup>52</sup> M. Radu, 'Stabilising Borders in the Balkans: The Inevitability and Costs of a Greater Albania', in T. Galen Carpenter, ed. *NATO's Empty Victory: A Postmortem on the Balkan War*, Washington DC, Cato Institute, p.126

<sup>53</sup> J.G. Jatras, 'NATO's Myths and Bogus Justifications for Intervention', in Galen Carpenter op.cit. p.26

<sup>54</sup> FAC Report Vol.I op.cit. Para.26

The Serbian government forces were initially slow to respond to this escalation in the conflict, and by the summer of 1998 the KLA controlled 40% of the territory of Kosovo. A brutal response eventually did arrive with a major Serbian offensive between 23 August and 5 September 1998.<sup>55</sup> Over the whole of 1998, about 2000 people were killed and- according to UN estimates- over 298,000 were made into refugees or internally displaced.<sup>56</sup> Serbian security forces were responsible for the great majority of the casualties.

The KLA's aim was to use terrorist tactics to provoke a response from the government forces. Given the nature of the Milosevic regime, the importance attached by Serbian leaders to retaining Kosovo, and the normal character of counter-insurgency campaigns as seen in many countries all over the world, it was a predictable that the response would be violent and indiscriminating in its effects. KLA leader Hashim Thaci told BBC investigators that "we knew full well that any armed action we undertook would trigger a ruthless retaliation against our people.... We knew we were endangering civilian lives too, a great number of lives."<sup>57</sup> KLA leaders knew that they could not defeat the Serbian army by themselves, whether in open battle or by guerrilla tactics; but they could hope to do so indirectly, by creating an internal conflict in the province which, with the Kosovo Albanians appearing as the victims, might well provoke Western intervention on their side. Even the peaceful resistance movement realized this:

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<sup>55</sup> House of Commons Defence Committee 14<sup>th</sup> Report, *Lessons of Kosovo*, Vol.I, House of Commons Stationery Office Ltd, 2001, Para.30

<sup>56</sup> ICTY, *Milosevic et.al. Kosovo: Second Amended Indictment*, 29 Oct 2001, <http://www.un.org/icty/-indictment/english/mil-2ai011029e.htm>, Para.95

<sup>57</sup> Cit. in N. Chomsky, *A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West*, London, Verso, 2000, pp.105-6

Alush Gashi, an advisor to Rugova, said that NATO intervention “depends on how we look on CNN. People need to see victims in their living rooms.”<sup>58</sup> Western powers, too, were aware of the KLA tactics: US intelligence concluded in 1998 that the KLA “intended to draw NATO into its fight for independence by provoking Serb atrocities.”<sup>59</sup>

The KLA were also able to benefit in this period from the attention of the Western media, which tended to see them as “freedom fighters” rather than “terrorists”. Pettifor writes that “the KLA were perceived as classic Balkan rebels, the oppressed in the hills taking on the foreign occupiers.... and, most important for the international media, they were ‘the underdogs’, risking all for their country, an attractive image compared to the heavily protected and repressive Serbian security forces.”<sup>60</sup>

The strategy of provocation proved successful. The escalation of the conflict in 1998 meant that, for the first time, Western governments were forced to take serious action with regard to the Kosovo crisis (the KLA was also helped by the fact that by this time, Milosevic was no longer useful to the West as a facilitator of peace in Bosnia, so there was no reason to placate him as there had been in 1995). The action taken was based on the already-existing strategy of threats of military force aimed at Milosevic in order to persuade him to accept a diplomatic settlement. On 13 October 1998, following a “concentrated diplomatic effort by the USA to persuade European states that... the threat of NATO force... was the

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<sup>58</sup> Cit. in D. Bando, ‘NATO’s Hypocritical Humanitarianism’, in Galen Carpenter op.cit. p.39

<sup>59</sup> Chomsky (2000) op.cit. p.105

<sup>60</sup> J. Pettifor, ‘The KLA: The Myth of Origin’, in M. Waller, K. Drezov & B. Gokay, eds. *Kosovo: The Politics of Delusion*, London, Frank Cass, 2001, p.28

only possible means” to resolve the crisis, every NATO member agreed to an activation order which was designed to prepare for aerial bombardment of the FRY.<sup>61</sup> The result was the ‘Holbrooke agreement’ (so called because it was brokered by US diplomat Richard Holbrooke) of October 1998, which mandated the reduction of Serb forces in Kosovo to “pre-crisis levels”, a ceasefire in Kosovo and the deployment of 2000 unarmed OSCE peace monitors in the province.<sup>62</sup>

The Serbs largely kept to their side of the Holbrooke agreement, at least initially. General Naumann, a participant in the October negotiations, said that “I think it is fair to say that Milosevic honoured the commitment which he had made.... He withdrew the forces and he withdrew the police... more or less.”<sup>63</sup> However, the KLA took advantage of the troop withdrawals to recapture much of the territory it had lost during August and September. According to Judah, the agreement also gave the KLA- which had been “hard pressed and... holed up in the hills”- “a reprieve, time to organise and rearm, and as they told anyone who cared to listen, time to prepare for their spring offensive.”<sup>64</sup> “In most cases,” said Naumann, “the escalation came from the Kosovar side... what the Serbs got wrong was that they reacted in an indiscriminate way.”<sup>65</sup>

The problem was that the KLA took the threat of NATO force which had accompanied the Holbrooke agreement as a promise of future NATO intervention<sup>66</sup>, and hence from this point on had even less incentive to

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<sup>61</sup> Independent International Commission on Kosovo op.cit. p.148

<sup>62</sup> Defence Committee Report Vol.I Para.34

<sup>63</sup> Ibid Para.35

<sup>64</sup> Judah op.cit. pp.178-9

<sup>65</sup> Defence Committee Report Vol.I Para.35

<sup>66</sup> Independent International Commission on Kosovo p.149

compromise. Unsurprisingly, the Serbs soon responded to the KLA's breaches of the ceasefire. During the winter the conflict resumed, although thanks to the presence of the monitors it did so at a far lower intensity than in the summer, except for the widely-publicised killing by Serb paramilitaries of some 45 ethnic Albanians at Racak on January 15 1999. There is some dispute over whether all those killed at Racak were civilians, as was initially reported: Henig writes that "quite what happened at Racak and, in particular, how many 'unarmed civilians' were killed will probably never be known, but it was a defining moment in the countdown to war".<sup>67</sup>

The resumption of the conflict led to a new set of negotiations at Rambouillet and Paris in February and March 1999. These talks, the failure of which led immediately to the beginning of the NATO military intervention, will be discussed in detail in Chapter 4.

### **3.6 Conclusion: The Pre-Intervention Consequences of Humanitarian**

#### **War in Kosovo**

We have seen, then, that long before the NATO bombing began in March 1999, the possibility that military intervention might occur at some point in the future had an impact on the actions and strategies pursued by the government of Yugoslavia and by the various groups representing the Kosovo Albanian population. Surprisingly though, while Western policy focused mainly on attempting to persuade Milosevic's government to alter its behaviour towards the Kosovo Albanians- whose representatives, before Rambouillet anyway, received

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<sup>67</sup> S. Henig, 'Britain: to War for a Just Cause', in Weymouth & Henig op.cit. p.51

little attention- it was upon the latter group that Western policy exercised a decisive influence. While, as we will see in Chapter 4, the Serbs took little heed of NATO's threats, the attitudes of NATO governments towards Kosovo in the mid-1990s played the crucial role in causing the Kosovar resistance to change its tactics, and in facilitating the rise of violent extremists to replace the peaceful figures who had dominated the resistance in the first half of the 90s.

If the prospect of intervention had had the effect of encouraging both sides to seek a peaceful settlement, all might have been well. Even if only one of the sides had been persuaded to seek peace, while the other had remained unmoved, that would have been something. But while Western threats seem to have had no decisive impact either way on the Serbs, their impact on the Kosovo Albanians was to encourage them to escalate the crisis through the use of violence, thereby worsening the immediate situation and, in the longer term, greatly reducing the chances of a sustainable peaceful settlement.

It is a commonplace for Western leaders, when planning to go to war, to say that the dictator who we will be fighting against 'only understands the language of force'. But in the case of their response to the Kosovo crisis, this could also be applied to Western countries themselves. For as long as the Kosovo Albanians pursued their strategy of peaceful resistance, they were largely ignored. However, as soon as the KLA arose, with its terroristic tactics, NATO powers began to take notice of Kosovo.

As we have seen- and will see in more detail in Chapter 4- Western action with relation to Kosovo before 1998 was distinctly sporadic and half-hearted. In this

period the West's main priority in the Balkans was attempting to resolve or at least contain the conflict in Bosnia. Kosovo, because of the peaceful strategy pursued by the LDK, did not constitute an immediate problem in the way that Bosnia did. Although serious human rights abuses were occurring in the province, there was no internal armed conflict and the situation posed no short-term threat to regional stability. This explains, for example, the exclusion of the issue of Kosovo was excluded from the 1995 Dayton talks. The Independent International Commission on Kosovo notes that "the political will to mount a major diplomatic effort could only be mobilised after the conflict escalated into full-scale violence."<sup>68</sup>

The long-term effects of the decision to exclude the question of Kosovo from the Dayton talks proved to be disastrous. Most importantly, the structure of the Dayton process and the content of the Accords sent out the worst possible message to oppressed groups such as the Kosovo Albanians.

This was not because Western leaders deliberately set out to reward those who used terroristic methods to achieve their goals. However, the nature of Western priorities in the Balkans in the 1990s was such as to have precisely this effect. The decision to intervene or not in Kosovo, as in other places, was taken not according to the severity of human rights abuses- as the theory of humanitarian war states that it should be- but according to the perceived presence or absence of a threat to wider regional stability, and the possibility of large-scale refugee flows which- given the sensitivity of the issue of immigration- would create political problems for governments in Western Europe. US Secretary of Defence William Cohen and Chairman of the Joint Chiefs of Staff H. Skelton said that NATO had three major

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<sup>68</sup> Independent International Commission on Kosovo op.cit. p.3

interests in Kosovo: preventing destabilisation of “NATO’s south-eastern region”, ending the refugee flow which was overtaxing infrastructure, and “protecting NATO’s credibility”.<sup>69</sup> The first two of these only became problems after the emergence of the KLA, and the third only became an issue once threats of NATO force had been made.

Hence an incentive was created for the KLA to escalate the crisis in the province by using terrorist actions to provoke a Serbian response. The history of counter-insurgency campaigns across the world shows that a government faced by the threat of an armed guerrilla group seeking independence for a portion of its territory is unlikely to be pusillanimous in its response, particularly if that government is led by someone like Slobodan Milosevic. An excessive response by the Serbian government would then enshrine the Kosovo Albanians as the victims in the eyes of the outside world.

A further factor involved here was the difference- mentioned earlier- between how the crisis was perceived internally and externally. That is, the Kosovo crisis was viewed by outsiders as a human rights issue, whereas for Kosovo Albanian leaders (the LDK and KLA were alike in this matter), as for the government of the FRY, the conflict was one of territory and sovereignty- whether Kosovo was to become independent or remain part of Serbia. For Kosovo Albanian leaders, human rights abuses within the province served as proof- and as an illustration to the outside world- that the Kosovars should have the right to self-determination. Equally, for the Serbian authorities- though it might well be argued that they had

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<sup>69</sup> Cit. in E. Herring, ‘From Rambouillet to the Kosovo Accords: NATO’s War Against Serbia and its Aftermath’, in K. Booth ed. *The Kosovo Tragedy: The Human Rights Dimensions*, London, Frank Cass & Co, 2001. p.236

forfeited any moral right to sovereignty over Kosovo by the abuses directed at the majority population over the previous decade- the province was still rightfully part of Serbia and they were entitled to respond to a separatist threat as would any legitimate government.

There is a danger that imposing such a ‘human rights framework’ on a territorial conflict can lead to a simplistic outlook in which one side is regarded as purely villainous while those on the other side are regarded as passive victims. In this case, as we have seen, Kosovo Albanian leaders were not mere victims but actors with their own agenda who were able by their actions to influence the way in which NATO powers perceived and acted upon the crisis in Kosovo

Thus there is a possibility of a humanitarian war being launched may serve to inflame internal crises by giving members of an oppressed group an incentive to turn to violent tactics, thereby favouring extremist currents within that society and reducing the chances of a peaceful settlement. It is almost certain that, had the Kosovo Albanians stuck with peaceful resistance, there would have been no war and Kosovo would most likely still be in Serbian hands today. As Pettifor says, “it can be stated with certainty that NATO would not have intervened in Yugoslavia without the emergence of the KLA.”<sup>70</sup> The UN Balkans Commander Major-General Lewis Mackenzie was later to reflect ruefully that “the Kosovo Albanians (meaning the KLA) played us like a Stradivarius.”<sup>71</sup>

It is hard, then, to avoid the conclusion that, in Kosovo, terrorism worked, albeit at huge cost to the population. True, the KLA did not achieve their goal of

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<sup>70</sup> J. Pettifor, ‘The KLA: The Myth of Origin’, in M. Waller, K. Drezov & B. Gokay, eds. *Kosovo: The Politics of Delusion*, London, Frank Cass, 2001, p.25

<sup>71</sup> Cit. in J. Pilger, ‘Calling the Kosovo Humanitarians to Account’, 2004, <http://www.antiwar.com>

full independence- but today Kosovo is clearly a *de facto* separate state, part of Serbia in name only. The depressing conclusion that can be drawn from this is that, if an oppressed people wish to bring about a humanitarian war to liberate them, they are far better off turning to terrorism than to peaceful resistance, because terrorist tactics are far more likely to provoke an excessively violent response, and a resulting humanitarian crisis- together, perhaps, with a threat to international stability.

It must be admitted that attitudes have changed since 1999, and it is unlikely that the KLA would be regarded with a similar degree of sympathy in Western capitals if they chose to start their campaign today. It was, after all, an Islamic terrorist group, and one which is alleged to have had at least indirect links with al Qaida via the brother of the leader of an Egyptian jihad organisation.<sup>72</sup> In fact, it is intriguing to speculate on what might have happened if the civil war in Kosovo had not erupted until, say, the spring of 2002. Milosevic would undoubtedly have attempted to sell his campaign of reprisals as part of the global war on terror, and given the atmosphere prevailing in the aftermath of 9/11, Serbia might even have become a valued Western ally. A number of Central Asian dictatorships- eg Uzbekistan - were able to exploit the War on Terror for their own ends in precisely that fashion.

There is, however, some evidence that the hope of provoking a humanitarian war is leading groups in other areas to adopt the KLA strategy. Specifically, the rebel groups in Darfur have been accused by the UN of attempting to provoke

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<sup>72</sup> M. Chossudovsky, 'War Crimes and the "Just War" Theory', 2005, <http://listserv.acsu.buffalo.edu/-archives/twatch-l.html>

atrocities by Sudanese forces, and some fear that media coverage of the Darfur crisis- much of it having a distinctly pro-underdog and therefore pro-rebel slant, as was the case in Kosovo- has served to embolden the rebels to increase their demands.<sup>73</sup>

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<sup>73</sup> J. Steele, 'One-sided Reporting that is Delaying an End to the Killing', *The Guardian* 5 May 2006

## Chapter Four

# **Kosovo: The *Jus ad Bellum***

This chapter will deal with the question of what the prehistory of the NATO intervention in Kosovo reveals about the *jus ad bellum* in a real case of humanitarian war. It will do this by looking in turn at each of the theoretical criteria for a humanitarian war, as detailed in Chapter 1: ‘last resort’, ‘humanitarian motives’, ‘supreme emergency’, ‘wide international backing’, ‘proportionality’ and ‘reasonable expectation of victory’.

The chapter will begin with a brief general summary of the extent to which the official justifications given for the intervention followed the theoretical criteria outlined in Chapter 1. Then each of these criteria will be discussed, beginning with the criterion of ‘last resort’, using evidence from sources both opposed to and in favour of the bombing and of the principle of humanitarian war.

Issues to be looked at in the section on the ‘last resort’ include the question of whether the conflict could have been resolved peacefully, either in 1999 or earlier, if outsiders had followed different courses of action. An attempt will be made from this to draw out some lessons about the potentially problematic nature of the ‘last resort’ in humanitarian wars, when there may be doubts over whether attempts to find a peaceful settlement have been pursued with sufficient vigour.

The next section will look at the motives that the NATO states had for

intervening in Kosovo- whether these were wholly, or at least mostly, humanitarian, and how these motives influenced the course of events in the run-up to the war. It will be recalled that humanitarian war theorists argue that the fact that states may have non-altruistic motives for undertaking an intervention does not matter provided that these motives do not hinder the chance of a humanitarian outcome; but the case of Kosovo provides some evidence that this idea may not be realistic in practice. It is widely acknowledged that non-humanitarian concerns such as the perceived need to protect NATO's credibility played a major part in motivating the intervention; these ancillary motives seem to have had a significant impact on the course of events. This section will also analyse the charge, often made by critics of the war, that NATO countries negotiated in 'bad faith' at the final negotiations in Rambouillet and Paris.

'Supreme emergency', the next criterion to be discussed, is another highly problematic area. The abuses of human rights suffered by the Kosovo Albanian population were undoubtedly severe, but *before the bombing began* they were not exceptional by global standards; this leads to questions over the selective nature of humanitarian intervention.

The other criteria- 'wide international support', 'proportionality' and 'reasonable expectation of victory' will then be investigated more briefly, as these are either less important or less problematic, or else (particularly the case with the last two criteria) are better investigated in other chapters.

#### **4.1 Out of the mouths of babes and spokesmen: Use of the Theoretical Criteria in Justifying the NATO intervention**

The justifications offered for the war by NATO leaders and spokesmen followed very closely the theoretical criteria for a humanitarian war. In particular, ‘last resort’, ‘severity of human rights abuses’ and ‘humanitarian motives’ were cited in almost every speech and article. At the UN Security Council meeting on 24 March 1999, the representatives from the USA (who said that “the United States and its allies had begun military action only with the greatest reluctance”), the Netherlands (who said that “his country had participated in and assumed responsibility for the present situation because there was no other solution”), France (“[Commitments] were not respected by Belgrade, despite every effort to prompt it to do so. Thus, [diplomatic] efforts had been exhausted”), the United Kingdom (“Every means short of force had been tried to avert this situation”), and Germany (“the international community had done its utmost to find a peaceful solution to the Kosovo conflict”) all used ‘last resort’ arguments to justify their countries’ support for the intervention.<sup>1</sup>

NATO’s humanitarian motives, and the alleged extreme severity of the human rights abuses that were taking place in Kosovo, were also widely cited, usually in tandem. Tony Blair told the House of Commons on 23 March 1999 that “we must act to save thousands of innocent men, women and children from humanitarian

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<sup>1</sup> UN Security Council Press Release SC/6657, 3988<sup>th</sup> Meeting 24/3/99

catastrophe, from death, barbarism and ethnic cleansing by a brutal dictatorship”.<sup>2</sup>  
The British DfID and FCO Annual Report on Human Rights for 1999 neatly encapsulated all three of the criteria to be dealt with in this chapter when it said in its introduction that:

“Together we (the UK government) stood up for the rights of the people of Kosovo... NATO was united in its resolve to defend those rights and the international community was overwhelmingly supportive of our actions.... This was not a conflict we wanted. But there could not have been a more vivid way of demonstrating our commitment to human rights as enshrined in the (UN) Declaration.”<sup>3</sup>

The criterion of ‘broad international support’ was less often cited, however, probably because it was more problematic. The UN Security Council neither endorsed nor condemned the war, opposition to it was expressed by such major powers as Russia, China and India (as well as a number of smaller states in the developing world), and, although NATO was united on the decision to go to war, its members were certainly not wholly in agreement on the issue of what form the war would take. Nevertheless, on 26 March the US representative on the Security Council did mention that “his country greatly appreciated the broad support for

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<sup>2</sup> T. Blair, cit. in S. Henig, ‘Britain: to War for a Just Cause’, in T. Weymouth & S. Henig, eds. *The Kosovo Crisis: The Last American War in Europe?*, London, Pearson Education Ltd, 2001, p.55

<sup>3</sup> DfID/FCO Annual Report on Human Rights 1999, cit. in M. Picken, ‘Ethical Foreign Policies and Human Rights: Dilemmas for NGOs’, in K. Smith & M. Light, *Ethics and Foreign Policy*, Cambridge, Cambridge University Press, 2001, p.96

NATO that had been shown in the Council on Wednesday (24 March).”<sup>4</sup>

Overall, then, if one concentrates purely on official statements, Kosovo looks in these areas like a paradigmatic case of a humanitarian war as outlined in the theory.

#### **4.2 The ‘Last Resort’**

Theorists of humanitarian war are almost invariably careful to state that it must be a last-resort option. True, the case of Kosovo did cause one or two to reject this criterion. Leon Wieseltier argued that “a war against genocide must be fought with a fury.... For the purpose of stopping genocide, the use of force is not a last resort: it is a first resort”<sup>5</sup>. But the vast majority continue to hold on to it, and we saw above that those who launched the NATO intervention unanimously claimed that it was a ‘last resort’ option.

This section, then, will look at how the ‘last resort’ was reached in Kosovo by detailing the history of the various international efforts to resolve the crisis by diplomatic means. It will hopefully help to fill a gap in theoretical accounts of humanitarian war, most of which do not give much consideration to what one might do before one reaches the oft-mentioned last resort.

Broadly, opponents of the war have criticised the way negotiations were conducted in the years leading up to the war in three different ways. Firstly, it has been argued that there was insufficient attention paid to the possibility of a diplomatic solution in the years up to about 1996- ie before the emergence of the

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<sup>4</sup> UN Security Council Press Release Sc/6659 3989<sup>th</sup> Meeting, 26/3/99

<sup>5</sup> L. Wieseltier, ‘Saving NATO, Losing Kosovo’, *The New Republic* April 26/May 3 1999, p.29

KLA made the prospect of a peaceful resolution of the Kosovo issue far more remote. Secondly, it has been argued that the negotiations that did take place were conducted using the wrong kind of strategy (eg too-heavy reliance on threats rather than inducements, failure to involve Russia- seen by the Serbs as their most powerful ally- more closely). Thirdly, critics have argued that, at least in the final sets of negotiations at Rambouillet and Paris in February-March 1999, NATO was negotiating 'in bad faith'- that, by this time, NATO governments had already decided to go to war over Kosovo, and these final negotiations were pursued with the aim of justifying a war. This, it is alleged, was done by drafting the proposed Peace Accords in such a way as to ensure a Serbian rejection, then refusing to countenance any changes- rather than of producing a diplomatic settlement. This section will deal with the first two criticisms; the third will be explored in the next section, which focuses on NATO's motives for intervening in Kosovo.

#### *4.2.1 The Early Phase: 1990- Spring 1998*

The period before the spring of 1998 is generally skimmed over or not mentioned at all in the literature dealing with the war, largely because not much diplomatic action took place. The situation in Kosovo was overshadowed by the- at this time- much deeper and more urgent crisis in Bosnia. However, it is well worth looking into this period, since it has been suggested that, had Western nations been more engaged with the problem at this stage, and had they shown more imagination in the tactics they used rather than relying purely on threats of force, it might well have proven possible for the international community to have facilitated a peaceful

solution to the Kosovo problem, and the war might never have happened.

If this is indeed the case, then it points to a potential problem, not so much with the idea of humanitarian war as such, but with the vast amount of effort that has been expended by many people over the past decade or so in promoting the idea of using force for humanitarian ends. Could more be achieved in terms of addressing humanitarian crises by attempting to rehabilitate the old and somewhat out-of-fashion virtues of peaceful diplomacy than by trying to make the case for using force? It is worth mentioning here that- as we will see later in the chapter- some of the political leaders who were involved in the NATO intervention, most notably US Secretary of State Madeleine Albright, were accused by critics of the war of viewing international politics through the lens of the 'Munich analogy', and hence automatically equating peaceful diplomacy with appeasement.<sup>6</sup> Has the recent popularity of the idea of using force to resolve humanitarian crises- and the seductiveness of war, which seems on the surface to offer a neat and clear cut solution to such crises compared to the necessarily messy convolutions and compromises of diplomatic action- contributed to a cavalier and dismissive attitude to diplomacy among some leaders?

The little international diplomatic action as did occur over Kosovo in this period has already been summarised in Chapter 3. In late 1990 and early 1991 the US imposed economic sanctions on the Yugoslav federal government over its decision to declare martial law in Kosovo and accept Serbia's revision of its constitution; but the sanctions proved counter-productive since they served to

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<sup>6</sup> C. Layne, 'Miscalculations and Blunders lead to War', in T. Galen Carpenter ed. *NATO's Empty Victory: A Postmortem on the Balkan War*, Washington DC, Cato Institute, 2000, p.18

further undermine the federal government's already dwindling authority. According to Woodward, the US approach "favoured the nationalist rather than the civic, nonnationalist definition of the Kosovo problem (and) bypassed the arena where a nonnationalist, democratic approach was possible."<sup>7</sup> The US periodically threatened the use of military force "in the event of conflict in Kosovo caused by Serbian action." But, as we have seen, the issue of Kosovo was not discussed in the Dayton negotiations, and overall the crisis was given a low priority.

A number of observers have argued that real opportunities for a negotiated settlement were missed in the period before spring 1998 because of the inaction of the West. The hearings on Kosovo held by the Foreign Affairs Committee produced agreement on this point among a number of witnesses, among them Dame Pauline Neville-Jones (former Political Director of the Foreign and Commonwealth Office), Balkans specialist Dr. Susan Woodward and Dr. Oleg Levitin, a Russian participant at the Rambouillet talks, who said that "I am sure that it was possible to solve the problem earlier- and at a cheaper price." Levitin describes the idea that Milosevic could never have given up Kosovo as "a myth...Milosevic needed Kosovo for practical reasons....Milosevic, after Dayton, viewed Kosovo as the most valuable card in his hands, which if sold, had to be bargained at the last moment and at a maximum price. Emotional motives were of little importance to him: all he needed was personal power.... Nothing suggested that he would not have given up Kosovo, had he come to the conclusion that his

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<sup>7</sup> S. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War*, Washington DC, Brookings Institution, 1995, p.382

personal power was not jeopardised by a deal.”<sup>8</sup> The idea that Milosevic might have been willing to let go of Kosovo for practical reasons does not fit with the picture painted of him during the bombing by NATO government sources as a nationalist fanatic and ‘new Hitler’ bent on genocide, but it is fair to point out that in earlier times he had been regarded by the West in a rather different way. A British Ministry of Defence official made the interesting claim to the Foreign Affairs Committee that “we did not think that (Milosevic) was a war criminal” before March 1999, since “he had behaved in a reasonably responsible way in trying to get the settlement in Bosnia.” This is contrary to the conclusions of the UN Srebrenica report, which criticises the international community for treating Milosevic as “part of the solution not part of the problem,”<sup>9</sup> but it offers a realistic picture of Western attitudes in this period.

Several suggestions have been made concerning tactics that the West might have tried in this period. Levitin suggested the “Tatarstan model”- with Kosovo within Yugoslavia, but outside Serbia- believing that Kosovo Albanian politicians would have accepted this as late as early 1998.<sup>10</sup> Others have suggested that inducements might have been offered to Serbia for cooperating, such as lifting of sanctions, fast-track stabilisation and association agreements.<sup>11</sup> It has also been suggested that Western powers should have made more effort to involve the Russians- I will return to this suggestion later in the chapter. Instead, the West

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<sup>8</sup> Memorandum submitted by Dr. Oleg Levitin, House of Commons Foreign Affairs Committee Fourth Report, *Kosovo*, Vol.II, Minutes of Evidence and Appendices, HC28-II, House of Commons Stationery Office Ltd., 2000, pp.360-1

<sup>9</sup> FAC Report Vol.I op.cit. Para.20

<sup>10</sup> Ibid p.361

<sup>11</sup> S. Woodward, Examination of Witnesses 8/1/2000, Ibid p.125

relied purely on a strategy of threat, which proved consistently ineffective and was based on a misreading of events in Bosnia. It was generally assumed that bombing had forced the Serbs to agree to negotiate at Dayton, when in fact it had played only a minor part; other factors, such as fears of a Croat-led ground offensive and the concession by the US of a separate Serb territorial entity within Bosnia, had been more important.<sup>12</sup> Woodward suggested that UN peacekeeping troops might have helped in late 1997 or early 1998, but added that to have made a serious effort at negotiations at that time “would have required a fundamental shift in attitude towards Serbia and the Serbs and we were not prepared to do that.”<sup>13</sup>

The Independent International Commission on Kosovo concluded that “one of the major lessons of Kosovo is that greater early engagement with a region in crisis with a view to preventing conflict is invariably a more effective response than late intervention using force.”<sup>14</sup> The Commission points to a “window of opportunity” that occurred in July 1992 when Milan Panic became Prime Minister of Serbia. However, Panic’s attempts to make a deal with Rugova fell through and shortly after he was defeated in an election which the Kosovo Albanians boycotted.<sup>15</sup>

It has been suggested that something might have been achieved if the West had attempted to aid the pro-peace and pro-democratic forces in Kosovo and Serbia; instead, Western policy inadvertently helped to keep Milosevic in power, even though his control was often very shaky. As was mentioned in Chapter 3, he would

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<sup>12</sup> Memorandum submitted by Dame Pauline Neville-Jones, Ibid p.110

<sup>13</sup> S. Woodward., Examination of Witnesses 8/1/2000, Ibid p.123

<sup>14</sup> Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford, Oxford University Press, 2000, p.295

have lost the election in 1992 if the Kosovo Albanians had voted; and in 1996 he was reduced to 30% of the vote.<sup>16</sup>

It can never be known for certain what might have happened if the various diplomatic alternatives suggested above had been tried in Kosovo. It is certainly possible- perhaps even likely- that no amount of effort by outsiders could have reconciled the gulf between the positions of even the moderate Kosovar and Serbian leaders, or that Milosevic's untrustworthiness would have wrecked all attempts at a settlement. However, real possibilities did exist, and were not pursued. The question is: why not? The first answer to this is that- as has been mentioned already- for much of the 1990s, Milosevic was viewed as "a man we can do business with", particularly at Dayton. The US in particular supported him in the late 80s and early 90s since he was an economic liberal and political conservative who supported the kinds of economic reform favoured by the IMF- he was regarded as a sort of Balkan version of the Chilean dictator Augusto Pinochet.<sup>17</sup> He was also known to be pro-American; while an executive of Serbia's largest bank, he spent extended periods in New York.<sup>18</sup> Woodward remarks that "it was common at th(is) time... for Westerners and banks to choose 'commitment to economic reform' as their prime criterion for supporting East European and Soviet leaders (as well as many in developing countries) and to ignore the consequences that their idea of economic reform might have on democratic

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<sup>15</sup> Ibid p.48

<sup>16</sup> Woodward, Examination of Witnesses 8/1/2000, FAC Report Vol.II op.cit. p.131

<sup>17</sup> Woodward (1995) op.cit. pp.106-7

<sup>18</sup> TRB, 'No Contact', *The New Republic* April 12 1999, p.6

development.”<sup>19</sup>

Thus Kosovo did not become a potential target for a humanitarian war until the Serbian dictator had outlived his usefulness to the West in terms of aiding a settlement in Bosnia, and had thoroughly lost his early reputation as an economic reformer.

Other factors contributing to the failure to search actively for a diplomatic settlement seem to have included a lack of imagination and short-termism; an unwillingness to deal with the problem while it did not appear to be absolutely urgent. The danger of this kind of attitude is that, if one only begins to seriously deal with a problem when it threatens to get completely out of hand, one may find that one has left it too late. That was to prove to be the case with regard to Kosovo.

#### 4.2.2 The Later Phase: From Spring 1998

When civil war erupted inside Kosovo in 1998, events in the province immediately gained a much higher profile in the international media, and diplomatic efforts to address the crisis were pursued with far greater intensity. The problem was that, once the KLA became the leading actor on the Kosovo Albanian side, the prospects of a peaceful settlement- even with active international involvement- receded sharply. Indeed, many observers have concluded that from the spring of 1998 onwards, there was effectively no chance of a negotiated settlement.

##### 4.2.2.1 The Holbrooke Agreement and the Deployment of OSCE Monitors

An apparent diplomatic breakthrough occurred in October 1998 when the

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<sup>19</sup> Woodward op.cit. p.107

Yugoslav government signed up to the ‘Holbrooke Agreement’. Its terms included a reduction of Serbian forces in Kosovo to the levels of before February 1998, and the deployment of 2000 unarmed monitors from the Organisation for Co-operation and Security in Europe (OSCE) to ensure continued cooperation with the agreement.<sup>20</sup> As was seen in Chapter 3, the Serbs did essentially keep to their side of this deal, at least for a time; but the KLA took advantage of Serb withdrawals to re-occupy lost territory. The Serbs responded, with the result that conflict continued- though at a greatly reduced level of intensity- through to March 1999.

It is scarcely disputable that, as the House of Commons Defence Committee report on Kosovo puts it, “the international community did not display sufficient seriousness of purpose or sense of urgency in supporting the KVM”<sup>21</sup> (Kosovo Verification Mission- the OSCE monitors). The OSCE, having no staff of its own, had to rely on secondments and nominations by member states. These states dragged their feet badly, and in December 1998, the KVM had only 50 staff.<sup>22</sup> Even in March 1999, only 1400 observers were present- well short of the 2000 prescribed by the Agreement.<sup>23</sup>

This is an example of a theme which was to resurface during the aftermath of the intervention- that the international community, though able with little apparent trouble to fund a full-scale war, is often reluctant to provide the necessary resources for peacekeeping operations- even though such activities cost far less in

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<sup>20</sup> E. Herring, ‘From Rambouillet to the Kosovo Accords: NATO’s War Against Serbia and its Aftermath’, in K. Booth ed. *The Kosovo Tragedy: The Human Rights Dimensions*, London, Frank Cass & Co, 2001, p.229

<sup>21</sup> House of Commons Defence Committee 14<sup>th</sup> Report, *Lessons of Kosovo*, Vol.I, HC347-I, 1999-2000, House of Commons Stationery Office Ltd., Para.40

<sup>22</sup> FAC Report Vol.I op.cit. Para.51

<sup>23</sup> Memorandum submitted by Jonathan Steele, FAC Report Vol.II op.cit. p.85

terms of money and personnel than a war. This provides strong backing for scepticism about the humanitarian rhetoric of Western governments.

Despite the shortfall in personnel, the KVM did succeed in limiting the level of atrocities, though not in preventing them altogether- which was all that could reasonably have been expected given the lack of a will to peace on either side. Air Marshal Day concluded that it “worked for a few months” but in the end was given an “impossible task”.<sup>24</sup>

Had the KVM been introduced a year earlier, it is possible that the subsequent history of Kosovo might have been different- but, as we have seen, the impetus for negotiations did not exist then. As it was, the KVM was never likely to do anything more than buy time, providing a period of relative quiet in which efforts could be made to find a more permanent solution. The tragedy was that, when the negotiations came that might in theory have enabled the working out of that solution, no party was prepared to search seriously for peace.

Before leaving this subject to move on to the question of NATO’s motives for intervention, there is one other matter that should not go unmentioned, as it certainly did not help the prospects for a peaceful settlement: namely, the US attitude towards the KLA. Officially, the US regarded the KLA as- in the words of special envoy R. Gelbard- “without any question a terrorist group”. This has been criticised, as Milosevic may have regarded it as a ‘green light’ for his campaign against the separatists<sup>25</sup>- but it is hard to argue with it as a statement of fact. However, despite this, it has been alleged in the press media that CIA officers

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<sup>24</sup> Defence Committee Report op.cit. Para.37

working under the cover of the KVM gave covert assistance to the KLA in planning actions against Serb police and civilians. “I’d tell them which hill to avoid, which wood to go behind, that sort of thing,” an agent is said to have admitted.<sup>26</sup> If this is correct, it raises a strong suspicion that US motives in going to war were more anti-Serb than pro-Albanian.

What conclusions can be drawn from all this about the ‘last resort’ in a humanitarian war? Clearly, it shows that the concept is at best highly problematic. If the intervening states pursue negotiations up until the last moment, and only intervene when those negotiations have irrevocably broken down, it would seem undeniable that they have waited for the ‘last resort’; but what if there is doubt over whether those negotiations were pursued in good faith? The danger is that the list of criteria for a legitimate ‘humanitarian war’ becomes merely a set of boxes to be ticked in order to give a war the appearance of legitimacy. Governments pursue negotiations not in order to avoid war but merely to show that they have tried to negotiate. Critics of humanitarian war worry that the concept is highly open to abuse, and the case of Kosovo shows that this is true, at least in the area of the ‘last resort’.

Most theorists of humanitarian war would not be pleased if their arguments were used to justify resort to military action in a situation where serious negotiations might have borne fruit: but, even in an apparent ‘best case’, an argument can be made that this is precisely what happened. Falk argues that hopefully, the lessons of Kosovo “can build pressure in the future to view war as a

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<sup>25</sup> N. Chomsky, *The New Military Humanism: Lessons from Kosovo*, London, Pluto Press, 1999, p.31

last resort and to uphold the humanitarian character of a humanitarian intervention.”<sup>27</sup>

Again, it must be stressed that we will never know for sure what would have happened in Kosovo if Western countries had pursued different tactics. But a chance for a peaceful settlement did exist, at least before 1998, and it was not taken.

### **4.3 Humanitarian- and Other- Motives**

As we saw in Chapter One, even pro-humanitarian war theorists admit that the motives that states have in launching a war are rarely, if ever, exclusively altruistic. It will be seen in this section that an investigation of NATO’s motives for launching the war in Kosovo serves to bear out this admission, even in an apparent “best case” of humanitarian war.

As was noted earlier in this chapter, the statements of NATO leaders and their spokesmen did stress very strongly the humanitarian motives for the action. However, several arguments have been advanced for doubting the idea that humanitarian concerns were the crucial factor in motivating NATO to use force. The first is the issue of selectivity. In 1999, abuses of human rights of equal or greater magnitude to those in Kosovo were happening in a number of other countries all over the world, but nowhere else did they provoke a Western military response. Indeed, in certain cases- for example in Turkey- the West was actually providing military aid to the abusers. This does not in itself constitute an argument

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<sup>26</sup> T. Walker & A. Laverty, ‘CIA Aided Kosovo Guerrilla Army’, *Sunday Times* 12 March 2000

against the use of force in Kosovo, nor against the idea of humanitarian war; but it might lead one to doubt the stated motives behind the Kosovo action. George Kennan writes that “a lack of consistency implies a lack of principle in the eyes of much of the world: whereas morality, if not principled, is not really morality.”<sup>28</sup>

If states are prepared to launch a war in order to protect the human rights of an oppressed people, one would expect them to perform the far smaller task of providing a safe haven for refugees who belong to the persecuted group. And yet one of the more remarkable- and yet, in the context, not terribly surprising- contradictions of the Kosovo war is that, even in the last month before the intervention, courts in at least one NATO state- Germany- were rejecting the asylum claims of Kosovo Albanians on the basis of governmental assertions that there was no systematic Serb persecution of Albanians in Kosovo. On 24 February 1999, the Upper Administrative Court of Munster- citing status reports from the German Foreign Office, concluded “that the often feared humanitarian catastrophe threatening the Albanian civil population has been averted”, after “the winding down of combat in connection with an agreement made with the Serbian leadership at the end of 1998.... Events since February and March 1998 do not evidence a persecution programme based on Albanian ethnicity. The measures taken by the armed Serbian forces are in the first instance directed toward combating the KLA and its supposed adherents and supporters.”<sup>29</sup> In fact, 12,000 Kosovo Albanians were deported from Germany back to Serbia in 1998, and

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<sup>27</sup> R. Falk, ‘Kosovo, World Order and the Future of International Law’, in ‘Editorial Comments: Kosovo and the Law of Humanitarian Intervention’, *American Journal of International Law* Vol.93/4, 1999, p.856

<sup>28</sup> G. Kennan, ‘Morality and Foreign Policy’, *Foreign Affairs* Vol.64 (2), 1985-6, p.211

before the war only 5% of Kosovars in Germany were afforded some form of protection.<sup>30</sup> At the very least, this is a clear case of rank hypocrisy.

Critics of the war (and some supporters) have suggested a number of possible alternative motivations for the intervention (what might be termed ‘collateral motives’). Those which have been widely mentioned include the following:

- 1) The need to maintain ‘NATO’s credibility’. This was actually mentioned as a motive by NATO leaders- British Foreign Secretary Robin Cook cited it in a speech on 14 April 1999, arguing that this meant that Britain’s national interest was thus engaged in the war, since “our national security depends on NATO”<sup>31</sup> Albright was also to write later that “the situation (in Kosovo) was emerging as a key test of American leadership and of the relevance and effectiveness of NATO... (which) was due to celebrate its fiftieth anniversary in April.”<sup>32</sup>
- 2) A wish to assert US hegemony over a recalcitrant Serbia.<sup>33</sup> This links fairly closely with the matter of NATO’s credibility. Michael Ignatieff, a supporter of the intervention, noted in a review of the memoirs of NATO commander Wesley Clark that “as Clark tells it, the really decisive impulse propelling the campaign was not Milosevic’s human

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<sup>29</sup> Cit. in Chomsky (2000) op.cit. p.113

<sup>30</sup> J. Whitman, ‘The Kosovo Refugee Crisis: NATO’s Humanitarianism and Human Rights’, in Booth op.cit. p.168

<sup>31</sup> Cook cit. in Henig in Weymouth & Henig op.cit. p.49

<sup>32</sup> Albright op.cit. p.391

<sup>33</sup> Chomsky (1999) op.cit. p.144

rights violations.... What mattered most was the need to impose NATO's will on a leader whose defiance, first in Bosnia and then in Kosovo, was undermining the credibility of American and European diplomacy and of NATO's willpower."<sup>34</sup>

- 3) Guilt over the failure to prevent atrocities in Bosnia. As we saw earlier in this chapter, the prehistory of the NATO intervention did contain certain features validating the truth of the old cliché that military planners are always fighting the last war. Elements of NATO's strategy- particularly the reliance on threats of bombing- were based on lessons drawn (some argue, mistakenly) from what happened in Bosnia. More broadly, the fact that a new conflict was occurring in the same region as the widely-publicised conflict in Bosnia (and involving similar actors- specifically, Serbs and Muslims) gave the impression that history was repeating itself, whatever the actual historical differences between the two conflicts. This also meant that the atrocities that took place in Kosovo- for example, the killings at Racak- received greater attention than might have been the case had they occurred elsewhere, because they raised the fear that Kosovo was going to turn into 'another Bosnia'
- 4) Concern over the threat to peace and security in the wider region- eg in Albania and Macedonia (which also had an ongoing dispute between the government and the large Albanian minority- this was to flare up

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<sup>34</sup> M. Ignatieff, 'Review of W. Clark, *Waging Modern War: Bosnia, Kosovo and the Future of Conflict*', *New York Review of Books*, 19 July 2001, p.18

again in the years following the Kosovo intervention)

- 5) “Reluctance to accept large numbers of refugees on a permanent basis” (Roberts)<sup>35</sup>
- 6) A wish to weaken Russia by denying it allies in the Balkans while expanding NATO into Eastern Europe<sup>36</sup>
- 7) Personal motives on the part of certain NATO leaders. Albright is said to have desired a personal success, since her term in office “had hitherto been marked by a long catalogue of failure.” Blair is said to have been influenced by his admiration for Thatcher and Churchill: one American NATO insider referred to him as “that Winston Blair”.<sup>37</sup> It is very difficult to evaluate this suggestion objectively.
- 8) Economic motivations. In some anti-war circles, claims have been made that NATO was motivated by economic factors. These involve the routing of a pipeline through the Balkans for oil from the Caspian Sea, which aside from ensuring US energy security was also meant to “advance the privatisation aspirations of the US government in the region” and “facilitate rapid integration” of the Balkans “with western Europe”<sup>38</sup>; or, more broadly, a wish to dismantle the socially-owned enterprises that still dominated the economy of Yugoslavia, and to open up “the last economy in south-central Europe to be uncolonized by

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<sup>35</sup> 2, 3 and 4 all come from A Roberts, cit. in FAC Report Vol.I op.cit. Para.72

<sup>36</sup> P. Anderson, ‘Air Strikes: NATO Astride Kosovo’, in Weymouth & Henig op.cit. p.187

<sup>37</sup> Ibid p.188

<sup>38</sup> G. Monbiot, ‘A Discreet Deal in the Pipeline’, *The Guardian* 15 Feb 2001; the quotes come from a paper published by the US Trade and Development Agency

Western capital.”<sup>39</sup> The latter claim is given some credence by the presence of the ‘free market principles’ clause in the Rambouillet Accords, but it seems unlikely to me that economics played more than a very minor part in prompting the decision to intervene. NATO undoubtedly had some economic interest in controlling Kosovo, but the same might be said for just about anywhere. When compared with later interventions in Afghanistan and Iraq- both places, for differing reasons, of major strategic importance in the world oil economy- the economic reasons for invading a small, landlocked province in the Balkans seem distinctly meagre. (The oil pipeline, moreover, was never actually meant to pass through Yugoslavia, so its relevance is tenuous at best.)

Some of these have been confirmed as genuine motivating factors by statements from officials. For example, US Secretary of Defence William S. Cohen and Chairman of the Joint Chiefs of Staff H. Skelton said that NATO had three major interests in Kosovo: preventing destabilisation of “NATO’s south-eastern region”, ending the refugee flow which was overtaxing infrastructure, and “protecting NATO’s credibility”.<sup>40</sup>

No single one of the above suggestions is entirely conclusive by itself- it is likely that, as with most conflicts, a number of different motivations contributed in

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<sup>39</sup> N. Clark cit. in J. Pilger, ‘Calling the Kosovo Humanitarians to Account’, 2004, <http://www.antiwar.com>

<sup>40</sup> Cit. in Herring in Booth op.cit. p.236

varying degrees to the decision to intervene. But having established that, as expected, NATO's motives were at least not wholly humanitarian, the crucial question for the theory is whether any of these motives were likely to have affected the chances of a humanitarian outcome. This chapter will only deal with the question of whether the motives listed above might have led NATO not to negotiate to the 'last resort', hence reducing the likelihood of a peaceful settlement. But it is also possible that such 'collateral motives' might adversely affect the 'humanitarian' nature of an intervention by, for example- if the wish is to weaken the enemy state, as may have been the case with Serbia- leading the intervening forces to fight on for longer than is necessary to achieve an acceptable outcome, or to show less concern for the plight of civilians than might have been the case if the intervening states had been truly motivated by humanitarian concerns. Those issues will be dealt with in the next chapter.

In the case of some of the examples on the list- the unwillingness of Western European states to permanently host large numbers of Kosovar refugees, for example- logic suggests that the non-altruistic motive should have aided the chances of a humanitarian outcome (although, as has been seen, the refugee issue did force NATO states into some bizarre moral contortions). The same would go for motives 3 (guilt over the failure in Bosnia) and 4 (fears that turmoil in Kosovo could spill over into the rest of the region). It can be argued, however, that if NATO countries had been genuinely concerned with the rights of the Kosovo Albanians, rather than merely with preventing a major refugee outflow, they might have shown more engagement with the situation in the province before it looked

like developing into a major regional crisis. As we have already seen, such earlier engagement just might have made the war unnecessary.

The other motives on the list raise more serious concerns. The desire in some NATO states- particularly the USA- for a strong NATO and a weak Russia could well explain the failure of NATO states to contemplate alternative ‘hats’ for an intervention or to attempt to form a united front with the Russians. The fact that NATO’s ‘credibility’ became such an important issue had particularly bad implications for the possibility of a humanitarian outcome. The House of Commons Defence Committee concluded that “the perceived need to defend NATO’s credibility was, in itself, a major factor in driving the process whereby the Alliance found itself painted into a corner in March 1999 from which its only way out was to pursue a military campaign against Serbia.”<sup>41</sup> Ignatieff notes that “if the issue becomes credibility, then the strategic logic becomes circular: NATO has to bomb in order to prove that it will bomb. The message of all this might be: never use force merely in order to show that you have the political will to use force.”<sup>42</sup> Thus, even if NATO leaders had judged that a resort to force was only likely to worsen rather than ameliorate the situation of the Kosovo Albanians, by provoking Serb reprisals against the population (depending on which official statements you believe, this may or may not have been the case), they would still have been forced to launch a war in order to protect the credibility of the Alliance.

It was NATO’s reliance on threat diplomacy that resulted in ‘credibility’ becoming an issue; critics argue that when this was allied with the tendency to

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<sup>41</sup> Defence Committee Report op.cit. Para.281

<sup>42</sup> Ignatieff loc.cit. p.18

present proposed solutions to the conflict as non-negotiable, as was the case with the Rambouillet Accords, any compromise solution was made virtually impossible. It is necessary, then, to take a detailed look at the negotiations at Rambouillet to see if the charges of the critics are justified.

#### 4.3.1 Rambouillet

The Rambouillet conference of 6-23 February 1999, and the Paris follow-up talks on 15-18 March, formed the final set of negotiations before intervention began. The failure of the Serb/FRY delegation to sign the 'Interim Agreement for Peace and Self-Government in Kosovo'- usually referred to as the 'Rambouillet Accords'- led NATO to decide to carry out its threats, and on 19 March the OSCE monitors were withdrawn preparatory to the beginning of the bombing some five days later. The history of these negotiations is well worth looking at in detail, as for many critics of the war, the events at Rambouillet provide evidence that NATO was negotiating in bad faith

The Rambouillet negotiations have proven to be perhaps the biggest single source of controversy in a highly controversial war. Marc Weller, a supporter of the NATO intervention, states that Rambouillet was a "significant departure" in international mediation because it was based on non-negotiable principles with agreement to be maintained through threat or use of force.<sup>43</sup> This probably made it illegal under international law, which voids treaties which are signed under duress. The Independent International Commission on Kosovo notes that "the inherent brinkmanship (of a strategy reliant on threat and non-negotiable principles)... is

not an approach designed to resolve underlying problems or to make war a matter of last resort.”<sup>44</sup>

Supporters of the war have argued that the intransigent stance of the Serbs at Rambouillet, and the eventual breakdown of negotiations, served to demonstrate the bad faith of the Milosevic regime and proved that only military action could address the situation. NATO had made every reasonable attempt to secure a negotiated settlement they say, but after Rambouillet the ‘last resort’ had been reached: force was the only option left. The US representative told the UN Security Council that “(b)y rejecting a peace settlement... Belgrade had chosen the path of war.” He described Rambouillet as an effort to “negotiate an equitable settlement to the crisis.”<sup>45</sup>

Critics of the war, however, have argued that NATO came to Rambouillet with the aim of justifying a war rather than negotiating a peace, and hence made no serious attempt to engage with the Serbs. In fact, NATO may have deliberately aimed to ensure that the Serbs would reject the terms offered to them by including in the ‘non-negotiable’ text of the Accords conditions which no sovereign state could ever possibly accept. (There would have been a famous historical precedent for this particular tactic: Austria-Hungary’s ultimatum to Serbia in 1914). Lord Gilbert, Britain’s defence Minister of State formally responsible for intelligence, told the Defence Select Committee that “certain people were spoiling for a fight in NATO at that time,” and that “the terms put to Milosevic at Rambouillet were absolutely intolerable: how could he possibly accept them? It was quite

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<sup>43</sup> M. Weller, ‘The Rambouillet Conference on Kosovo, *International Affairs* Vol.75/2, 1999, p.250

<sup>44</sup> Independent International Commission on Kosovo op.cit. pp.158-9

deliberate.”<sup>46</sup> Even less vociferous critics often argue that NATO was far more concerned with ensuring that the Kosovo Albanians- who were also a party to the negotiations- would accept the proposed deal than with assuaging Serbian concerns.

The makeup of the Kosovo Albanian delegation itself has attracted criticism, with the West accused of favouring the KLA over more moderate groups. The delegation was headed by KLA leader Hashim Thaci, and two-thirds of the places on it were given to the KLA and its associated parties- leaving the elected government of Kosovo in a distinct minority.<sup>47</sup> This was probably a fair reflection of the balance of power on the ground in Kosovo in early 1999, but it did not help the prospect of finding a settlement. The contrary argument to this- and it is a strong one- is that excluding the KLA from negotiations would merely have ensured that any agreement which had been reached would not have lasted for long. Still, Woodward’s assertion that the Rambouillet negotiations overly “privilege(d) the role of the KLA” which was “only one of many voices in Kosovo”<sup>48</sup> is borne out by the results of post-intervention elections, in which the political parties that have sprung out of the KLA have only gained around a quarter of the vote.

The Allies were insistent at Rambouillet that the peacekeeping force that would be sent into Kosovo following an agreement had to be led and controlled by NATO. The main reason for this appears to have been the attitude of the US

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<sup>45</sup> UN Security Council Press Release SC/6659 3989<sup>th</sup> Meeting 26/3/99

<sup>46</sup> Chomsky (2000) op.cit. p.126

<sup>47</sup> Weller loc.cit. p.227

<sup>48</sup> Woodward, FAC Report Vol.II op.cit. p.125

government, which did not have much confidence in the ability of organisations such as the UN and OSCE to perform such an operation successfully, and preferred NATO as an instrument since US predominance in defence spending ensures that it has a controlling role in the organisation- although another motivating factor may have been the need to find a reason to justify NATO's continued existence. McGwire alleges that the US was keen to keep NATO going on order to prevent the emergence of an alternative European security structure.<sup>49</sup> More defensibly, the perceived failure of the OSCE verification mission also led to the conclusion that something more robust was required- and NATO seemed to provide a better framework for an active peacekeeping force as opposed to the rather more passive, monitoring approach taken by the OSCE mission.

However, the decision to bring in NATO has been criticised for three reasons. First, it resulted in "NATO's credibility" becoming an issue, hence raising the stakes whenever any threat of force was made; secondly, it made a peaceful outcome less likely, as the prospect of a NATO-controlled force occupying Kosovo was obviously going to be harder for the Serbs to swallow than, say, a conventional peacekeeping operation under UN auspices. US Secretary of State Madeleine Albright said that Serb negotiators had told her that they could accept the political deal on offer at Rambouillet, but they would not even consider the presence of a NATO-led force.<sup>50</sup>

Thirdly, it made it far more difficult for Western countries to form a united front with Russia. The idea that the West should have made more effort to involve

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<sup>49</sup> Cit. in N. Chomsky, *A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West*, London, Verso, 2000, p.127

the Russians in negotiations has been put forward by a number of people as an alternative negotiating strategy that might have been tried. Advocates of this view, such as Jonathan Steele, note that Russian pressure played a crucial part in eventually forcing Milosevic to concede at the end of the war, and yet little effort was made to get the Russians on side before the intervention began. Instead, the West went out of its way to antagonise Russia by insisting that NATO should take the lead in any intervention or peacekeeping force in Kosovo. Steele argues that “Russia’s resistance to the use of force against Yugoslavia was largely based on its concerns over the future role of NATO.... Western governments should not have linked the Kosovo crisis to the debate over NATO’s future. The two issues were separate. By joining them, Western governments unnecessarily raised the stakes by putting the Alliance’s credibility on the line as well as antagonising Russia.” In reply to the argument that historical links or a common Slavic tradition would have made Russia disinclined to put pressure on Milosevic, Steele argues that “Russia had... no common interest with Milosevic.... what temporarily united Milosevic and Moscow were shared suspicions about NATO intentions....Western governments should therefore have been more creative in considering alternative political ‘hats’ for an international intervention in Kosovo”- such as a coalition of the willing, or the OSCE.<sup>51</sup>

Much of the controversy around the Accords has centred on Appendix B, titled “Status of Multi-National Military Implementation Force”, but generally referred to as the SOFA (Status of Forces Agreement). Paragraph 8 of this Appendix

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<sup>50</sup> Independent International Commission on Kosovo op.cit. p.156

<sup>51</sup> Memorandum submitted by Jonathan Steele, FAC Report Vol.II op.cit. p.85

decrees that:

“NATO personnel shall enjoy, together with their vehicles, vessels, aircraft and equipment, free and unrestricted passage and unimpeded access throughout the FRY including associated airspace and territorial waters. This shall include, but not be limited to, the right of bivouac, maneuver, billet, and utilization of any areas or facilities as required for support, training, and operations.”<sup>52</sup>

As has been widely noted, this is a charter for the occupation of all Yugoslavia, not just Kosovo. If the government of the FRY had signed this agreement, NATO would have been given- in the words of Adam Roberts- “troop rights (across the whole FRY), not merely in transit but manoeuvre and goodness knows what else.”<sup>53</sup> Critics argue that these are terms of surrender, not of negotiation, and no sovereign state which had not just been utterly defeated in a war could ever have accepted them. This was particularly so for the FRY, where Tito’s constitution in fact made it a constitutional offence to permit the presence of foreign troops on Yugoslav soil.<sup>54</sup>

Since the stated aim of the Rambouillet Accords was merely to end the conflict in Kosovo, it was manifestly unnecessary for NATO forces to enjoy the right to occupy all Yugoslavia. In fact, no-one, as far as I am aware, has attempted to defend the SOFA on the grounds that NATO actually needed this free access.

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<sup>52</sup> Interim Agreement for Peace and Self-Government in Kosovo, 23 Feb 1999, Appendix B, Para.8, from [http://www.kosovo.mod.uk/rambouillet\\_text.htm](http://www.kosovo.mod.uk/rambouillet_text.htm)

<sup>53</sup> A. Roberts, cit. in FAC Report Vol.I op.cit. Para.64

<sup>54</sup> Ibid Para.64

Particularly bizarre is the inclusion of the words “territorial waters”: Kosovo is landlocked, as indeed is Serbia, so this could only have been needed if NATO had wanted to occupy Montenegro as well.

Critics argue that the SOFA in that form was included in the Accords purely in order to ensure that the Serbs rejected them, and point out that this provision was omitted from the agreement that ended the war- in that, KFOR troop rights were restricted to Kosovo. A wider point can be made that the diplomacy to end the war was also more geared towards searching for a genuine settlement in that it brought to the fore negotiators such as Finnish President Martti Ahtisaari and Russian special envoy Viktor Chernomyrdin, who were more acceptable to Yugoslavia than the negotiators at Rambouillet. Richard Falk concludes from this that “had the search for a peaceful settlement been undertaken in good faith, the pattern of pre-war and post-war diplomacy would have been reversed.”<sup>55</sup>

In attempting to defend the SOFA from the charges of critics, NATO governments have adopted two different strategies. The first is to insist, as in the British Ministry of Defence’s report *Kosovo: Lessons from the Crisis*, that the SOFA was similar to arrangements already in place for Bosnia.<sup>56</sup> But Roberts insists that “there are provisions in there that are not in the Dayton agreement” (he goes on to say that “whoever wrote that military agreement... should be taken aside and shot”).<sup>57</sup> Even if true, this argument is irrelevant since the criticisms of the SOFA concern its territorial scope, not its content as such. The second strategy is

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<sup>55</sup> R. Falk, ‘Humanitarian Wars, Realist Geopolitics and Genocidal Practices: Saving the Kosovars’, in Booth op.cit. p.330

<sup>56</sup> Ministry of Defence Report, *Kosovo: Lessons from the Crisis*, CM4724, HMSO 2000, p.10

<sup>57</sup> Roberts cit. in FAC Report Vol. I op.cit. Para.62

to blame the fact that the document was “drafted in a hurry”, and “because the Rambouillet accords tried to preserve the idea of the territorial integrity of the FRY and Kosovo’s continuing status as part of it, it was technically more difficult to limit the geographical scope of the SOFA”.<sup>58</sup> This does not seem credible, since the term ‘Kosovo’ is used throughout the rest of the Accords- in fact, Chapter 1, Paragraph 6 refers to there being “no changes to the borders of Kosovo”.

It is clear from the course of events that the Serbs would have rejected the Accords even without the SOFA. Indeed, it is generally stated that they made no public objection to it, although the Serbs say that they denounced the SOFA at their (poorly attended) last Paris press conference.<sup>59</sup> However, this does not prove that the SOFA was not included with the aim of ensuring rejection, so the doubt remains over the good faith of the intervenors.

The other clause in the Rambouillet Accords which caused considerable controversy was Chapter 8, Article 1(3), which stated that:

“Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party’s efforts regarding the implementation of the Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures.”

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<sup>58</sup> Defence Committee Report op.cit. Para.53

<sup>59</sup> Chomsky (2000) op.cit p.125

This Article came to be interpreted as meaning that the future of Kosovo would be decided by a referendum three years after the conclusion of negotiations. As can be seen, the actual text of the Article does not even come close to saying anything so specific- it includes a reference to the “will of the people”, but also to the Helsinki Final Act, which guarantees the inviolability of frontiers except by agreement. However, the US government chose to push for this interpretation, and during the negotiations, Secretary of State Madeleine Albright sent the following letter to the Kosovo Albanian delegation:

Rambouillet, 22 February 1999

This letter concerns the formulation (attached) proposed for Chapter 8, Article 1(3) of the interim Framework Agreement. We will regard this proposal, *or any other formulation of that article that may be agreed at Rambouillet* (italics added), as confirming a right for the people of Kosovo to hold a referendum on the final status of Kosovo after three years.

Sincerely,

Madeleine Albright, Secretary of State<sup>60</sup>

As the FAC report notes, “it appears that the US Secretary of State was offering US support for a referendum regardless of what was agreed at Rambouillet.”<sup>61</sup> It is this episode, more than any other, which provides strong backing for the charge that NATO’s only real aim at Rambouillet was to get the KLA’s support for any

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<sup>60</sup> Cit. in FAC Report Vol.I op.cit. Para.59

<sup>61</sup> Ibid Para.59

deal. The former Canadian Ambassador to Yugoslavia told the Canadian House of Commons Committee on Foreign Affairs that the “demand that a referendum on autonomy be held within three years guaranteed a Serbian rejection.”<sup>62</sup> It might be added that this provision, like the occupation clause in the SOFA, did not reappear in the post-campaign settlement.

Many have blamed the intransigent attitude of Albright for the failure of negotiations. Albright- a one-time refugee from Czechoslovakia- is accused of having been “blinkerered by her obsession with viewing all international crises through the lens of the ‘1930s analogy’ .... For her, Milosevic was a modern-day Hitler... and any attempt to resolve the crisis on terms Belgrade might accept was ‘appeasement.’”<sup>63</sup> When one of her aides suggested she compromise during a negotiation session, she replied: “where do you think we are, Munich?”<sup>64</sup> Albright’s memoirs do offer a certain amount of evidence to back up this charge of wilful intransigence towards the Serbs. At one point she describes Milosevic as living in a “parallel universe” because he said to her during the Rambouillet negotiations that “the crucial issue for us is that we cannot have a solution that causes non-Albanians to flee (from Kosovo).”<sup>65</sup> Given that this- an exodus of non-Albanians- is precisely what happened after the bombing, Milosevic’s concern does not in this instance appear unreasonable.

The British government had similar preoccupations, although in Britain’s case this was normal- Henig states that “the latter part of the 1930s defined British

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<sup>62</sup> Ibid Para.58

<sup>63</sup> Layne in Galen Carpenter op.cit. p.18

<sup>64</sup> S. Kober, ‘Setting Dangerous International Precedents’, in Ibid p.111

<sup>65</sup> M. Albright with B. Woodward, *Madam Secretary*, London, Macmillan, 2003, p.401

foreign policy for the remainder of the Twentieth Century and, perhaps, into the Twenty-First.”<sup>66</sup> The ‘Munich analogy’ has become virtually a mantra for British politicians in situations like this.

At the risk of straying into side issues, it is worth mentioning that the Rambouillet Accords also contain certain rather odd provisions in the sphere of economic policy. Chapter 4A (Economic Issues) dictates that “the economy of Kosovo shall function in accordance with free market principles”. This section does not seem to have been a sticking point in negotiations- it was picked up later by critics of the war, but not by the parties themselves- but one wonders why it was deemed necessary for a peace treaty to wander into such blatantly irrelevant territory.

I am forced to the conclusion that in fact, none of the three parties went to Rambouillet with any serious intention of concluding a peace deal. The Kosovo Albanians, as was shown in Chapter 3, did not want to settle for anything less than independence, which would clearly become a far stronger possibility if the Serbs were defeated in battle by NATO than if a peace deal was reached. As for Milosevic, it seems that he was not greatly concerned by NATO’s threats and had already decided to put the Alliance’s credibility to the test. Neville-Jones said that “I suspect that by (the time of Rambouillet) he regarded the Western position as being one where this negotiation was a disguised way of getting an international presence on Serb soil which would lead to the separation of Kosovo from Serbia, and he was not going to have that. It was easier to be bombed....The problem was... that it was difficult to threaten Milosevic because of his lack of concern for

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<sup>66</sup> Henig in Weymouth & Henig op.cit. p.40

his people and his country.”<sup>67</sup> This is a serious indictment of NATO’s long-term strategy of relying solely on threats.

The exact attitude of the NATO countries at the negotiations is more difficult to establish with certainty, but the evidence indicates that by this time they had effectively decided on military intervention, and only continued with negotiations in order to provide legitimacy for a war. At the very least, NATO made no effort to put together a set of accords which the Serbs might have accepted, and a strong argument can be made that parts of the Accords were deliberately included in order to ensure a Serbian rejection. The real objective that NATO had at Rambouillet was to gain the endorsement of the Kosovo Albanian delegation for the deal, and a number of concessions were made in order to ensure that this was achieved. The Kosovo Albanians had two key demands: a binding referendum on independence after three years and a NATO ground force in the meantime<sup>68</sup> - and they were effectively granted both, even though the former did not appear explicitly in the text of the Accords.

At least three of the motives on the list given earlier in this section: ‘NATO’s credibility’, the wish to assert US hegemony over Serbia, and the wish to weaken Russia, could all be put forward as explanations for NATO’s failure to negotiate seriously at Rambouillet. It must be asked from this whether the theorists of humanitarian war are wise to rest their argument on the idea that non-humanitarian motives do not matter if they do not affect the outcome. The case of Kosovo shows that motives do matter, and do affect outcomes.

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<sup>67</sup> Neville-Jones cit. in FAC Report Vol,I op.cit. Para.70

<sup>68</sup> Ibid Para.57

#### **4.4 Supreme Emergency**

We saw in Chapter 1 that theorists of humanitarian war tend to agree that the use of military force should be restricted to cases where the abuse of human rights is exceptionally severe; in Walzer's phrase, "acts that shock the moral conscience of mankind."<sup>69</sup> It is questionable whether the situation in Kosovo *before the bombing* was sufficiently bad to merit that description. Some confusion on this matter has been caused by the sudden escalation in killings and expulsions by Serbian forces that occurred in the very first days of the bombing. Many short accounts of the war (usually in media reports rather than academic literature) do not get this chronology correct. (To provide one example, a newspaper obituary of Ibrahim Rugova talked of "the NATO bombing campaign of Yugoslavia in 1999, which had followed the intensification of Milosevic's crackdown in the province.")<sup>70</sup> It is possible to argue that the NATO bombing meets the 'Just Cause' criterion as a pre-emptive intervention, on the grounds that the Serbian offensive would have happened in the same way even without the bombing and that NATO, by doing its best to try to impede Serbian forces, was attempting to mitigate its effects. I will deal with this issue at greater length in the next chapter, but here it suffices to note that- although there is much uncertainty on this point- the available evidence indicates that it was the bombing campaign that prompted the massive escalation in atrocities by Serbian forces, and that in the absence of any bombing (or other

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<sup>69</sup> M. Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (2<sup>nd</sup> ed.), New York, Basic Books, 1992, p.107

<sup>70</sup> E. Pentice, 'Ibrahim Rugova' (Obituary) *The Guardian* 23 January 2006. The BBC TV documentary *Blair: the Inside Story* (shown 27 Feb. 2007) also makes it seem as though the NATO bombing *followed* the expulsion of 1.5 million refugees from the province. An example in the academic literature is R. Paris, 'Kosovo and the Metaphor War', *Political Science Quarterly* Vol.117/3, Fall 2002, p.423

international action) the likeliest scenario would have been another Serbian offensive of the type seen in 1998.

Before the bombing, the Kosovo Albanians were undoubtedly suffering very real abuses of their basic rights. But, as indicated above, even if we restrict our timescale to the mid-to-late 1990s, it is not difficult to find many examples of abuses of human rights on a similar or greater scale to those in Kosovo in a number of other countries across the world. In an article assailing NATO for its “hypocritical humanitarianism”, Bandow gives a long list of examples of conflicts with death tolls and refugee figures which dwarf those in Kosovo in the period before the bombing- these include such cases as Angola, Rwanda, Turkey, East Timor, Chechnya and Sri Lanka. He cites the case of a 3-day battle between the Tamil Tigers and the Sri Lankan government in the autumn of 1998, in which nearly as many died as did in Kosovo in the whole of that year.<sup>71</sup>

It is worth mentioning the massacre at Racak in this context. It is often argued that this single event- the slaughter of 45 Kosovo Albanian civilians by Serb paramilitaries on 15 January 1999 so angered the leaders of NATO states that, in the words of Washington Post correspondent Barton Gellman, it “transformed the West’s Balkan policy as singular events seldom do.”<sup>72</sup> Matthew Wyman says that “Racak seems likely to come to be regarded as a singular moment in modern world history.... what Racak crystallised for Western policy-makers was the peculiar awfulness of official Serb policy towards ethnic Albanians within Kosovo.”<sup>73</sup>

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<sup>71</sup> Bandow in Galen Carpenter op.cit. p.34

<sup>72</sup> Gellman cit. in Chomsky (2000) op.cit. p.111

<sup>73</sup> M. Wyman, ‘Kosovo: Why Intervention was Right’, in M. Waller, K. Drezov & B. Gokay, eds. *Kosovo: The Politics of Delusion*, London, Frank Cass, 2001, p.104

And yet Racak, though undeniably a shocking atrocity- even allowing for the fact that some doubt has been cast over whether all of the victims were civilians (see Chapter 3)- is the sort of event which happens with depressing frequency in some countries. To take just one example, on April 6 1999- while the war in Kosovo was going on- Indonesian troops murdered 60 people in a church in Liquica, east Timor.<sup>74</sup> When Israeli troops killed 52 Palestinian civilians in Jenin in 2002, this was widely dismissed as a minor matter, largely because the number of deaths turned out to be much lower than early reports had stated.

So why did military intervention occur in Kosovo particularly, and not in these other cases? One factor is that human rights abuses in places like East Timor and Sri Lanka did not receive the kind of media coverage that was devoted to Racak and to human rights abuses in Kosovo in general. Racak, paradoxically, may have attracted so much attention in part because it was a relatively isolated incident- no other comparable atrocities are known to have occurred in Kosovo in the period between the signing of the Holbrooke Agreement and the withdrawal of the OSCE monitors. In contrast, the East Timor massacre cited above was just one of a succession of atrocities by Indonesian forces in 1999, causing an estimated 3000-6000 deaths that year. Furthermore, as Weymouth states- and as was noted in Chapter 3- “the Western media widely represented the pre-intervention hostilities in a pro-Kosovo Albanian light.”<sup>75</sup> Weymouth argues that there is an anti-Serb ideological current in the Western media which dates from the beginning of the

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<sup>74</sup> Chomsky (1999) op.cit. p.43

<sup>75</sup> A. Weymouth, ‘The Media: Information and Deformation’, in Weymouth & Henig op.cit. p.148

Twentieth Century, and was reinforced by the Cold War<sup>76</sup>, concluding that “it is highly likely that the distinctly unsanitised pictures coming out of Kosovo... were instrumental in forcing the hands of Western politicians to take action against Milosevic”.<sup>77</sup> Media coverage stirred up public opinion over Kosovo in a way that did not occur for more distant, less well-covered crises.

One seemingly plausible explanation for the selectivity of intervention in the case of Kosovo centres on geographical location- the fact that Kosovo, unlike other countries where massacres were taking place in 1999, is in Europe. Peter Beinart- a supporter of the intervention- admitted during the conflict that “America’s Kosovo war is unintelligible without reference to the race of the victims.”<sup>78</sup> If it is true that only human rights abuses that take place within Europe are likely to cause enough concern in the West to motivate the launching of a war, then the whole debate over humanitarian war may be a little pointless, since we are unlikely to see any more such wars in future unless a new set of conflicts occurs in the Balkans. However, this explanation is not wholly convincing. Selectivity can be seen to operate even in cases of human rights abuse that occur within Europe- for example, the flight of Serbs from the Krajina region of Croatia in the 1990s did not lead to the governmental concern and calls for intervention that were raised by ethnic cleansing in Bosnia.

A further factor is involved: the identity of the government that is committing the abuses. Bandow concludes that “in practice the United States seems prepared to conduct armed humanitarian crusades under three conditions: those being killed

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<sup>76</sup> Ibid p.152

<sup>77</sup> Ibid p.146

are white Europeans, the perceived aggressor is not a US ally, and there is saturation media coverage of the conflict.”<sup>79</sup>

Though the concerns outlined above are very serious, they do not by themselves constitute an argument against the use of military force in Kosovo, or against the ideal of humanitarian war. While the human rights abuses in Kosovo before the bombing did not reach a level so as to be exceptional in the sad context of late 20<sup>th</sup> Century history, the situation in the province was undeniably serious- and, if military force can indeed be the most effective and humane way to deal with such crises, there seems to be no good reason why its use should not be considered. A final evaluation here will have to wait for Chapter 5, where the effects of using military force in such situations will be looked at in more detail. The case of Kosovo does show the continued truth of Hedley Bull’s contention- expressed in 1977- that “the international order does not provide any general protection of human rights, only a selective protection that is determined not by the merits of the case but by the vagaries of international politics.”<sup>80</sup> Humanitarian wars, then, will tend to be selective and dubious in their motivation. But most theorists already acknowledge this, and would reply that, in the cases where a humanitarian war is made possible because human rights abuses are occurring- and being widely covered in the media- in a state that is not an ally of the potential intervening coalition, some good may still be done.

There may, however, still be a problem if selectivity leads to scarce resources

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<sup>78</sup> P. Beinart, ‘War Fair’, *The New Republic* 31 May 1999, p.6

<sup>79</sup> Bandow in Galen Carpenter op.cit. pp.37-8

<sup>80</sup> H. Bull, *The Anarchical Society: A Study of Order in World Politics*, London, Macmillan, 1977, pp.89-90

being diverted away from more serious crises. Vaux argues that this is what has happened in recent years: the pattern of humanitarian aid funding has become more and more distorted in favour of those countries where Western powers have been at war (and where therefore aid serves a political purpose in ensuring the perceived success of the operation)- such as Afghanistan, Iraq and Kosovo- and away from places like Angola and the Congo, where humanitarian needs are far greater. He states that “it has been estimated that 2½ million people died in the DRC over the last years while our government, the UN and the aid agencies focused on Kosovo, Afghanistan and Iraq.”<sup>81</sup>

#### **4.5 International Support for and Opposition to the War**

The criterion of ‘international support’ is one of the vaguer aspects of humanitarian war theory. Under the minimalist version of the criterion, it is merely considered preferable that a humanitarian war should be fought by a coalition rather than a single state. Under a maximalist version, wide international support is required for a humanitarian war to be considered legitimate; it should be authorised by a UN Security Council resolution, or at least it should be obvious that such a resolution would have been passed but for opposition from one or two permanent members.

The Kosovo intervention attracted a fairly high degree of international support. It was, of course, fought by a 19-member coalition. The UN Security Council never explicitly endorsed the war (and any resolution authorising NATO to use force would certainly have been vetoed by Russia and China), but it never

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<sup>81</sup> T. Vaux, ‘Humanitarian Trends: A Strategic Review for CAFOD’, Apr 2004

condemned it either. On 26 March a Russian/Chinese resolution condemning the bombing was rejected by 12 votes to 3 (the third vote came from Namibia).<sup>82</sup> However, opponents of the war point out that Russia, China, Belarus and India- who together represent 40% of the world's population<sup>83</sup>- all made statements opposing the war during the debates in the Security Council. There was also widespread opposition in the developing world, and among Islamic states- despite the fact that the intervention was officially aimed at helping the largely Muslim Kosovo Albanian population. President Clinton said that "through our efforts in the Balkans we have also helped to bridge the gulf between Europe and the Islamic world, the source of so much trouble over the last Millennium"<sup>84</sup>, but this was wishful thinking.

It may be pointed out in response to this that many of the states which opposed the war were dictatorships, which would be expected to oppose a war that was fought in the cause of human rights- although this does not go for India, whose representative at the UN charged that NATO "was trying to intimidate a government through unprovoked aggression".<sup>85</sup>

In fact, apart from a few democratic governments which opposed the war, the reactions of states to the intervention were pretty much as one would expect from the theory; so this is one area where the case study does not raise serious concerns about the application of the theory in practice. However, from what we have seen of the motives of the states that supported intervention, it may well be concluded

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<sup>82</sup> UN Security Council Press Release Sc/6659 26/3/99

<sup>83</sup> Supplementary memorandum submitted by M. Littman QC, FAC Report Vol.II op.cit. p.166

<sup>84</sup> Kober in Galen Carpenter op.cit. p.113

<sup>85</sup> UN Security Council Press Release SC/6657 24/3/99

that, by itself, wide international support does not necessarily legitimate a humanitarian war. The reasons for that support also matter.

#### **4.6 'Proportionality' and 'Reasonable Expectation of Victory'**

There is not a great deal to be said here about these two final criteria for the *jus ad bellum* in a humanitarian war. As we have seen, the criterion of 'Proportionality' - the idea that humanitarian wars should be limited in their aims, which in the different theoretical accounts includes such notions as the idea that intervention should be 'short-term and instrumental', and a requirement for no regime change - was cited by prominent NATO figures in their justifications for the bombing. However, the question of whether it is feasible and/or desirable that humanitarian wars be limited in such a manner is better left for the discussion of the bombing itself and its aftermath in Chapters 5 and 6. Although 'proportionality' is a criterion of the *jus ad bellum*, it is only in the *jus in bello* and the *jus post bellum* that its feasibility and consequences become evident.

'Reasonable expectation of victory' would seem at first sight to be unproblematic in the case of Kosovo, as here the world's mightiest military alliance was planning to fight a war against a single small, economically fragile Balkan state. Indeed, many leading figures in NATO expected the war to be over in a few days. However, if one defines 'victory' as the prevention of a humanitarian crisis (as one should in the case of a humanitarian war), then the nature of the tactics NATO was planning to use made it far less of a certainty. This issue, however, is better left to Chapter 5, which will look in detail at the tactics

used in the bombing campaign and will assess whether it could have been reasonably expected that they would be successful.

#### **4.7 Conclusion**

We can see, then, that the examination of the international prehistory of the Kosovo intervention has raised some very serious concerns about the theory of humanitarian war. The charge of critics that the concept is highly open to abuse has been shown to have some backing, at least in the case of the 'last resort' criterion. NATO leaders insisted that they only took the decision to go to war after all peaceful options had been exhausted; but in fact the search for a peaceful solution was all too often characterised by lack of interest (in the early phases) and lack of seriousness (in the later phases). There is strong circumstantial evidence that the decision to go to war was effectively taken some time before the end of negotiations. As for the issue of motive, it has been seen that, even in this 'best case' of a humanitarian war, there is considerable doubt over whether the motives of the intervening states were mostly altruistic; and it may also be argued that it is too glib for theorists to rely on the idea that non-humanitarian motives do not matter if they do not affect the outcome. In the case of Kosovo, motives- particularly the perceived need to protect NATO's credibility- strongly influenced the course of events in the months leading up to the war.

One further lesson can be drawn from this chapter: that of the need for a revival of interest in methods for peaceful settlement of disputes. It has been seen that, if Western nations had been more engaged and more imaginative in pursuing

a diplomatic solution, there is at least a possibility that the crisis in Kosovo might have been averted. In this respect, humanitarian war may indeed be a dangerous concept; amid all the talk of war as an instrument for resolving humanitarian crises, the possibilities offered by non-military action may sometimes be forgotten. The duality of ‘armed intervention’ versus ‘doing nothing’ ignores the many other options that may exist in any given situation. As Jonathan Steele has written, “a plethora of hot wars over the last decade has turned people cold on democracy. The Churchillian adage that jaw-jaw is better than war-war is forgotten in favour of the faulty notion that applying superior military power is the best way to handle stubborn political conflicts.”<sup>86</sup>

Even the most evangelistic proponents of liberal interventionism do at least affect to believe that war should always be avoided if it is at all possible; but the underlying assumption behind many arguments for humanitarian war is that force is the only tactic that works. This seems to have been a popular assumption among NATO-area policymakers during the years preceding the Kosovo war. Often it appeared that NATO only had one diplomatic tactic: to threaten to bomb Serbia. Threats of military action can undoubtedly be highly effective in many situations, provided of course that they are credible; but they do not always work. With Milosevic, such threats were ineffective. It is hard not to share the conclusion of the Independent International Commission on Kosovo that “one of the major lessons of Kosovo is that greater early engagement with a region in crisis with a view to preventing conflict is invariably a more effective response than late intervention using force.” The Commission admits that “this might appear to be a

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<sup>86</sup> J. Steele, ‘Diplomacy is Forgotten in the Mania for Intervention’, *The Guardian* 6 August 2004

counsel of perfection”, but argues that “if governments were to listen more carefully to the human rights warnings of NGOs and use their political and diplomatic influence on abuser states at an earlier stage, the focus of international intervention could shift towards prevention, with long-term benefits for vulnerable communities everywhere.”<sup>87</sup>

Such change is not likely to happen. Vaux writes that “rather than suppressing problems, they (Western governments) could focus on the underlying causes, addressing the issues of injustice and inequality that underlie security threats. But this seems unlikely. Any politician attempting such an uncertain and long-term strategy would be overtaken by those offering the excitement of war and political certainties.”<sup>88</sup> Unfortunately, the case of Kosovo- where Western politicians moved straight from effective non-engagement to threatening and then using force, with very little in between- demonstrates the truth of this comment- and the wide support given to this policy by liberal humanitarians demonstrates the seductiveness of the military option. But perhaps, in the more subdued post-Iraq climate of today, there may be room at least in some quarters for a rehabilitation of ideas of peaceful diplomacy.

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<sup>87</sup> Independent International Commission on Kosovo op.cit. p.295

<sup>88</sup> Vaux (2004) op.cit.

## Chapter Five

# **Kosovo: the *Jus in Bello***

On 24 March 1999, NATO planes launched the first bombing raids against Yugoslavia. The bombing was to last for some 78 days, until it ended with the signing of the Kosovo Peace Accords in early June. This chapter will look at the conduct of the military intervention, judged against the theoretical idea of a humanitarian war, and will attempt to draw out lessons as to what humanitarian wars are likely to look like in practice.

This chapter will be split into four sections. The first section will give a brief general overview of the bombing campaign. The chapter will then move on to a more detailed analysis of the campaign. This will be split into two sections: the first will focus on the attacks aimed at Serb forces in Kosovo, aimed at ‘degrading’ their ability to inflict harm on the Albanian population; the second will focus on the attacks on targets in Serbia outside Kosovo, which seem to have been pursued mainly with the aim of coercing the Milosevic regime into accepting NATO’s political demands with regard to the future status of Kosovo.

The first aspect of the campaign- the bombing of the Serbian army in Kosovo- had the more immediately humanitarian objective, as it was aimed directly at the forces who were accused of causing the crisis. However, these attacks are widely viewed as not having been particularly successful- indeed, many have argued that

they actually made the situation worse by provoking the Serbs into launching an all-out campaign to expel the Kosovo Albanian population. The bombing of targets in Serbia proper, which involved the bombing of civilian (or at least, not purely military) targets such as TV stations, bridges and oil refineries, can also be said to have had a humanitarian objective, though in a more long-term sense- that of forcing Milosevic to accept a NATO peacekeeping force in Kosovo. This part of the campaign is generally viewed as having been successful in causing Milosevic to sue for peace. It was because of this disjunction that the Independent International Commission on Kosovo judged that “the NATO war was neither a success or a failure: it was in fact both.”<sup>1</sup>

By assessing the success or failure of the campaign, and its impact on the civilian populations of Kosovo and Serbia, we can draw out lessons which may help to answer the question of whether a humanitarian war can be fought in a genuinely humane manner, and the extent to which military force can be useful in serving humanitarian ends.

It is true that the NATO operation was widely criticised on tactical grounds. Most notably, many of those who believe in the ideal of using force to advance the cause of human rights argued that NATO should have been sending in ground troops to protect the Kosovo Albanians rather than relying purely on high-level bombing. Therefore the fourth and final section of this chapter will investigate the reasons why this option was not pursued, and what the likely consequences might have been if NATO had heeded the widespread calls for a ground invasion.

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<sup>1</sup> Independent International Commission on Kosovo, *Kosovo Report*, Oxford, Oxford University Press, 2000, p.4

### **5.1 The Campaign: A Brief Overview**

As stated above, the bombing lasted for some 78 days. During this time, NATO planes flew 38,400 sorties, including 10,484 strike sorties, during which 26,614 air munitions were released against 900 separate targets.<sup>2</sup>

In one respect, the war was astoundingly successful. With pilots flying at 15,000 feet in order to negate the threat of Yugoslav air defences, NATO forces did not suffer a single casualty throughout the campaign- an unprecedented occurrence in any war.<sup>3</sup> Although the UK government claimed after the war that “there was no requirement for ‘zero casualties’, as has been alleged,”<sup>4</sup> avoiding casualties on the Alliance side was certainly a very high priority. This was to have consequences for the ‘humanitarian’ character of the campaign, as we will see later on.

However, casualties were suffered on the other side, and among civilians. It has to be acknowledged at this point that there is still a great deal of uncertainty over casualty figures for the war- particularly over the numbers of civilian casualties, both those inflicted by bombing raids and those caused by Serbian government forces. Therefore the figures that follow, in this and the next section, should not be regarded as definitive.

According to its own figures, the Federal Republic of Yugoslavia suffered at least 600 casualties among its own troops, about half killed by NATO and half by the KLA.<sup>5</sup> There is still no generally-agreed figure for the number of civilian

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<sup>2</sup> Ibid p.92

<sup>3</sup> Ibid p.94

<sup>4</sup> Ministry of Defence report, *Kosovo: Lessons from the Crisis*, CM4724, HMSO, 2000, p.36

<sup>5</sup> Independent International Commission on Kosovo op.cit. p.94

casualties caused by the bombing campaign. In its study on the effect of the bombing campaign, Human Rights Watch produced an estimate of between 488 and 527 verified civilian casualties.<sup>6</sup> Other estimates have been higher, ranging from about 600<sup>7</sup> to as high as 2600 (Belgrade's estimate).<sup>8</sup> General Ralston, Vice Chairman of the US Joint Chiefs of Staff, said that Serbian civilian casualties had been "amazingly light... less than 1500."<sup>9</sup> General Wesley Clark said on August 31 1999 that there had been just "20 incidents of collateral damage" in the entire war; however this proved to be an underestimate. Human Rights Watch found evidence of at least 90 separate incidents involving civilian casualties.<sup>10</sup>

The very first bombing raids were on Serb forces in Kosovo, and statements by NATO leaders at the beginning of the war focused on immediate humanitarian justifications for the action. For example, British Defence Secretary George Robertson said on 24 March that military action "will be taken against only military targets with a very clear objective, not to bomb common sense or even self-interest into the mind of President Milosevic, but to reduce the military capability that is being used against a civil population." One day later, he told the House of Commons that "this is a limited action with a strictly humanitarian objective, which we believe can be achieved through air strikes."<sup>11</sup> This was

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<sup>6</sup> Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, [www.hrw.org/reports/2000/nato/html](http://www.hrw.org/reports/2000/nato/html). February 2000

<sup>7</sup> E. Herring, 'From Rambouillet to the Kosovo Accords: NATO's War Against Serbia and its Aftermath', in K. Booth, ed. *The Kosovo Tragedy: The Human Rights Dimensions*, London, Frank Cass & Co., 2001, p.231

<sup>8</sup> P. Knightley, *The First Casualty: The War Correspondent as Hero and Myth-Maker From the Crimea to Kosovo*, London, Prion, 2000, p.514

<sup>9</sup> Human Rights Watch op.cit.

<sup>10</sup> Ibid.

<sup>11</sup> G. Robertson, cit. in House of Commons Defence Committee 14<sup>th</sup> Report, *Lessons of Kosovo*, Vol.I, House of Commons Stationery Office Ltd., 2001, Para.69

already a change from the position before the bombing, when military action had been threatened in order to support diplomatic action to end the crisis.<sup>12</sup>

In a televised speech on 24 March setting out NATO's objectives, Bill Clinton concentrated mainly on humanitarian justifications for the campaign, though with a nod to the motivation of 'credibility'; he said that the aims of the bombing were "to demonstrate the seriousness of NATO's response to aggression, to deter Milosevic's escalating attacks in Kosovo, and seriously to damage Yugoslavia's military capability to wage war in the future."<sup>13</sup>

However, within a week, NATO planes had begun to attack targets outside Kosovo, and a second set of objectives for the bombing- focusing on coercing Milosevic into accepting NATO's demands- was emerging in official statements.

By 21 June, Robertson was completely contradicting his earlier statement, saying that "frankly, we were seeking to coerce Milosevic to back down." General Wesley Clark said of the bombing that "it was not designed as a means of blocking ethnic cleansing... (Nor) as a way of waging war against the Serb and MUP forces in Kosovo."<sup>14</sup>

Even long after the campaign had ended, this contradiction was still not entirely resolved. The Ministry of Defence report *Kosovo: Lessons from the Crisis*, published in 2000, claims that "NATO's action had limited military objectives: to disrupt the violent attacks of Milosevic's forces and to weaken their ability to continue these activities."<sup>15</sup>

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<sup>12</sup> House of Commons Foreign Affairs Committee 4<sup>th</sup> Report, *Kosovo*, Vol.I, HMSO, 2000, Para.74

<sup>13</sup> Independent International Commission on Kosovo op.cit. p.85

<sup>14</sup> Cit. in Herring, in Booth op.cit. 'p.231

<sup>15</sup> Ministry of Defence Report, *Kosovo: Lessons from the Crisis*, CM4724, HMSO, 2000, p.11

This chapter will now turn to a detailed examination of the NATO intervention, focusing first on the bombing of targets within Kosovo.

### **5.2 The Bombing Campaign I: within Kosovo**

The beginning of the bombing campaign was immediately followed by a catastrophic worsening in the situation of the ethnic Albanian population in the province. A major offensive by Yugoslav troops, Serbian police and paramilitaries resulted in a dramatic escalation in killings of Kosovar civilians and a massive exodus of refugees from the province. What had before been mainly a counter-insurgency campaign, albeit marked by excessive force and frequent outrages against civilians, now turned into an organised- and largely successful- attempt to expel the entire Albanian population. During the bombing campaign, approximately 863,000 refugees were displaced from Kosovo, and another 590,000 people became internally displaced within the province. This amounted to over 90% of the Kosovo Albanian population as of 1998.<sup>16</sup> There is still no exact agreement on the number of killings that took place. Some sources give a figure of around 10,000; the Independent International Commission on Kosovo suggests this figure as an estimate, and a study by the American Association for the Advancement of Science produced an estimated figure of between 7494 and 13627 killings.<sup>17</sup> Some other studies have produced lower estimates. The two-year investigation of mass graves in Kosovo by the International Criminal Tribunal for the Former Yugoslavia resulted in the exhumation of approximately 4000 bodies

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<sup>16</sup> Independent International Commission on Kosovo op.cit. (Annex I: Documentation on Human Rights Violations), p.304

<sup>17</sup> Ibid p.306

or parts of bodies.<sup>18</sup> This figure, again, is not definitive: on the one hand, it would not be expected to include every casualty; on the other, it includes casualties on both sides and does not refer solely to the period of the bombing.<sup>19</sup> If one assumes that the figure of 10,000 is roughly correct, then the number of civilians killed during the 2½ months of the bombing campaign was approximately five times greater than the number killed in the whole year preceding it.

The most extreme charge that has been levelled against the bombing campaign- the idea that these refugees were fleeing from NATO bombs rather than Serbian attacks- can be discounted. There is wide agreement in the sources that virtually all of the refugee flow was caused by Serb action- indeed, the exodus is better viewed as a case of organised expulsion than one of refugees fleeing.<sup>20</sup>

However, the campaign clearly did not succeed in its stated objective of preventing Serb forces from carrying out human rights abuses in Kosovo. It has been widely argued that in fact the campaign made the situation far worse, as the escalation detailed above would not have occurred if bombing had not taken place.

### 5.2.1 The Serbian Offensive: Dates, Nature and Planning

In assessing whether it is true that the bombing made the situation worse, the first thing that needs to be established is exactly when the escalation began. Some pro-war sources claim that the Serbian offensive was already well under way when the final decision to bomb was taken. The British Ministry of Defence report *Kosovo: Lessons from the Crisis* claims that there was a “renewed Yugoslav/ Serbian

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<sup>18</sup> ICTY Annual Report 2001, <http://www.un.org/icty/repannu-e/2001/AR01e.pdf>

<sup>19</sup> J. Pilger, ‘Calling the Kosovo Humanitarians to Account’, 2004, <http://www.antiwar.com>

<sup>20</sup> Independent International Commission on Kosovo op.cit. p.90

offensive underway in Kosovo” around 19 March, and that the OSCE withdrew its peace monitors because of this offensive- denying the widely-accepted account that they were withdrawn because of the impending bombing.<sup>21</sup> However, the MoD report provides no evidence for its claim of a Serbian offensive before 19 March. In its Chronology, the earliest report of action by Yugoslav forces is a sketchy account of an offensive in Drenica on 21-22 March, then there is nothing until 29 March.<sup>22</sup>

Other sources- even official reports by departments of NATO governments- follow the same pattern in terms of dates. For example, apart from the killing of one person on 18 March, all the atrocities listed in the US State Department’s Executive Survey of May 1999 (titled ‘*Erasing History: Ethnic Cleansing in Kosovo*’) date from after the withdrawal of the monitors.<sup>23</sup> This report states that “in late March 1999, Serbian forces dramatically increased the scope and pace of their efforts, moving away from selective targeting of towns and regions suspected of KLA sympathies toward a sustained and systematic effort to ethnically cleanse the entire province of Kosovo.”<sup>24</sup>

The International War Crimes Tribunal indictment of Milosevic gives the same picture. The Second Amended Indictment refers to crimes “beginning on or about Jan. 1 1999”<sup>25</sup>; but with just two exceptions, all of the crimes specifically referred to in the indictment date from after 23 March. The exceptions are the Racak

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<sup>21</sup> MoD Report op.cit., p.10

<sup>22</sup> Ibid p.47

<sup>23</sup> N. Chomsky, *The New Military Humanism: Lessons from Kosovo*, London, Pluto Press, 1999, p.84

<sup>24</sup> Cit. in Independent International Commission on Kosovo op.cit. p.351

<sup>25</sup> ICTY, ‘Milosevic et.al., Kosovo: Second Amended Indictment’, 29 Oct 2001, <http://www.un.org/-icty/indictment/english/mil-2ai011029e.htm>, Para.17

killings and an attack on 8 March during which FRY/Serbian forces partially burned the village of Kotlina.<sup>26</sup> The ‘background’ section of the indictment does refer more obliquely to a series of offensives by Serbian forces in late February and early March, but no crimes from this period- except for the single example from 8 March, noted above, which does not mention any casualties- are included on the charge list.<sup>27</sup>

The most complete account of human rights abuses by VJ forces in this period is detailed in the OSCE report *Kosovo/Kosova: As Seen as Told*. This report states that the OSCE/KVM monitors were withdrawn “in the face of an untenable situation of deteriorating security... as well as the impending internationalisation of the conflict”,<sup>28</sup> but makes clear that whatever indications there may have been in advance of a worsening situation, the escalation itself happened after the monitors were withdrawn.

Furthermore, the escalation seems to have happened in two phases. The Report states that “the level of incidents of summary and arbitrary killing escalated dramatically immediately after the OSCE/KVM withdrew on 20 March”<sup>29</sup>, and then that “summary and arbitrary killing became a generalised phenomenon throughout Kosovo with the beginning of the NATO air campaign”<sup>30</sup> on 24 March.

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<sup>26</sup> Ibid Para.63

<sup>27</sup> Ibid Para.100

<sup>28</sup> OSCE: *Kosovo/Kosova: As Seen as Told: An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999*, OSCE, 1999 ([www.osce.org/documents/mik/1999/11/1620](http://www.osce.org/documents/mik/1999/11/1620)), p.10

<sup>29</sup> Ibid p.71

<sup>30</sup> Ibid p.72

The report also notes the change in the nature of Serb tactics and objectives, stating that “up to that point, the attentions of the Yugoslav and Serbian military and security forces had been generally directed towards communities in Kosovo in areas that were on UCK (KLA) transit routes or where there were UCK bases.... After 24 March however the general pattern changed and included areas that had previously been relatively quiet.”<sup>31</sup> The ICTY indictment of Milosevic corroborates this, describing the Serbian offensives of 1998 as being characterised by “widespread destruction of property and expulsions of the civilian population from areas in which the KLA was active.”<sup>32</sup>

There has been much discussion over whether the Serbian offensive was planned in advance. Certainly the coordinated nature of the offensive, with the Serbian armed forces, police and paramilitaries all working together, and the fact that it began so quickly after the monitors were withdrawn- 307,500 refugees left Kosovo within the first eight days of the campaign<sup>33</sup> - indicates that a good deal of it was pre-planned. The expulsions were mostly highly organised, with those displaced being forced from their homes by armed troops in a process routinely preceded by shelling.<sup>34</sup> It is also the case that the Serbs were building up their forces on the borders of Kosovo for some time before the bombing began. However, these facts are largely irrelevant to the question of whether the escalation would have happened anyway in the same fashion if NATO had not bombed. Given that NATO had been threatening to launch a bombing campaign

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<sup>31</sup> Ibid p.72

<sup>32</sup> ICTY, Milosevic et al. Para.95

<sup>33</sup> FAC Report Vol.I op.cit. Para.95

<sup>34</sup> Independent International Commission on Kosovo op.cit. p.90

for some time, it would be something of a surprise if Serbian leaders had not drawn up plans for how to respond if these threats were carried out.

Supporters of the bombing have pointed to a document known as ‘Operation Horseshoe’ as evidence that the Serbian government had planned all along to expel the Albanian population. First revealed by the German Defence Ministry in April 1999, ‘Operation Horseshoe’ supposedly details a Serbian plan to surround Kosovo from three sides and drive the population into Albania.<sup>35</sup> US Defence Secretary William Cohen told Congress that Milosevic could have carried out this operation “in a week or so” if the bombing had not thwarted his plans (although the bombing clearly did not prevent him from carrying it out quite effectively anyway). However, there are doubts over the authenticity of the plan. OSCE worker and retired German general Hans Loquai claimed that it was fabricated from an analysis by a Bulgarian intelligence agency of Serbian behaviour during the war (in fact they even distorted this analysis, which concluded that Serb tactics were focused on counter-insurgency rather than ethnic cleansing). German intelligence, he alleged, also coined the word ‘Horseshoe’ in the title of the report, mistakenly using the Croatian word for a horseshoe (‘Potkara’) instead of the Serbian word (Potkovicica).<sup>36</sup>

There is also some ambiguity about the meaning of ‘Horseshoe’ in this context. The first documented use of the word ‘horseshoe’ in connection with Kosovo occurred in a report published in October 1998 by Dr Dusan Batakovic, a Kosovo Serb. This report, which was widely discussed in Serbia at the time of

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<sup>35</sup> Herring in Booth op.cit. pp.229-30

<sup>36</sup> N. Chomsky, *A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West*, London, Verso, 2000, pp.33-34; also FAC Report Vol.I op.cit. Para.93

publication, proposed the cantonisation of Kosovo according to the ethnic composition of localities within it. The name was suggested by the fact that under this plan, Serbs would control a horseshoe-shaped area along the borders with Serbia, while Albanians would control the southern and central areas of the province.<sup>37</sup> This does not match the ‘Operation Horseshoe’ discovered or produced by German intelligence, nor does it match what actually occurred during the bombing- Serbian tactics then were aimed at driving out all Albanians regardless of what part of the province they had been living in.

Even assuming that ‘Operation Horseshoe’ is authentic, without knowing when it was drawn up one cannot say whether it constitutes evidence that the Serb offensive would have occurred without the bombing.

#### 5.2.2 Did the Bombing Campaign Provoke the Atrocities?

Then British Foreign Secretary Robin Cook has stated that “there is no evidence that what happened subsequently (to the beginning of the bombing) would not have happened anyway.”<sup>38</sup> But nearly all independent observers have rejected the idea that there was no link between the bombing and the sudden change in Serb tactics. Indeed, even certain figures within the Alliance have accepted the existence of a link; General Naumann, Chairman of the NATO Military Committee in 1999, said that the humanitarian catastrophe “may have been

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<sup>37</sup> FAC Report Vol.I op.cit. Para.92

<sup>38</sup> Ibid Para.86

accelerated by NATO, and definitely some of the atrocities which happened were caused by NATO bombs, since (these provoked) this vendetta feeling.”<sup>39</sup>

Madeleine Albright states in her memoirs that in advance of the negotiations at Rambouillet, the US had “received intelligence indicating that the Serbs were planning an assault on large KLA units and command centres during a two-week period in March, followed by a months-long operation to wipe out pockets of resistance.”<sup>40</sup> If this intelligence was accurate, it sounds like a repeat of the Serbian offensive of Spring 1998- not anything resembling the all-out offensive that actually occurred during the bombing. Therefore it may be concluded that the balance of the available evidence strongly indicates that the bombing did indeed cause a qualitative change in the tactics used by the Serbs, from a brutal and excessive, but still fairly conventional, counter-insurgency campaign to an all-out attempt to expel the whole of the Kosovo Albanian population, whether or not they were providing support for the KLA.

The Independent International Commission on Kosovo concludes that “it is... certainly not true that NATO *provoked* the attacks on the civilian Kosovar population.... It is nonetheless likely that the bombing campaign and the removal of unarmed monitors created an internal environment that made such an operation feasible.”<sup>41</sup> This occurred because of two main factors; the first practical, the second psychological.

Firstly, the withdrawal of the peace monitors gave the Serbs an apparent opportunity to launch an all-out offensive without being under the same level of

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<sup>39</sup> Ibid Para.89

<sup>40</sup> M. Albright with B. Woodward, *Madam Secretary*, London, Macmillan, 2003, p.395

<sup>41</sup> Independent International Commission on Kosovo op.cit. pp.88-9

scrutiny. Secondly, the effect of the bombing created an impulse for retaliation on the part of the Serbs. Unable to strike back against NATO, they turned on the only available targets: the Kosovo Albanians. This made the offensive even more cruel in its effects than it would otherwise have been. Adam Roberts has said that “there is no doubt at all that there was a connection” between the withdrawal of the monitors, the start of bombing and the violence; “all major cases of genocide and ethnic cleansing in the 20<sup>th</sup> Century have occurred during or shortly after major wars: the chaos and hatred unleashed in war, the secrecy that wartime conditions engineer, can provide the necessary conditions for such mass cruelty.”<sup>42</sup>

The OSCE monitors, though they could do no more than contain the conflict, do seem to have exercised a genuine restraining influence, certainly on the Serbs though perhaps not so much on the KLA. Though there are strong indications that much of the offensive was pre-planned, it was only the withdrawal of the monitors and the bombing that gave the Serbs the opportunity to carry out their plans. What we do not know- and never will know- is how long that restraining influence could have lasted if the bombing had not taken place.

To the argument that the NATO bombing provoked the Serbs into intensifying their assault on the Albanian population, war supporter Matthew Wyman replies: “if someone is being tried for murder, does the fact that they were provoked remove their personal responsibility for their actions?”<sup>43</sup> Clearly not- but it might suggest that the provoker is not entirely innocent.

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<sup>42</sup> FAC Report Vol.I op.cit. Para.89

<sup>43</sup> M. Wyman, ‘Why Intervention was Right’, in M. Waller, K. Drezov & B. Gokay, eds. *Kosovo: The Politics of Delusion*, London, Frank Cass, 2001, p.105

### 5.2.3 'Degrading' the VJ Forces: The Impact of the Campaign in Kosovo

The British Ministry of Defence claims that the campaign was successful in that the Serb forces were forced “to conceal their tanks and heavy weapons from NATO attack”, which limited their ability to oppress the Kosovo Albanians.<sup>44</sup> However, it is hard to attach much credence to this contention, given the speed with which the Serbs were able to displace over 90% of the Kosovo Albanian population. It is hard to see how they could have done so much more quickly or completely even with the use of heavy weapons.

The Independent International Commission on Kosovo, while stating that the bombing did seriously damage Yugoslavia's air defences, concludes that “the NATO attacks in Kosovo did relatively little damage to FRY ground forces.”<sup>45</sup> This view is echoed in most sources. The House of Commons Defence Committee concluded that “VJ and MUP forces in Kosovo were able to withdraw... after 10/6/99 with their flags flying, plausibly claiming to have remained undefeated”.<sup>46</sup>

Debate has often centred on disputes over the exact figures for Yugoslav heavy armaments destroyed and damaged by NATO bombing. After the war, NATO reported “validated strikes on 93 tanks, 153 armoured personnel carriers, 389 artillery pieces and mortars and 339 military vehicles”, but these numbers may well have been exaggerated; the UK Chief of Defence Intelligence has conceded that they were “probably...optimistic”.<sup>47</sup>

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<sup>44</sup> MoD Report op.cit. p.35

<sup>45</sup> Independent International Commission on Kosovo, op.cit., p.93

<sup>46</sup> Defence Committee Report Vol.I op.cit. Para.115

<sup>47</sup> Ibid Paras.112-114

However, this statistical quibbling is in essence irrelevant to judging the success or failure of the campaign. The clear fact is that, during the bombing- and regardless of whatever damage they may or may not have sustained- Serb forces succeeded in pushing over 800,000 people out of Kosovo. Indeed, they had largely achieved their aim of expelling the Kosovo Albanian population long before the bombing was over. Thus, at least in terms of achieving its *immediate* humanitarian objectives, the campaign has to be counted a clear failure.

In claiming that the campaign was proving to be a success because they had destroyed  $x$  number of tanks, command posts, road bridges, military airfields or aircraft, NATO leaders showed a misunderstanding of the nature of ethnic cleansing, which “does not require heavy armour or sophisticated command and control”.<sup>48</sup> A large number of thugs with guns can do the job perfectly well. It is possible that NATO knew this, and that the bombing of targets in Kosovo continued, despite its failure, because it provided a way for NATO to be seen to be doing something about the Serbian atrocities, and the figures handed out to the media gave an impression of success. Certainly if a NATO spokesman had admitted that the Alliance could not stop the ethnic cleansing, nor even slow it down- and had announced that therefore NATO would from then on concentrate purely on attacking strategic targets in Serbia- the PR implications would have been disastrous. The bombing of Serb forces was far easier to sell to the public and the media, as it seemed to be aimed at directly helping the Kosovars. Attacks on targets in Serbia proper might have offered more hope for achieving the campaign’s longer-term objective- that of producing a settlement that would allow

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<sup>48</sup> Ibid Para.89

the refugees to return- but in the meantime NATO had to be seen not to be completely abandoning them to their fate.

After the bombing was over, some Alliance spokesmen claimed that they had known all along that the campaign was unlikely to succeed in preventing expulsions. George Robertson told the Royal United Services Institute in late summer 1999 that “NATO knew from the start that we could only hope to limit or contain the sort of state run terrorism that was happening on the ground.”<sup>49</sup> The evidence indicates that the campaign did not even succeed in achieving that objective.

#### 5.2.4 ‘Collateral Damage’ in the campaign within Kosovo

The ‘humanitarian’ campaign also had a more direct effect on the Kosovo Albanians. The Human Rights Watch study documented 32 instances of ‘collateral damage’ resulting from bombing within the borders of Kosovo, resulting in between 278 and 317 civilian dead.<sup>50</sup> Though dwarfed by the numbers killed by the Serbs, this is still a significant figure, and there is a possibility that NATO’s decision to have its pilots fly at an altitude of 15,000 feet- taken with the aim of reducing the risk of casualties among its own forces- resulted in this figure being higher than it need have been. There were several instances during the campaign of NATO pilots attacking refugee convoys in mistake for military convoys. The most serious of these occurred on April 14, when a convoy of refugees was repeatedly attacked on a stretch of road between Djakovica and Decane, resulting

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<sup>49</sup> Cit. in S. Henig, ‘Britain: To War for a Just Cause’, in T. Weymouth & S. Henig, eds. *The Kosovo Crisis: The Last American War in Europe?* London, Pearson Education Ltd., 2001, p.57

<sup>50</sup> Human Rights Watch op.cit.

in 73 deaths. Human Rights Watch said that “there is a question as to whether NATO’s extraordinary efforts to avoid casualties among its pilots precluded low-flying operations that might have helped to identify targets more accurately”, and that in this case, “flying at a higher altitude seems to have impeded a pilot from accurately identifying a target... inadequate precautions were taken to avoid civilian casualties.”<sup>51</sup>

It is clear that in the Kosovo conflict, NATO’s one over-riding priority- which had more impact than any other factor in shaping the Alliance’s overall strategy- was minimising the risk of casualties among its own forces. We will see this again later in the chapter when we come to the reasons why the Alliance did not pursue the strategy- advocated in many quarters- of an invasion of Kosovo by ground troops. One would of course expect this to be a high priority for any military power in any war, but not to the extreme extent that was the case in Kosovo. The USA- the dominant power in NATO- proved willing to take significant numbers of casualties among its forces during the recent wars in Iraq and Afghanistan, so why would it not do so in Kosovo? The most likely reason for this was that Kosovo was a ‘humanitarian war’, and that the fundamental national interests of NATO powers was not involved, or at least not to the same extent as in other conflicts.

This raises a serious problem for the idea of humanitarian war. We saw in Chapter Two that, according to theorists, those conducting a humanitarian war should abide by the usual *jus in bello* criteria of avoiding unnecessary harm to civilians at least as scrupulously- if not more so- than in any other type of conflict. Certainly one would think that the minimal requirement in any true humanitarian

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<sup>51</sup> Ibid.

war would be that intervening powers would take all possible precautions to avoid causing unnecessary casualties among the people on whose behalf they were supposedly fighting.

But in Kosovo, this does not seem to have been the case. It appears, when one compares Kosovo with the wars in Iraq and Afghanistan, that for all their pious rhetoric about human rights, Western powers are not prepared to go to the same lengths when fighting for other peoples' rights as they are when fighting for their own national interests. Specifically, they are not prepared to accept any costs to themselves. This did damage the 'humanitarian' character of the intervention in Kosovo, as NATO risked causing unnecessary civilian casualties among the Albanian population in order to minimise the chances of casualties among its own forces.

#### 5.2.5 Thoughts on the Failure of the Campaign within Kosovo

The Kosovo campaign provides a very poor advert for the idea- promoted by some theorists, as we saw in Chapter Two- that humanitarian wars should be "short term and instrumental", focused on achieving an immediate humanitarian objective. The evidence of Kosovo is that air power is of very little use in halting human rights abuses on the ground. Advocates of humanitarian war will argue that this does not invalidate the concept; it merely shows that future wars should be fought using ground troops rather than by high-level bombing. The problem with this is that, as we will see later, the war in Kosovo could never have been fought by any tactic other than air power. The reluctance of leading NATO members to take

humanitarian war' in Kosovo, then, it was air power or nothing; and there is no reason to believe that things will not be the same in any future humanitarian wars.

But it may be that air power, though it cannot provide immediate protection to civilians under attack, can be successful in forcing a recalcitrant regime to accept a humanitarian settlement. This is generally seen to have been the case in Kosovo. The other part of the campaign, which involved attacks on a wide range of targets throughout Serbia with the stated objective of putting pressure on the Milosevic regime to accept NATO's demands as outlined at Rambouillet, is usually regarded as having been successful. Certainly Milosevic did in the end concede. It is therefore to this aspect of the war that we now turn.

### **5.3 The Bombing Campaign II: The Rest of Serbia**

This section will deal with that part of the NATO bombing campaign that consisted of attacks on targets outside the borders of Kosovo. NATO's decision to expand air operations to the whole of Serbia proved to be highly controversial, both at the time and since, since it involved attacks on many targets which did not seem to be of much importance in helping NATO to achieve its stated humanitarian objectives of halting the Serbian assaults on the Kosovo Albanians.

#### **5.3.1 Aims of the Campaign outside Kosovo**

med by leading NATO figures. The questions to be addressed here are what tactics the Alliance pursued in attempting to force Milosevic to give in, whether these tactics was successful, and whether it can be viewed as a genuine humanitarian war.

Critics of the war have argued that targeting policy in the campaign outside Kosovo was based on a desire to hurt the civilian population of Serbia, in the hope that they might then put pressure on their leaders to give in. Throughout the bombing, NATO leaders consistently insisted that “we are not at war with the people of Serbia”. Then and ever since, there has been an official insistence that NATO never deliberately attacked civilians, and indeed took all possible precautions to avoid causing civilian casualties, in accordance with international law. According to NATO, consideration of civilian casualties was fully incorporated into the planning process. General Shelton said that all targets were

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<sup>52</sup> MoD Report op.cit. p.11

“looked at in terms of their military significance in relation to the collateral damage or unintended consequences that might be there.” Wesley Clark was said to have spent “hours of his day dealing with the allies on issues of collateral damage.”

However, the charges of the critics are given credence by remarks by General Michael Short, who was in charge of targeting policy, to the *International Herald Tribune* in May 1999; “I think no power to your refrigerator, no gas to your stove, you can’t get to work because the bridge is down- the bridge on which you hold your rock concerts and on which you all stood with targets on your heads- that needs to disappear at three in the morning.”<sup>53</sup> Admiral Schmaling, the head of German Military Intelligence, said that “the plan was to first put pressure on the civilian population and second to destroy the Yugoslav economy so deeply that it would not recover.” The fact that certain areas of Serbia that had historically been major centres of opposition to Milosevic- such as the city of Novi Sad- were singled out for particularly heavy bombing may also provide evidence of the existence of this strategy. People who had protested against Milosevic before were presumably viewed as likely to be more willing to do so again. This does not suggest a strategy of directly targeting civilians- which would of course be illegal- but rather one of putting pressure on them indirectly by making life inconvenient for them.<sup>54</sup>

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<sup>53</sup> Cit. in Knightley op.cit.p.510

<sup>54</sup> One argument might be found to justify a policy of putting pressure on the Serbian people. This was the ‘Milosevic’s Willing Executioners’ argument, which we met briefly in Chapter One. This stated that the Serbian people were collectively guilty of complicity in the acts of their government. Though no NATO leader ever used this argument, variations on it were put forward by several media commentators, for example William Pfaff, who wrote in the *Boston Globe* that “Serbia’s leaders have been elected by the Serbian people”, and that therefore the Serbs should “not be

Criticism during the bombing focused largely on a series of individual mistakes by NATO pilots which resulted in civilian casualties. For example, at least ten people were killed on April 12 when NATO bombs hit a railway bridge near Leskovac just as a passenger train was crossing it. There were various other similar cases; on April 28, a stray bomb hit a house in Sofia, the capital of Bulgaria; and on May 1 and 3, NATO bombs hit buses, killing at least 56 people.<sup>55</sup>

However, since the campaign ended, criticism has come to focus less on these individual cases- which can be dismissed as the sort of regrettable accidents that always occur in war- to the targeting policy that made some of them possible. For example, in the case of the bombing of the passenger train, there is no evidence that NATO policymakers wanted their pilots to hit bridges just as trains were crossing them. The claim made at the time- by General Wesley Clark- was that the presence of the train was merely a “freakish coincidence”, and that rockets had already been released when the pilot saw the train. This assertion has been disputed; the passengers said that the first bombs had hit a road bridge above the train and that the falling concrete had cut the railway’s power cables, immobilising

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spared a taste of the suffering that he (Milosevic) has inflicted on their neighbours,” (Cit. in Chomsky (1999) p.93) and also by Stacy Sullivan in the *New Republic* (‘Milosevic’s Willing Executioners’, 10/5/99).

This argument, however, rests on a series of dubious assertions. Sullivan argues that “the relative absence of effective Serbian protest and, especially, the silence of intellectuals on the matter of war crimes raise disturbing questions about the culpability of Serbs as a whole in the actions of the authoritarian government that rules them.” (p.26) This begs all kinds of questions; how many people have to protest against any given action before a people are judged not to be collectively culpable? Besides, a considerable proportion of the population of Serbia was made up of people- children, the infirm, national minorities- who could not be regarded in any sense as being collectively guilty, yet these people presumably suffered just as much as others from the bombing campaign. Indeed, as has already been mentioned, Vojvodina- a province with a large minority population- was bombed particularly heavily.

<sup>55</sup> ‘The Attacks that Went Wrong’, *The Guardian* 8 May 1999

the locomotive; the plane had then fired a second rocket into the train.<sup>56</sup> But whatever the exact truth of what happened in this instance, it was NATO's policy of attacking bridges- even where these were of little or no obvious military value- that made such a mistake possible. Although NATO- unlike the Serbs- was not actually setting out to attack civilians, its targeting strategy in the campaign outside Kosovo made it more likely that a significant number of such casualties would occur accidentally.

### 5.3.2 Targeting Strategy: Attacks on the Infrastructure of Serbia

NATO seems to have pursued a strategy of attacks on targets which could under some circumstances be seen as having military value, but which in this case only really made sense as part of what Human Rights Watch describes as “a psychological warfare strategy of harassment”<sup>57</sup>- aimed at both the Milosevic regime and the civilian population. This is seen most clearly in the frequent attacks on road bridges. The British Ministry of Defence report on the war claims that 34 road bridges were destroyed during the bombing (as well as 11 railway bridges).<sup>58</sup> The Independent International Commission on Kosovo raises this figure to 59 bridges, seven of which were on the Danube.<sup>59</sup> Many of these attacks took place during the daytime, greatly increasing the chance of civilian casualties. NATO did eventually change its policy in this area, directing its pilots not to attack bridges

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<sup>56</sup> R. Fisk, *The Independent*, 17 September 1999

<sup>57</sup> Human Rights Watch op.cit.

<sup>58</sup> Ministry of Defence Report, op.cit. p.36

<sup>59</sup> Independent International Commission on Kosovo op.cit. p.93

during daylight hours, on weekends, on market days or on holidays- but only on May 30, when the war was nearly over.<sup>60</sup>

Where they are being used by enemy vehicles, road bridges can be highly important military targets. However, during the Kosovo war NATO attacked bridges which could not conceivably have been of any use to the Serbian military: for example, the Danube bridges in the city of Novi Sad, at the opposite end of Yugoslavia from Kosovo- and, as it happened, a major centre of opposition to Milosevic. (One of these bridges was reportedly barely strong enough to support buses.) Novi Sad suffered particularly badly during the bombing, with its water and electricity supplies quickly devastated.<sup>61</sup> This was not the only case where opponents of the regime bore the brunt of the destruction, as will be seen below. This strongly suggests a strategy of making life as difficult as possible for the civilian population of Serbia in the hope that this would lead to increased opposition to the Milosevic regime.

NATO also conducted what it described as “Raids on Serb Elite’s Property”- for example the Zastava car plant, whose director was the Minister of Privatization in Milosevic’s government. The idea behind this was “to instill fear in those whose economic standing depends on Mr. Milosevic- and therefore, presumably, to lead them to lobby him to change his stance. This tactic might seem easier to justify than coercion of the population in general, since it concentrated on those who might be argued to be directly complicit in the actions of the Serbian government. However, the wider population was again adversely affected. In this case, the

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<sup>60</sup> Human Rights Watch op.cit.

<sup>61</sup> Chomsky (1999) op.cit. p.34

workers at the plant- who had carried out a major strike with anti-regime overtones- lost their livelihoods.<sup>62</sup>

The bombing caused serious damage to the civilian infrastructure of Serbia. In addition to the bridges, nine major highways and seven airports were destroyed; most of the main telecommunications transmitters were damaged, and two-thirds of the main industrial plants were nearly destroyed. NATO claims that 70% of the electricity production capacity and 80% of the oil refinery capacity was knocked out. The Independent International Commission on Kosovo notes that “the consequent suffering of the Serbian civilian population contradicted initial NATO assurances that the war was not aimed at the Serbian people.”<sup>63</sup>

Also controversial was the bombing of oil refineries. Every oil refinery in Yugoslavia was either destroyed or damaged during the campaign and, according to official NATO figures, 57% of Yugoslavia’s petroleum reserve capacity was destroyed.<sup>64</sup> Oil refineries can undoubtedly be of military value in certain situations, but Brownlie argues that in this case the bombings “could not involve military objectives because nowhere in Yugoslavia were NATO troops on the ground and in a position to benefit from the destruction of fuel sources. NATO official statements were very frank in admitting that the purpose of the targeting policy was to cause hardship to the civilian population.”<sup>65</sup> These attacks- along with those on chemical plants- were controversial mainly because of the environmental damage that they caused. The bombing of refineries in Belgrade

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<sup>62</sup> Ibid p.93

<sup>63</sup> Independent International Commission on Kosovo op.cit. p.93

<sup>64</sup> MoD Report op.cit. p.36

<sup>65</sup> Memorandum Submitted by Professor Ian Brownlie, FAC Report Vol.II (Minutes of Evidence and Appendices) op.cit. p.236

and Novi Sad caused oil slicks 12 miles long in the Danube<sup>66</sup>, and chemical tanks ruptured by bombing contained major pollutants such as naphtha and vinyl chloride monomer (VCM), which can induce vomiting, unconsciousness, liver and kidney damage.<sup>67</sup> Anderson states that “to target such facilities is effectively to wage chemical warfare on the civilian populations”- and not only the population of Serbia, since the health-risks also existed for people living in the states downwind and downriver from the bombing sites.<sup>68</sup>

These problems- both economic and environmental- did not disappear when the bombing ended. The Danube remained blocked for months afterwards by the remains of the bombed bridges, resulting in ‘collateral damage’ to the economies of the other states which relied on the river for their trade; In November 1999, more than 200 vessels from these countries were still trapped upstream from Serbia; direct losses to Romania, Bulgaria, the Ukraine and Moldova totalled £125 million.<sup>69</sup>

### 5.3.3 Attacks on Media Facilities

Perhaps most controversial of all were the attacks on Serbian TV and radio stations, which began on April 8 and culminated on April 23 with an attack on the headquarters of Serbian Radio and Television. Sixteen civilian technicians were

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<sup>66</sup> G. Monbiot, ‘Consigning their Future to Death’, *The Guardian* 22 April 1999

<sup>67</sup> A. Dobson, ‘The Natural Environment and the Balkan Conflict’, in Waller, Drezov & Gokay op.cit. p.139

<sup>68</sup> P. Anderson, ‘Air Strikes: NATO Astride Kosovo’, in T. Weymouth & S. Henig, eds. *The Kosovo Crisis: The Last American War in Europe?* London, Pearson Education Ltd, 2001, pp.200-1

<sup>69</sup> N. Ascherson, ‘Damning the Danube’, *The Guardian* 11 November 1999

killed and another sixteen were wounded in this attack.<sup>70</sup> These attacks are of importance since, controversial as they were at the time, they seem to have constituted the start of a trend. The Iraq war has been characterised by numerous (and allegedly deliberate) attacks by American forces on journalists- the most famous example being the bombing of the Palestine Hotel. One might also mention the bombing of Al Jazeera's offices in Afghanistan.

NATO spokesmen argued that the Serbian media facilities were a "legitimate target which filled the airwaves with hate and with lies over the years."<sup>71</sup> But a Human Rights Watch report was particularly critical of these attacks, arguing that "there is no evidence that the radio and television headquarters meet the legal test of military necessity in target selection, as it made no direct contribution to the military effort in Kosovo. In this case, the purpose of the attack again seems to have been more psychological harrassment of the civilian population than to obtain direct military effect."<sup>72</sup>

Attacks on media facilities could probably be justified if these were being used for military purposes- or else aiding a campaign of genocide by inciting violence, as was the case with some radio stations in Rwanda. However, though the charges levelled by NATO at Serbian Radio and Television were somewhat vague, they do not seem to have amounted to an accusation of direct complicity in the actions of the Serb forces in Kosovo. Rather, the Alliance's justification for the attacks rested on charges that the Serb media were spewing out propaganda for the Milosevic

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<sup>70</sup> Human Rights Watch op.cit.

<sup>71</sup> Chomsky (1999) op.cit. p.129

<sup>72</sup> Human Rights Watch op.cit.

regime- meaning that the TV stations, at most, were only aiding the military effort in a very indirect way.

Accusing the other side's media of propaganda and distortion is virtually compulsory in modern warfare, and such allegations are often justified, particularly in the case of a country which is directly under attack. NATO did not help its credibility in this case by saying that the media might "escape further punishment" if Milosevic "gave six hours of air space to Western news broadcasts each day."<sup>73</sup> This would indeed seem to indicate that the bombing was motivated by NATO's objections to the political content of broadcasts on Serbian TV rather than any real military advantage, and that therefore the main aim of the TV station bombings was to split the Serbian civilian population off from their leadership rather than to directly aid the effort to protect the Kosovars.

Given the civilian deaths caused by these bombings, and their lack of success (the broadcasters were easily able to move their operations to new, makeshift facilities,<sup>74</sup> and in fact Serbian TV was back on air just a few hours after the destruction of its HQ), NATO's tactics here seem disproportionate to say the least.

Taken together with the strategy of coercion of the population of Serbia, attacks on the media seem to indicate an erosion of the principle of noncombatant immunity which has historically been the basis of the theory of *jus in bello* and of international humanitarian law. When journalists are viewed as legitimate targets because of the political content of their broadcasts rather than because they are directly inciting atrocities, and the civilian population are regarded as legitimate

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<sup>73</sup> Chomsky (1999) op.cit. p.129

<sup>74</sup> Human Rights Watch op.cit.

targets for indirect attack in the hope that they will put pressure on their leaders, the line between combatants and noncombatants does become blurred.

#### 5.3.4 Smart Bombs, Dumb Bombs, Uranium Bombs and Cluster Bombs

Much play was made during the bombing of the great accuracy of NATO's new precision-guided weapons. TV stations showed video footage of bombs hitting their targets. Indeed, NATO's original intention- at least as it was expressed publicly by George Robertson on the day the campaign began- was that only precision-guided weapons should be used.<sup>75</sup> This did not in fact prove to be the case. Although the Kosovo operation used a higher percentage of precision-guided munitions than any other conflict in history<sup>76</sup>, the majority of the munitions dropped by NATO were still old-fashioned 'dumb' bombs. This led to some strange contortions by Alliance military spokesmen in the aftermath of the conflict, as they attempted to justify the use of 'dumb' bombs by asserting that they were in fact less likely to cause civilian casualties than 'smart' bombs, since there was less to go wrong with them. This claim, however, was contradicted by the admission that only 2% of the 'dumb' bombs dropped during the campaign could be confirmed as having hit their targets.<sup>77</sup>

As Dobson has pointed out, the talk about the tremendous accuracy of modern 'smart bombs' serves to hide the fact that bombs can still cause serious 'collateral damage' even when they hit the correct targets. Military targets often harbour

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<sup>75</sup> G. Robertson, cit. in Defence Committee Report Vol.I op.cit. Para.69

<sup>76</sup> Human Rights Watch op.cit.

<sup>77</sup> R. Norton-Taylor, 'MoD Leak Reveals Kosovo Failure', *The Guardian* 15 August 2000

harmful substances which are released into the air when they are hit, and “whatever gains... ‘smartness’ might promise in principle are lost as soon as the range of targets is widened to include civilian targets. Car factories containing large amounts of asbestos (were) attacked, for example, and this toxic substance (was) spread across wide areas of relatively dense population.”<sup>78</sup>

Hence it would be unwise for advocates of humanitarian war to argue that modern technology can- either now or at some time in the future- make it possible to fight a genuinely ‘clean’ war. Even if future humanitarian wars are fought only with precision-guided weapons, and even if the reliability of these weapons is improved in order to reduce the possibility of casualties caused by stray bombs, the problems of casualties caused by targeting strategy will still remain. In any case, the issue of reliability can be overstated; relatively few of the civilian casualties in the Kosovo campaign seem to have been caused by malfunctioning weapons. The Pentagon has admitted to only two instances in which this occurred.<sup>79</sup> Most casualties were either due to targeting strategy, or else to human error (eg bombing a refugee convoy in mistake for a military convoy)- which will be a lot harder to eliminate in any future conflicts.

Two types of weapons used by NATO in Kosovo caused particular controversy: cluster bombs, and shells tipped with depleted uranium (DU).

The stated reason for using DU in shells is its extremely high density, which gives greater armour-piercing qualities than any other available material. Officially the health risks of depleted uranium are considered to be “low”; its toxicity is

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<sup>78</sup> Dobson in Waller, Drezov & Gokay, op.cit p.140

<sup>79</sup> Human Rights Watch op.cit.

similar to lead.<sup>80</sup> Though there has been a good deal of concern expressed about the use of depleted uranium, such evidence that exists of any harmful effects to the environment or human health caused by these munitions is purely anecdotal. A report for the European Parliament Directorate-General for Research concluded that “the dose rate in the vicinity of DU is very low and orders of magnitude too small to induce acute radiation damages... if a protracted direct skin contact with penetrators/fragments is avoided, the effects of external irradiation by DU are negligible.”<sup>81</sup> This report also states that “in view of the low mobility of uranium in the soil and the small transfer factors into biological material neither intermediate nor long-term effects on the environment are expected.”<sup>82</sup> However, while one might give a provisional clean bill of health to DU weapons, there are far firmer grounds for concern over the use of cluster bombs.

As their name suggests, cluster bombs are weapons containing a large number of individual ‘bomblets’, which in theory are all supposed to explode on impact with the ground. However, at least a few of the bomblets invariably fail to explode and remain in the soil, becoming landmines in all but name. Cluster bombs, then, can be a highly indiscriminate weapon, especially when used in populated areas. This fact has been recognised by international courts; the International Criminal Tribunal for the Former Yugoslavia indicted the Croatian Serb military commander Milan Martić for- among other charges- using cluster bombs in an

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<sup>80</sup> MoD Report op.cit. p.43

<sup>81</sup> M. Keller et.al., *Depleted Uranium: Environmental and Health Effects in the Gulf War, Bosnia and Kosovo*, Luxembourg, European Parliament Directorate-General for Research, 2001, p.viii

<sup>82</sup> Ibid p.33

attack on civilian areas of Zagreb.<sup>83</sup> (although the bombs themselves have not specifically been declared illegal). Unexploded bomblets pose a serious risk to civilians, particularly since the fragments are brightly coloured and therefore attractive to young children.<sup>84</sup> NATO countries reject the comparison with landmines; the MoD, in defending Britain's use of cluster bombs in Kosovo, argues that these bombs "should not be confused with anti-personnel type weapons that are specifically designed to lay dormant and detonate once disturbed".<sup>85</sup> But nevertheless, designed or not, that is the effect that they have.

The fact that cluster bombs are customarily used for 'area denial' (that is, killing an enemy within an area and then preventing subsequent entry to that area by the enemy) shows that the existence of a 'failure rate' is acknowledged and taken into account by strategists.

There are various different figures given for the failure rates of cluster bombs. The British Secretary of State for Defence claimed that this was "of the order" of 5%.<sup>86</sup> However, the UN Mine Action Coordinating Committee in Kosovo estimates a failure rate of 11-12%.<sup>87</sup> Whatever the exact figure, this is a significant failure rate given that each cluster bomb dropped on Kosovo (1100 were dropped by US forces<sup>88</sup>, and 531 by British forces) contained 147 bomblets and over 2000

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<sup>83</sup> International Criminal Tribunal for the Former Yugoslavia, *Martić Second Amended Indictment*, 9 Sep 2003, <http://www.un.org/icty/indictment/english/mar-2ai030909e.htm>, Paras.51-52

<sup>84</sup> R. Norton-Taylor, 'Cluster Bombs: The Hidden Toll', *The Guardian* 8 August 2000

<sup>85</sup> MoD Report op.cit. p.42

<sup>86</sup> Defence Committee Report Vol.I op.cit. Para.150

<sup>87</sup> R. Norton-Taylor, 'Cluster Bombs: The Hidden Toll'

<sup>88</sup> Chomsky (2000) op.cit. p.134

pieces of shrapnel.<sup>89</sup> Even taking the lower figure, this would indicate that seven or eight bomblets from each bomb could be expected not to explode.

Cluster bombs are not precision-guided; only 31% of those dropped on Kosovo could be confirmed as hitting their targets.<sup>90</sup> Landmines are notorious for the way they continue to cause casualties among civilians long after the particular conflict that led to their being placed has ended, and in Kosovo, cluster bombs proved to have the same effect. In early 2000, leftover bomblets were still killing two people a day.<sup>91</sup> This is in addition to the 90-150 civilian casualties (the Human Rights Watch estimate) that were caused by cluster bombs during the campaign itself.<sup>92</sup>

The effects of cluster bombs did lead the US government to temporarily stop using them. After an incident in Nis on 7 May, when a malfunction led to submunitions falling on a hospital and on the town centre, killing 14 civilians and injuring 28, US forces were stopped from using the weapons.<sup>93</sup> British forces, however, continued to use them- an act against which the Americans made no protest<sup>94</sup>- and the American weapons were returned to service shortly afterwards.<sup>95</sup>

Certainly the use of such a weapon by an intervening power should raise some questions about the power's humanitarian intentions and the humanitarian character of the operation. But knowledge of their effects in Kosovo has not led to any reluctance on the part of NATO states to continue to use cluster bombs. On the

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<sup>89</sup> Defence Committee Report Vol.I op.cit. Para.147

<sup>90</sup> Ibid Para.148

<sup>91</sup> R. Norton-Taylor, 'NATO Under Fire for Choice of Targets in Kosovo', *The Guardian* 7 January 2000

<sup>92</sup> Human Rights Watch op.cit.

<sup>93</sup> Ibid.

<sup>94</sup> Defence Committee Report Vol.I op.cit. Para.150

<sup>95</sup> MoD Report op.cit. p.42

contrary: during the war on Iraq, US and UK forces dropped almost 13,000 of them, often in populated areas, killing or wounding over 1000 civilians.<sup>96</sup>

The long-lasting after-effects of the bombing- casualties caused by cluster bombs, environmental damage and the economic effects of the destruction of Serbian infrastructure and the bombing of the Danube bridges- provide considerable evidence for the argument that, even in these days of precision weapons, military force is too destructive an instrument for the use of it ever to be termed 'humanitarian'- at least, if the intervening authorities are not prepared to commit sufficient resources to clean up afterwards. This is why the *Jus Post Bellum* is so important, as we will see in the next chapter.

Against all this, supporters of the war can point out that- despite the above concerns over NATO's targeting strategy, weapons used and over the unwillingness of the intervening forces to take casualties- whichever of the estimates you take, the level of civilian casualties directly caused by the NATO bombing was much lower than those caused by the wars in Iraq and Afghanistan. This could be taken to show that the war in Kosovo was fought in a more humanitarian manner than other recent conflicts. However, the difference in casualty levels may be more due to the fact that the war in Kosovo was far more of a limited conflict both in terms of the objectives sought and the type of fighting that occurred. In the case of the Kosovo conflict, unlike those in Iraq and Afghanistan, the intervening power did not seek a regime change in the target state; it only sought to remove an area of territory from the regime's effective

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<sup>96</sup> Human Rights Watch, *Off Target: the Conduct of the War and Civilian Casualties in Iraq*, [www.hrw.org](http://www.hrw.org), 2003

control. Equally, in Kosovo the intervening forces were never involved in any battles on the ground, and their own forces were never put under any serious threat. In judging any war, one's assessment as to whether a certain number of civilian casualties can be considered proportionate has to be made not merely according to absolute levels of casualties- important as that factor is- but according to such factors as military necessity, the possible alternatives and the nature of the objective sought.

Human Rights Watch, in its report on the campaign, found no evidence that NATO had committed war crimes in Kosovo. But it did find evidence that NATO had violated international humanitarian law, by (among other things) attacking targets of questionable military legitimacy and failing to warn civilians of impending attacks. This seems an appropriate conclusion.

We saw in Chapter One that, according to theorists, a humanitarian war should abide closely by the accepted criteria of *jus in bello*. These state (in the formulation given in the First Additional Protocol to the Geneva Convention) that civilian facilities can only be attacked if they “make an effective contribution to military action”. ‘Collateral damage’ is only permissible when the attack that causes it is not “indiscriminate”- ie one which “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”<sup>97</sup> In its targeting strategy and in the nature of the weapons used, the intervention at times violated these norms.

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<sup>97</sup> FAC Report Vol.I op.cit. Para.145

### 5.3.6 The End of the Bombing Campaign

There were increasing worries, as the bombing failed to produce the quick concession by Milosevic that some expected, over how long NATO unity could be maintained. The Independent International Commission's Report on Kosovo states that "at the end of April, the question floating nervously around many NATO capitals was 'how are we going to end the war?'"<sup>98</sup>

Although a majority of the public in the UK and USA continued to support the bombing, by May some Alliance members were becoming worried about growing popular opposition. In Italy, for example, the proportion of people believing that the bombing was justified fell from 43% at the end of April to 35% in May, while the proportion believing that it was unjustified rose from 33% to 42%.<sup>99</sup> The Independent International Commission on Kosovo concluded that "it is a moot question whether the Alliance could have maintained its cohesion if Milosevic had held out for very much longer"<sup>100</sup> if Milosevic had not conceded when he did.

It was probably these worries about continued Alliance unity that prompted NATO leaders to take the steps that they had been so reluctant to take before the bombing- ie, dropping some of NATO's more extreme demands, and, most importantly, involving Russia more closely in negotiations for peace. As the bombing campaign dragged on, many sensed that, as Robert Skidelsky put it, NATO had got itself into a hole "from which we now rely on Russia to rescue us."<sup>101</sup>

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<sup>98</sup> Independent International Commission on Kosovo op.cit. p.95

<sup>99</sup> U. Morelli, 'Italy: the Reluctant Ally', in Weymouth & Henig op.cit. p.75

<sup>100</sup> Independent International Commission on Kosovo op.cit. p.97

<sup>101</sup> Cit. in M. Ignatieff, *Virtual War: Kosovo and Beyond*, London, Chatto & Windus, 2000, p.81

Publicly, NATO maintained the same stance to the very end: that there was to be no negotiation on the Alliance's demands, and that the bombing would continue until Milosevic accepted them in full. But there were already signs of a minor retreat from the provisions of Rambouillet in the very first of the diplomatic initiatives. In April, the German government promoted a plan which stated that the UN should have some role in the post-conflict administration of Kosovo.

This plan became the basis for the 7-point peace plan produced at a G8 meeting in Cologne on May 8, which itself was to become the framework for the subsequent discussions between Milosevic and Russian envoy Viktor Chernomyrdin in Belgrade on May 19.<sup>102</sup>

Milosevic had already met Chernomyrdin on April 22, and at that meeting had agreed to an "international presence in Kosovo under UN auspices"- this was rejected by the US and UK because they wanted a NATO force, and indeed the US government officially dismissed the G8 peace plan for the same reason.<sup>103</sup>

The end of the campaign came in early June, when Chernomyrdin and EU envoy Martti Ahtisaari brought a proposal to Belgrade based on the G8 principles. The Serbian parliament formally approved the peace plan on June 3, but the bombing continued for another week while a technical agreement was worked out.<sup>104</sup>

### 5.3.7 Was the Campaign Successful?

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<sup>102</sup> Independent International Commission on Kosovo op.cit. p.95

<sup>103</sup> Chomsky (1999) op.cit. p.113

<sup>104</sup> Independent International Commission on Kosovo op.cit. p.96

Whether the campaign can be judged to have been a success depends on the extent to which the bombing was instrumental in forcing Milosevic's eventual concession. Unfortunately, any investigation into what was going through Milosevic's mind when he gave in must of necessity be highly speculative. A number of possible explanations have been suggested for why he gave in:

- 1) The effect of the bombing, particularly on Serbia's infrastructure and its economy, and the likelihood that continued destruction would lead to mounting internal criticism of the regime;<sup>105</sup>
- 2) The continuing unity and solidarity of the NATO alliance;<sup>106</sup>
- 3) The buildup of ground forces within the region, which may have led Milosevic to expect an invasion;<sup>107</sup>
- 4) Fears of a KLA breakthrough on the border with Albania (Tim Judah).;<sup>108</sup>
- 5) The role of the Russian government, firstly in making clear that its support for Yugoslavia had reached a limit, and secondly in leading Milosevic to hope that a Russian role in the peace implementation force might result in a *de facto* partition of Kosovo;
- 6) The gains for the FRY in the proposed final settlement relative to the Rambouillet Accords. Most importantly, the NATO occupation of Kosovo was now to take place under UN auspices. The Peace Accords do not in fact even specify a NATO-led force, merely "an international security

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<sup>105</sup> Ibid p.96

<sup>106</sup> Defence Committee Report Vol.I op.cit. Para.273

<sup>107</sup> Ibid.

<sup>108</sup> Cit. in Ibid Para.274

presence with substantial North Atlantic Treaty Organisation participation”.<sup>109</sup> Russian troops would form a significant proportion of the peacekeeping force; NATO was no longer proposing for its troops to have access to the whole of the territory of Yugoslavia. In the final settlement, there was no longer any reference- even implicit- to a referendum on the future status of Kosovo, nor to any timeframe for a permanent settlement on Kosovo’s status (Rambouillet had specified three years).<sup>110</sup> In the long term, these concessions proved to be largely cosmetic- though Kosovo remained in theory a part of Serbia, Milosevic lost control of it as completely as he would have done if he had accepted the Rambouillet Accords. However, at the time these changes did enable him to save face.

Of these six possible explanations, only the first relates directly to the bombing campaign. It is doubtful whether popular opposition resulting from the campaign played a significant part in Milosevic’s concession. True, in the long term his defeat in the war did weaken him greatly, and he was overthrown little more than a year afterwards. But for as long as the bombing was actually going on, a ‘rally round the flag’ effect seems to have taken place. As stated above, the economic effect of the bombing, with the resultant prospects for a weakening of his rule in the future, is likely to have been more significant.

The differences between the negotiations conducted during the bombing and those conducted before it- which was already noted in Chapter Four- must have

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<sup>109</sup> UN Security Council Resolution No.1244 (1999), Annex 2 Paragraph 4

<sup>110</sup> Independent International Commission on Kosovo op.cit. p.96

had an impact in encouraging Milosevic to be more accommodating. In contrast to the events of Rambouillet, the months of May and June saw real, serious peace negotiations; NATO made an effort to involve actors who would be acceptable to Milosevic, and concessions were made by both sides (though those made by Milosevic were of far greater magnitude).

The role of the Russians was also very important. Ignatieff states that “the decisive event that made Milosevic fold his cards” was not the bombing but “the effective way in which American diplomacy worked to isolate Serbia from Russia.”<sup>111</sup> The Foreign Affairs Committee report concludes that “it is not unreasonable to believe that” the Russians promised Milosevic that they would get a sector of their own in Kosovo, which could have led to partition, “and that this was one of the key reasons for Milosevic agreeing to withdraw his troops from Kosovo.”<sup>112</sup> The Russians certainly did attempt to deliver on this promise in the days immediately following the signing of the Kosovo Accords, though they did not succeed in doing so. NATO’s victory, then, may well have owed as much to post-war intrigues as it did to the bombing itself.

If it is the case that diplomatic pressure applied via Russia played a bigger role in forcing Milosevic to concede than the bombing did, then this serves to reinforce the point made in Chapter 4 about the need for theorists to pay more attention to the potential value of non-violent methods- in particular, the old-fashioned virtues of diplomacy- in resolving humanitarian crises.

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<sup>111</sup> M. Ignatieff, ‘Review of W. Clark, *Waging Modern War: Bosnia, Kosovo and the Future of Conflict*’, *New York Review of Books* 19 July 2001, p.18

<sup>112</sup> FAC Report Vol.I op.cit. Para.118

#### **5.4 Possible Alternative Strategies**

So what were the alternative strategies that might have been pursued by NATO? Throughout the campaign, much of the criticism of the operation in the mainstream media came from those who favoured the use of ground troops. Ground war advocates argued for their position on both moral and tactical grounds. They insisted that the war could not be won by air power. Some of them maintained this position until very late in the campaign; in an editorial printed on 2 June, even as the final peace negotiations were being conducted, the *New Republic* continued to insist that “victory is vital; (and) it will take ground forces, including a large component of American ground forces, to win.”<sup>113</sup> Michael Walzer criticized NATO for its “fetishisation” of air power, and stated that “the truth remains... soldiers with guns... can’t be stopped by smart bombs. They can only be stopped by soldiers with guns.”<sup>114</sup>

Like a number of theorists of ‘humanitarian war’, Walzer argued that NATO was putting too high a priority on avoiding casualties among its own troops, and wondered whether “countries with armies whose soldiers cannot be put at risk (are) morally qualified to intervene.” Though believing that military action was “entirely justified, even obligatory”, he added the corollary that “you can’t kill unless you are prepared to die.”<sup>115</sup>

Theoretically, there were a number of possible options for a ground campaign. In evidence to the House of Commons Foreign Affairs Committee, journalist Jonathan Steele suggested that the best option would have been a ground operation

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<sup>113</sup> Editorial, ‘The Peacefaker’, *The New Republic* 21/6/99, p.11

<sup>114</sup> M. Walzer, Editorial, *Dissent*, Summer 1999, p.5

<sup>115</sup> *Ibid* pp.5-6

focused purely on Kosovo: “we should never have got into bombing Belgrade... the whole operation should have been limited entirely to Kosovo, bringing in forces rapidly to protect the Albanians quickly, and the only bombing that might have been outside the borders, strictly, of Kosovo would have been on some units that were particularly involved in air defence, but not bridges, power stations and the like.”<sup>116</sup> The most hawkish figures favoured the occupation of the whole of Serbia.

In fact, a ground attack of any variety was never a realistic option. This was true throughout the period of the bombing. A ground force would have required 150,000-200,000 troops.<sup>117</sup> At the start of the bombing, NATO had only 8000 troops in Macedonia (there to provide support and extraction capability for the OSCE peace monitors). There were also 27,000 NATO troops in Bosnia, but they were already fully occupied and not authorised to serve elsewhere. NATO planners worked on the assumption that, once the decision to launch a ground assault had been taken, it would take no less than three months for NATO forces in the region to be built up to the required levels for an attack to go ahead. At NATO HQ, planning for a ground war did not even begin until April- largely because the lack of political will in most NATO governments for a ground invasion led to inhibitions being placed by politicians on the military staff from even planning for one.<sup>118</sup> General Wesley Clark said that for an invasion to begin in early September- which was considered to be the last possible date before the onset of

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<sup>116</sup> J. Steele, Examination of Witnesses 18/1/00, FAC Report Vol.II op.cit. p.95

<sup>117</sup> Defence Committee Report Vol.I op.cit. Para.261

<sup>118</sup> Ibid Para.81-2

winter- the orders to begin preparations would have needed to be given in the first week of June.<sup>119</sup>

Moreover, a ground operation would have been politically impossible in March 1999. The opposition of the US administration to the use of ground forces is well known. The fact that political considerations forced US Defence Secretary William Cohen to publicly rule out the use of ground forces in October 1998, and that the US Administration continuously reaffirmed this position throughout the months leading up to the war, even though it was obvious that this would encourage Milosevic to believe that NATO was not serious about its threats<sup>120</sup>, indicates just how improbable it is that US support could have been gained for a ground war. Indeed, as late as January 1999, Cohen and Joint Chiefs Chairman Hugh Shelton favoured a continuation of the KVM mission rather than making the demand that Milosevic should allow a NATO force in Kosovo.<sup>121</sup>

This attitude was unsurprising given the attitude of the American public towards ground troops as expressed in opinion polls; in April 1999, 54% of the population supported air strikes, but the same percentage opposed the use of ground forces.<sup>122</sup> US opposition was crucial since “to most if not all nations, it would have been inconceivable to engage in forced entry into Kosovo without the participation of US ground forces.”<sup>123</sup> Anderson states that Kosovo “reinforced dramatically the USA’s post-Somalia doctrine: that American forces will only engage in ground operations in Europe, or indeed anywhere, prior to the

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<sup>119</sup> Independent International Commission on Kosovo op.cit. p.95

<sup>120</sup> Defence Committee Report Vol.I op.cit. Para.80

<sup>121</sup> Albright op.cit. pp.394-5

<sup>122</sup> H. Fineman & D. Rosenberg, ‘The Good Soldier’, *Newsweek* 19 April 1999, p.38

<sup>123</sup> FAC Report Vol.I op.cit. Para.78

conclusion of hostilities, in contexts where vital goals of US foreign, defence or economic policy are perceived to be threatened.”<sup>124</sup>

What is less well known is that even in the UK, generally viewed as the most hawkish of all the members of NATO; the country whose Prime Minister was determined, in the words of one anonymous US military figure, to fight “to the last American”<sup>125</sup> - there was a great deal of opposition in government circles to the ground option. One Permanent Secretary told the House of Commons Defence Committee that “the casualties (from an opposed ground force operation) would have been enormous and we would have been rightly criticised for that sort of carnage.”<sup>126</sup> On 24 March, Defence Secretary George Robertson said that “it is a pretty unanimous view of the military commanders that we should not get involved in a land campaign.”<sup>127</sup> Also, most of Serbia’s neighbours opposed the use of their territory for a ground war; Greece, for example, made clear that it would not countenance the use of the port of Thessaloniki.<sup>128</sup>

In the end, such discussion as did take place about a ground invasion seems to have been aimed largely at putting pressure on Milosevic by creating the impression that such an invasion might well happen, when in fact “it was understood from the start that ground troops were only a distant possibility, and that the necessary political consensus would be difficult to achieve.”<sup>129</sup>

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<sup>124</sup> Anderson in Weymouth & Henig, op.cit. pp.193-4

<sup>125</sup> Ibid p.195

<sup>126</sup> Defence Committee Report Vol. I op.cit. Para.79

<sup>127</sup> Ibid Para.79

<sup>128</sup> FAC Report op.cit. Vol.I Para.112

<sup>129</sup> Independent International Commission on Kosovo op.cit. p.95

The hawks argued that the ethnic cleansing could be stopped only by putting soldiers on the ground, and even after the war many held to the view that a ground invasion would have been the best option. However, even if the use of such tactics had been politically feasible, it has to be doubted whether the results would have been any better. According to some estimates made at the time, an invasion, had it met determined Serb opposition, might well have led to a bloodbath far worse than the one that in fact occurred. In May 1999, John Hallen of the Center for Strategic and International Studies advocated a ground war aimed at establishing 75% of Kosovo as a haven, using Macedonia and Albania as bases. He estimated that the campaign would take a month or two and could cost NATO 1000 killed and wounded (the report I read does not include any estimate of the number of civilian casualties). Michael O'Hanlon of the Brookings Institution argued that Serb forces "may well be extremely motivated to fight us very hard", so suggested letting the Serb troops know that they could keep a slice of northern Kosovo in order to give them an incentive to surrender.<sup>130</sup> If such would have been the consequences of a ground war, we should be thankful that NATO stuck to bombing. All this is highly speculative; more concrete reasons for being wary of the idea of ground invasion as an ideal form of humanitarian war are provided by the experience of the 2003 Iraq war, where troops were used, and the level of civilian casualties proved to be much higher than in Kosovo.

The fact that a ground operation, though widely advocated by outsiders, was not seriously considered by the policy makers is an illustration of one major 'lesson of Kosovo'; that, as Robert Falk put it, liberal democracies... are unwilling

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<sup>130</sup> W. Bass, 'Ground Rules', *The New Republic* 17/5/99, p.19

to accept the costs of conducting a humanitarian war in a humanitarian manner.”<sup>131</sup> It is clear that it was only by placing the highest priority on keeping casualties to an absolute minimum that the political will could be found for the war to be fought at all. The remarkable success of the high-level bombing strategy in Kosovo in terms of avoiding Alliance casualties makes it likely that any future humanitarian wars will be fought by the same methods- methods which Falk describes as “forms of interventionary violence that are themselves illegal, and anti-humanitarian.”<sup>132</sup> Geostrategic wars which masquerade as humanitarian- eg Afghanistan and Iraq- are, it is true, another matter altogether. But the bad experience of Iraq may make the US even more reluctant to commit ground troops in future conflicts, and Europe is no closer today than it was in 1999 to being able to fight such wars without American assistance.

Advocates of the idea of humanitarian war would no doubt prefer it if states were prepared to risk casualties in order to achieve a genuinely humanitarian outcome. But the evidence indicates that, if humanitarian wars are fought at all, they will be fought by the least costly option available. In the case of Kosovo, that meant air power, despite its drawbacks. It is also unlikely that humanitarian warriors will voluntarily restrict themselves from using distinctly anti-humanitarian weapons such as cluster bombs.

## **5.5 Conclusion**

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<sup>131</sup> R. Falk, ‘Humanitarian Wars, Realist Geopolitics and Genocidal Practices: “Saving the Kosovars”’, in K. Booth, ed. *The Kosovo Tragedy: The Human Rights Dimensions*, London, Frank Cass & Co., 2001, p.331

<sup>132</sup> Ibid p.333

The Kosovo campaign, then, points up a serious problem with the idea of humanitarian war. To the extent that the campaign was directly focused on an *immediate* humanitarian objective- ie impeding the Serb forces in Kosovo from carrying out ethnic cleansing- it was a failure. Indeed all the evidence indicates that the bombing made the situation far worse than it would have been had the monitors remained in place. Although Kosovo has been described as the first war ever to be won by air power alone, the campaign provides no evidence that air power can be useful in achieving immediate, as opposed to long-term, humanitarian objectives. Ignatieff concludes that “the Kosovo war, far from proving that the American military can stop human rights violations with military power, shows that there is a dangerous lack of effective tactics, strategy and doctrine that will accomplish that aim.”<sup>133</sup> It may be responded that these objectives can be achieved by the use of ground troops. But, as we have seen, from a self-interested point of view there are great advantages to intervening states in relying on air power in a war where fundamental national interests are not involved, and this creates a strong temptation in favour of using it.

To the extent in which air power can be successful, in achieving humanitarian ends, it was as a coercive instrument, as used in the bombings of targets in Serbia proper. How big a part the bombing campaign played in forcing Milosevic’s concession, compared to other factors such as pressure and promises from Russia, cannot be assessed with total confidence, but it seems likely that it was a significant factor. But, as we have seen, air power as used for coercive ends is not a humanitarian instrument. The nature of the campaign, with NATO’s willingness,

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<sup>133</sup> Ignatieff loc.cit. p.19

not to attack civilians directly but rather to bomb essentially non-military targets in a strategy of harassment of the civilian population of Serbia, leads to serious doubts over whether it can be regarded as truly humanitarian in nature.

## Chapter Six

# Kosovo: the *Jus Post Bellum*: The Aftermath

This chapter focuses on events in Kosovo since the end of the NATO bombing in early June 1999, up to the time of writing. The aim of this chapter is to assess whether the conventional understanding of humanitarian intervention as a short-term matter is tenable in the case of a full-scale humanitarian war; and, if not, whether it would be possible to construct a concept of *jus post bellum* that is both realistic and legitimate given the principled and pragmatic objections to military occupation outlined in Chapter One.

As we saw in Chapter One, the question of what happens after a conflict is over is neglected in most theoretical accounts of humanitarian war. The only theorist so far to have specifically defined a concept of *jus post bellum* is Michael Walzer in his recent book *Arguing About War*. Therefore, after an introductory section detailing the nature and mandate of the post-conflict missions in Kosovo (UNMIK and KFOR), this chapter will be split into two main sections, broadly reflecting Walzer's two criteria for the *jus post bellum*: 'Closure' and 'Legitimacy'. 'Closure' encompasses responsibilities to think seriously about post-victory actions and to expend sufficient resources on reconstruction; 'Legitimacy'

concerns democratic principles such as self-determination, popular consent, civil rights, defence of minorities and the idea of the common good.<sup>1</sup> These criteria will be fleshed out through the use of works on post-conflict reconstruction by such authors as Roland Paris, William Bain, Simon Chesterman and Richard Caplan.

As for the timeframe to be used in this chapter, detailed coverage will go up to the ‘fifth anniversary’ riots of March 2004 and their immediate aftermath; the period since then will be covered more briefly as comment on such recent events must of necessity be more impressionistic and hence perhaps of limited use in contributing to the central aim of this project (which is, of course, to analyse the theory of humanitarian war rather than to speculate on the future of Kosovo). At the end of the chapter there will be a brief analysis of the fall of the Milosevic government in Serbia in October 2000, which was claimed in some quarters as a vindication of the Kosovo intervention, even though the removal of Milosevic had never been among the stated objectives for the bombing.

The *jus post bellum* should not necessarily be seen as a charter for prolonged military occupation of an area where an intervention has taken place. As those who ran the Iraq war have learned, occupation has all kinds of serious drawbacks- most importantly, even if its intentions are fundamentally benign, by its very nature it creates resentment amongst the occupied. Each individual case is likely to be different, but the presumption should clearly be for intervening forces to leave as soon as is practicable. If, for example, a humanitarian war has been waged against a brutal regime in a state where there are no serious internal ethnic conflicts and which does not seem likely to collapse into civil war, the best option will surely

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<sup>1</sup> M. Walzer, *Arguing About War*, New Haven, Yale University Press, 2004

be for the military forces to 'declare victory and get out' as soon as the intervention has achieved its basic objectives, with post-conflict assistance confined to economic reconstruction and the cleaning-up of the damage caused by the war. However, in the case of Kosovo, an international security presence was clearly required in the aftermath of the conflict, otherwise fighting would have started up again. The problem is that such occupations have a tendency to take on attributes of semi-permanence. This has been the case not only in Kosovo, but also in Bosnia, Afghanistan and Iraq.

The most important lesson of the aftermath of Kosovo is that military intervention, while it may seem in the short run to provide a neat and effective solution to humanitarian crises, cannot deal with the underlying causes of conflict. Intervention in Kosovo did not end the conflict; at most, it produced a temporary stability in the province. What it did do was alter the power structure within which the conflict over the future of Kosovo was being played out, decisively shifting the advantage from Serbs to Albanians. Essentially, it turned a tyranny of the minority into a tyranny of the majority, which might be viewed as an improvement but cannot be regarded as a just outcome (unless one takes the view- as a few people did- that Serbs were collectively guilty of war crimes- but the weaknesses in this argument have been explored in Chapter 5, and it is not one that fits readily with a genuinely humanitarian worldview).

The other thing that the intervention in Kosovo did was to further entrench the absolutist positions on both sides. As we saw in Chapter 4, a peaceful agreement between Serbs and Albanians on the status of the province might just have been

possible before 1998, if there had been enough impetus from outside to encourage the parties to negotiate; it became much less likely as the prospect of military intervention grew more clear. After the war- and despite far greater efforts by NATO governments to promote negotiations- it has so far proven impossible for Pristina and Belgrade to reach any agreement on the 'status issue'. Apart from a few brief flare-ups, most notably in March 2004, the violent conflict in Kosovo has now subsided, largely because of a *de facto* separation of the province into various discrete ethnic units. But the potential remains for conflict to resume at any time. Meanwhile, the strategy pursued by the international community- essentially one of putting off the issue of Kosovo's final status for as long as possible in the hope that passions would cool with time- has encouraged the parties involved to maintain their intransigent attitudes.

It will be argued that the issue of motive is highly relevant to the *jus post bellum*. As we have seen in earlier chapters, some theorists maintain that the motives of intervening states need not be purely humanitarian- or even, necessarily, all that strongly humanitarian- for them to launch and conduct a successful humanitarian war. But strong humanitarian motivation is unquestionably necessary for the *jus post bellum*. The process of rebuilding after a conflict is long, difficult and somewhat unglamorous. Public scrutiny will be far less intense in the post-war period as the media move on to other stories- unless the occupying forces suffer significant numbers of casualties, as in Iraq. Kosovo, which dominated the newspaper front pages during the period of the bombing campaign, has rarely rated more than the occasional brief piece on the

‘international news’ pages of the broadsheets since then, except during the ‘fifth anniversary’ violence in March 2004- The same has proven to be true in Afghanistan. Therefore governments will be under far less pressure of accountability.

### **6.1 UNMIK and KFOR: Nature and Mandate**

Bain states that in the aftermath of the intervention, “the people of Kosovo, Albanian and Serb alike, (were) forcibly deprived of their independence and... made wards of the United Nations.”<sup>2</sup> Certainly the postwar settlement, contained in UN Security Council Resolution 1244, gave KFOR- the security force, drawn from NATO countries and from Russia- and UNMIK- the UN-run civilian administration- exceptionally wide authority in Kosovo. KFOR’s main responsibilities included:

- 1) Deterring renewed hostilities, maintaining and enforcing a ceasefire and ensuring the withdrawal of Yugoslav forces
- 2) Demilitarising the KLA
- 3) “Establishing a secure environment in which refugees and displaced persons can return home safely”
- 4) Ensuring public safety and civil order and supervising demining until the international civil presence (UNMIK) could take over.<sup>3</sup>

UNMIK’s main responsibilities included:

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<sup>2</sup> W. Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power*, Oxford, Oxford University Press, 2003, p.154

<sup>3</sup> UN Security Council Resolution 1244, 10 June 1999, Para.9

- 1) “Promoting the establishment, pending a final settlement, of substantial autonomy in Kosovo”
- 2) “Performing basic civilian administrative functions where and for as long as required”
- 3) Organising and overseeing development of institutions for self-government in Kosovo
- 4) Transferring administrative responsibilities to these institutions as they were set up
- 5) Facilitating a process for sorting out Kosovo’s final status
- 6) “Supporting the reconstruction of key infrastructure and other economic reconstruction”
- 7) Maintaining civil law and order and establishing local police forces
- 8) “Protecting and promoting human rights”
- 9) Assuring safe and unimpeded return of refugees.<sup>4</sup>

In essence, KFOR was there to provide security, while UNMIK had an open-ended mandate to operate as a colonial administration.<sup>5</sup> UNMIK also had the authority to engage in international bargaining, for example by negotiating the international sale of commodities to firms in Europe and Asia, and establishing partnerships with European firms in Kosovo<sup>6</sup>- perhaps in fulfilment of the ‘free-market principles’ section of the Rambouillet Accords. UNMIK was headed initially by

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<sup>4</sup> Ibid Para.11

<sup>5</sup> House of Commons Foreign Affairs Committee Fourth Report, *Kosovo*, HC28-I, House of Commons Stationery Office Ltd, 2000, Para.174

<sup>6</sup> M. Baskin, ‘Post-Conflict Administration and Reconstruction’, *International Affairs* Vol.79/1, Jan 2003, p.165

Bernard Kouchner, a former humanitarian worker for *Medicins Sans Frontieres*- which would seem well in keeping with the principles of humanitarian intervention, indicating a genuine effort to provide a civilian face to the occupation as well as a military one.

## **6.2 Closure**

This section of the chapter will deal with those aspects of the post-bombing history of Kosovo that relate to Walzer's criterion of 'closure': for example, the question of whether NATO had thought seriously about its post-victory actions and whether the international authorities provided sufficient resources for reconstruction.

### *6.2.1 Planning for the Post-Victory Phase*

There have been accusations that the nature of the post-conflict operation in Kosovo showed "slow learning" on the part of the planners, as with generals fighting the last war. "UN officials now acknowledge that, to varying degrees, Kosovo got the operation that should have been planned for Bosnia... and East Timor got the one that should have been sent to Kosovo."<sup>7</sup>

However, the main area to which NATO states undeniably did not devote enough thought was the question of the future status of Kosovo. The long period of uncertainty over what this is to be illustrates the problem of starting a humanitarian war without a clear idea of what is to happen afterwards.

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<sup>7</sup> S. Chesterman, 'Transitional Administration, State-Building and the United Nations', in S. Chesterman, M. Ignatieff & R. Thakur, eds. *Making States Work: State Failure & the Crisis of Governance*, Tokyo, United Nations University Press, 2004, p.355

It was noted in Chapter Five that whereas the Rambouillet accords had specified a final settlement on the future status of Kosovo in three years (and this was generally understood to mean a referendum, although the Accords themselves did not actually say this), the settlement that ended the bombing did not contain these provisions. The problem for the NATO states was that the positions they had adopted before and during the war left them in an impossible position afterwards, since they had either explicitly or implicitly ruled out any conceivable future status for Kosovo other than that of a semi-permanent international protectorate. After the war, it was plain for anyone to see that Kosovo could no longer be part of Serbia in anything more than a formal sense- any move by the international community to allow Serbia to regain control of Kosovo, or any attempt by the Serbs to regain the province by force, would have led to a renewed civil war. Equally, after the rhetoric of saving the Kosovars from genocide that had been used to justify the war, NATO could hardly have allowed the Serbs to retake Kosovo and still maintained its credibility. Given this, logic would seem to suggest that Kosovo should have become independent; but for a variety of reasons- most importantly the risk of setting a precedent that could lead to the disintegration of states like Bosnia and Macedonia- the international community had consistently and specifically ruled out this option both before and during the bombing. And again, the rhetoric used during the bombing meant that NATO had to remain committed at least in principle to a multi-ethnic Kosovo, as doing otherwise would have meant effectively admitting that the war had been a failure- so independence could not be allowed unless it could be credibly asserted that the rights of

minorities would be protected in the new Kosovo, which so far has clearly not been the case. In essence, then, the international community could not allow Kosovo to remain part of Serbia; but nor could it allow it to become independent. All the possible compromise options- partition, cantonisation, population transfer- had even more serious drawbacks (as will be shown in more detail later in the chapter). The result was that Kosovo was left in a kind of limbo- in which, more than six years later, it still remains.

### 6.2.2. Resources

One consistent theme running through much of the literature on the immediate aftermath of the Kosovo intervention- and one which links directly with Walzer's *jus post bellum* criterion of 'closure'- concerns the insufficient resources given to UNMIK by the international community, especially when compared with the large sums of money that NATO governments had been so willing to spend on the bombing. Bernard Kouchner told the UN Security Council on 7 March 2000 that the lack of resources given to UNMIK was appalling given the resources allocated to the bombing, and complained that he had had to go round EU member states begging for funds to pay UNMIK staff<sup>8</sup>; a complaint justified by the fact that UNMIK had a budget shortfall of \$25 million in 1999.<sup>9</sup>

The deficiency in resources was reflected in manpower as well as in money. The House of Commons Foreign Affairs Committee noted that "the international community has conspicuously failed to provide the numbers of police necessary to

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<sup>8</sup> FAC Report Vol.I op.cit. Para.177

<sup>9</sup> Herring in Booth op.cit. p.236

bring the UNMIK force to the strength of 4718 requested by the UN Secretary General in November 1999.... Fewer than half this number were in post on 2 March 2000” (the actual total was 2361).<sup>10</sup> Travers notes further that “some of the personnel have been of such poor quality and lacking in basic skills (such as driving and use of firearms) that they have had to be returned home.”<sup>11</sup> This shortfall was particularly serious given that in the aftermath of the conflict Kosovo faced a serious problem with organised crime, with the KLA and criminal gangs from Albania having filled the vacuum left by retreating Yugoslav forces<sup>12</sup>, so an infusion of police forces was clearly necessary.

Baskin states that in the immediate aftermath of the conflict, those working for UNMIK “were overwhelmed with the enormity of the many tasks” before them; “there were too few international officials; those who did arrive generally lacked expertise in handling the prosaic issues of administration; and few knew anything about Kosovo.” Hence, when groups of Kosovars started visiting UNMIK’s HQ to ask for the redress of grievances- as they began to do as soon as UNMIK arrived in Kosovo- the staff “generally put off local petitions by forming committees to explore the matter.... Consequently, few substantive demands were addressed with the necessary urgency and dispatch to build genuine UN authority in Kosovo.” This allowed “‘hardliners’, including various strands of the KLA”, to fill the void

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<sup>10</sup> FAC Report Vol.I op.cit. Para.205

<sup>11</sup> D. Travers, ‘The UN: Squaring the Circle’, in T. Weymouth & S. Henig, eds. *The Kosovo Crisis: The Last American War in Europe?* London, Pearson Education Ltd., 2001, p.271

<sup>12</sup> FAC Report Vol.I op.cit. Para.173

by “taking direct action” and building “their own institutions in a provisional government.”<sup>13</sup>

It should be pointed out that despite these serious shortcomings, the operation in Kosovo was actually unusually well-resourced for a post-conflict reconstruction effort, certainly compared to the one that followed the next US-led intervention- in Afghanistan. A 2003 report by Care International showed that Kosovars were receiving \$288 per person in aid from the West, while over the next five years, people in Afghanistan were scheduled to receive just \$42 per head. In Kosovo, there was one international peacekeeper for every 48 people; in Afghanistan, the ratio was 1:5380. This was so despite the fact that Afghanistan had suffered from a civil conflict that had been far longer in duration and far more destructive than the one in Kosovo- indeed, it was still going on in parts of the country. By any measure, its security and economic needs were far greater.<sup>14</sup> Despite the fact that President Bush had likened the commitment to rebuilding Afghanistan to the Marshall Plan, “just over 12 months later... the White House apparently forgot to include *any* money for reconstruction in the 2004 budget that it submitted to Congress.” This fact makes Chesterman note that “the ephemeral nature of international interest in post-conflict operations is, unfortunately, a cliché.”<sup>15</sup>

Some might ascribe the difference between the resources given to post-conflict reconstruction in Afghanistan and those given to Kosovo to the change from the liberal-interventionist Clinton administration to the neoconservative Bush

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<sup>13</sup> Baskin loc.cit. p.162

<sup>14</sup> P. Osborne, ‘On the Roads of Ruin’, *The Observer* 25 May 2003

<sup>15</sup> S. Chesterman, ‘Transitional Administration, State-Building and the United Nations’, in S. Chesterman, M. Ignatieff & R. Thakur, eds. *Making States Work: State Failure and the Crisis of Governance*, Tokyo, United Nations University Press, 2004, p.346

administration. But the real reasons seem more likely to be found in the differing objectives of the two wars. In the case of Afghanistan the strategic objectives of the reconstruction were centred on ensuring the security of the West (from al-Qaida terrorism) rather than the security of the Afghan people. According to Chesterman, “when interventions are justified by the national interest... this may lower the standards to which post-conflict reconstruction is held. The level of physical and economic security required in Afghanistan to prevent it from becoming a terrorist haven, for example, is not the same as that required for the basic peace and prosperity of the general population. This was reflected in the methods used by the United States to pursue its objectives in Afghanistan.”<sup>16</sup>

The above- the inadequacy of the resources provided for the post-conflict period in Kosovo, and the even greater inadequacy of those given to Afghanistan- provides strong evidence that humanitarian motives matter a great deal to the achievement of a humanitarian outcome in the *jus post bellum*. Herring points out that providing the resources for war but not for peace in Kosovo was irrational if the war was truly fought for the rights of the ethnic Albanians- but it “makes sense if it was a war fought for NATO’s credibility at Kosovo’s expense.”<sup>17</sup> The objective of ‘protecting NATO’s credibility’ was achieved as soon as FRY troops left Kosovo; it did not require any commitment to the *jus post bellum*.

The strongest evidence for the importance of motive, however, lies in the several ways in which the most minimal (and least controversial) condition of the

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<sup>16</sup> Ibid p.352

<sup>17</sup> E. Herring ‘From Rambouillet to the Kosovo Accords: NATO’s War Against Serbia and its Aftermath’, in K. Booth ed. *The Kosovo Tragedy: The Human Rights Dimensions*, London, Frank Cass & Co, 2001, p.242

*jus post bellum*- the repair of damage directly caused by the war- was not met. The US government refused to allow American weapons disposal experts to remove unexploded cluster bombs, instead leaving the problem to “underfunded civilian teams”- the head of the UN civilian demining team explained that “NATO doesn’t want to create a precedent for cleaning up in post-conflict situations.”<sup>18</sup> To an outsider, this would seem to be the sort of precedent that should be set as quickly as possible. This is especially so if states are determined to keep using cluster bombs in their humanitarian crusades, given the reputation that these weapons have for continuing to cause casualties long after the conflict in which they were used has ended- as indeed they did in Kosovo (see Chapter 5).

The decision had long-term consequences. In 2002, the Halo Trust alleged that the UN had stopped its landmine clearance programme too early, with thousands of unexploded bombs still left lying around in Kosovo.<sup>19</sup> As late as March 2005, a report by Landmine Action listed Kosovo as one of 90 countries contaminated by unexploded weapons, saying that 75 areas of cluster munition contamination still remained in the province six years after the war.<sup>20</sup>

NATO also proved reluctant to repair the damage caused by the bombing in Serbia proper: for as long as Milosevic remained in power, the responsibilities of reconstruction were sublimated to the attempt to give Serbs incentives to overthrow him. Hence funds for reconstruction were withheld from Serbia, and- for example- the Danube bridges in Novi Sad that were destroyed by the bombing

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<sup>18</sup> N. Chomsky, *A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West*, London, Verso, 2000, pp.133-4

<sup>19</sup> BBC Ceefax news report, 23 August 2002

<sup>20</sup> R. Norton-Taylor, ‘Anti-Mine Lobby Lists 90 Blighted Lands’, *The Guardian* 7 March 2005

still remained in ruins in June 2001.<sup>21</sup> The grudge held by NATO leaders against Milosevic was suggested as a motivating factor for the bombing, and in this aspect of the post-war settlement it seems to have eclipsed the responsibilities of the *jus post bellum*.

### 6.2.3 Long-term Economic Reconstruction

Perhaps the most serious problem of all in Kosovo today is the continued economic stagnation. When the war ended, it was clear that international-led economic reconstruction was just as necessary as peacekeeping; after a decade of hidden and open conflict, Kosovo was, economically speaking, a mess. Public services had been run down, Albanians had been deprived of work in key industries, and the Albanian population had lost the sense of civic responsibilities and the obligation to pay taxation. To this had been added the damage caused by the bombing and sabotage by the retreating Yugoslav forces. Robin Cook described Kosovo as “an impoverished province... further ravished by the conflict”<sup>22</sup> (presumably he meant to say ‘ravaged’?). However, six years of ‘peace’ has failed to bring about any discernable improvement in the province’s economic situation.

This has not been helped by the fact that, just as before 1998 the lack of open military conflict in Kosovo led to the developing crisis in the province being ignored as the international community concentrated on more urgent problems in places like Bosnia, in the aftermath of the bombing Kosovo has gradually drifted

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<sup>21</sup> C. Hope, ‘The War that Won’t End’, *The Guardian* 26 June 2001

<sup>22</sup> FAC Report Vol.I op.cit. Para.173

down the international community's priority list as new crises have arisen in other places. The predictable result has been a dramatic decline in the level of aid given to the province; from €2 billion in 2000-2003 to €400,000 in 2004-2006.<sup>23</sup>

Economic reconstruction rivals the protection of minority rights as the greatest failure of the post-war era in Kosovo. The repair of war damages in housing and infrastructure has been completed (although more than four years after the bombing had ended, Kosovo was still suffering from daily power cuts)<sup>24</sup>, but Kosovo shows no signs of any substantial economic development. Today, the unemployment rate in the province is approaching 60%<sup>25</sup> - an even higher rate than when the war ended. Van Meurs writes that there has been "a continuous slowdown in economic growth, a corresponding increase in unemployment, and a huge disproportion between import and export. What remains is a region with no major assets for sustainable economic development, but crippling historical legacies and cultural deficits."<sup>26</sup>

Support for economic reconstruction should be regarded as a central part of the *jus post bellum*, since it may well be crucial in the avoidance of renewed conflict. The recent history of the Balkans indicates the enormous importance of economics as a factor in causing or preventing ethnic conflict; it was the collapse of the Yugoslav economy in the 1980s that provided the initial spark for the civil wars by setting the republics against each other in competition for diminishing federal

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<sup>23</sup> T. Judah 'Impasse in Kosovo', *New York Review of Books* 10 June 2004. p.37

<sup>24</sup> H. Smith, 'Angry Kosovars call on 'Colonial' UN Occupying Force to Leave', *The Observer* 19 October 2003

<sup>25</sup> S. Tisdall, 'Time Running out to Stop Kosovo's Descent into Violence', *The Guardian* 27 January 2005

<sup>26</sup> W. van Meurs, 'Kosovo's Fifth Anniversary: The Road to Nowhere?', C.A.P. Discussion Paper, 25 March 2004, from <http://www.cap.lmu.de/publikationen/cap/kosovo/htm>, p.2

funds.<sup>27</sup> Tim Judah, writing in the immediate aftermath of the March 2004 violence in Kosovo, stated that “everyone I spoke to said that the poor shape of the economy in Kosovo was a major factor in creating discontent”<sup>28</sup>; the previous week, an official in Pristina had complained that “no-one in UNMIK is even thinking about the economy. They don’t even have any economic experts here.”<sup>29</sup> Given all this to be true, the cutting of economic aid to Kosovo is a very short-sighted policy.

The international community should certainly have been prepared for the fact that Kosovo would not be economically viable without support from outside. The province was always one of the poorest parts of Yugoslavia- it had an average income just one-third of the Yugoslav average<sup>30</sup>- and in the Tito era it relied heavily on subsidies from other republics.

A further reminder that economic and ethnic issues should not be treated as separate is provided by the impact that the continued ethnic polarisation of the province has had on economic reconstruction; Kosovo’s mining industry, formerly quite lucrative, was based on an area around Mitrovica that now straddles the ethnic divide, and hence it has so far proven impossible to revive it.<sup>31</sup>

The prospects for future conflict- and the difficulties of economic reconstruction- are further fuelled by the fact that Kosovo has what is effectively a third-world demographic structure, with half of the population under 20 and 70%

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<sup>27</sup> A. Orford, ‘Locating the International: Military and Monetary Interventions After the Cold War’, *Harvard International Law Journal*, Vol.38/2 (Spring 1997), p.454

<sup>28</sup> Judah loc.cit. p.37

<sup>29</sup> M. Tanner, ‘UN Flounders as Kosovo Plunges Back into Anarchy’, *The Independent* Friday 19 March 2004

<sup>30</sup> *Crossing Continents: Kosovo*, BBC Radio 4, July 2004

<sup>31</sup> Judah loc.cit. p.37

under 30. The riots of 2004 were led by young Albanians, and the structure of the population means that 45,000 young people come onto the job market every year- a very high number relative to Kosovo's total population.<sup>32</sup>

Economic reconstruction emphasises the long-term nature of the *jus post bellum*. Any former conflict zone is likely to need serious and prolonged support before it can fully recover economically- particularly one which, like Kosovo, had required subsidies to keep it afloat even in better times.

### **6.3 Legitimacy**

This section will deal with those aspects of the post-bombing history of Kosovo that relate to Walzer's criterion of 'legitimacy': these, as stated above, include such matters as self-determination, civil rights, popular consent and defence of minorities.

#### **6.3.1 Popular Consent: Accountability**

Overall, the structure of the post-conflict operation in Kosovo broadly parallels the 'Institutionalisation Before Liberalisation' strategy set out by Roland Paris, which we encountered in Chapter 1 as an example of a 'maximalist' interpretation of the *jus post bellum*. Paris does criticise the Kosovo operation for not going far enough in certain areas- for example, for not taking over political and judicial power sufficiently quickly in the period immediately after the bombing<sup>33</sup>, and for moving too quickly to hold elections- but he states that overall, "since their

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<sup>32</sup> BBC, *Crossing Continents*

<sup>33</sup> R. Paris, *At War's End: Building Peace After Civil Conflict*, Cambridge, Cambridge University Press, 2004, p.215

deployment, KFOR and UNMIK have been considerably more assertive and interventionist in constructing functioning governmental institutions, and in managing the liberalisation process, than earlier peacebuilding missions- with substantial success.”<sup>34</sup>

The idea- or, as some would have it, the contradiction- at the heart of the IBL agenda is that of “creating a legitimate and sustainable state through a period of benevolent autocracy.”<sup>35</sup> In the case of Kosovo, the implementation of this strategy led to some interesting ironies. First of all, UNMIK regulations provided that all KFOR and UNMIK personnel should be immune from any form of arrest and detention, and that all KFOR and high-ranking UNMIK officials should be “immune from local jurisdiction in respect of *any* civil or criminal act committed by them in the territory of Kosovo.”<sup>36</sup> This meant, as the Kosovo Ombudsperson has noted, that “as a consequence of living under UNMIK’s rule, Kosovars lack the protections that derive from Belgrade’s increasing acceptance of international human rights instruments (in the period after the fall of Milosevic)... The UN, the self-proclaimed champion of human rights in the world, has by its own actions placed the people of Kosovo under UN control, thereby removing them from the protection of the international human rights regime that formed the justification for UN engagement in Kosovo in the first place.”<sup>37</sup>

There are certainly grounds for accusing the Kosovo missions of being insufficiently accountable to the people on whose behalf they were meant to be

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<sup>34</sup> Ibid p.213

<sup>35</sup> Chesterman in Chesterman, Ignatieff & Thakur op.cit. p.342

<sup>36</sup> R. Caplan, *International Governance of War-Torn Territories: Rule and Reconstruction*, Oxford, Oxford University Press, 2005, p.209. Emphasis in original.

<sup>37</sup> Cit. in Ibid p.210

acting. Aside from the legal immunity given to international officials, the Kosovo Ombudsperson was not permitted to investigate complaints of human rights violations or abuse of authority by KFOR personnel, nor any complaints to do with actions occurring before July 2001.<sup>38</sup> Also, despite a provision in the very first UNMIK regulation to the effect that all future regulations would be published in Albanian and Serbian, three years later many were still only available in English.<sup>39</sup>

It was noted in Chapter 1 that one of the potential arguments against the IBL strategy- or any similar formulation of the *jus post bellum*- is that it could be abused by major powers with an imperialist agenda, seeking to conduct an occupation in their own interest rather than that of the local population. The wars pursued in the era of the ‘war on terror’ provide strong evidence for this. Chesterman writes that “recent operations in Afghanistan and Iraq have shifted the terms of th(e) debate (on post-conflict reconstruction); the state-building agenda in such operations has been determined less by the needs of the post-conflict society than by the strategic interests of the United States.”<sup>40</sup>

This danger would be expected to arise less strongly in the case of Kosovo; as a small and rather impoverished province with no oil reserves, it does not offer opportunities for the kind of grand-scale corruption seen in occupied Iraq. There have nevertheless been problems, however. Complaints have grown about corruption by UN officials; for example, in 2003 a German bureaucrat was

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<sup>38</sup> Ibid p.202

<sup>39</sup> Ibid p.208

<sup>40</sup> Chesterman in Chesterman, Ignatieff & Thakur op.cit. p.340

imprisoned for embezzling €4.5 million while he was chairman of the supervising board of the Kosovo Electric Company.<sup>41</sup>

The UN administration has also been accused in various ways of neglect and of abuse of power. To take one example, a 2002 report by the organisation Mental Disability Rights International (and endorsed by Human Rights Watch), stated that patients in UN-run mental institutions in Kosovo had been “raped and and physically attacked under the eyes of UN staff, held in ‘filthy and degrading’ conditions, and threatened with punishment if they report the abuses.”- and that evidence of this had been ignored by the UN. MDRI’s founder commented that “the rule of law simply does not apply within these psychiatric facilities. We found extreme, inhuman and degrading treatment, arbitrary detention and the physical and sexual assault of women, and we received a blanket denial from the authorities.”<sup>42</sup>

The weakness of institutions is a characteristic of states which are left for too long under international occupation; in this case, allegations such as those detailed above provide ammunition for Kosovar nationalists, who insist that these problems would be cured by independence. Adem Demaci said in 2003 that “as long as none of us is politically accountable for our own institutions, they will remain weak and corrupt.”<sup>43</sup>

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<sup>41</sup> H. Smith, ‘Angry Kosovars Call on ‘Colonial’ UN Occupying Force to Leave’, *The Observer* 19 October 2003

<sup>42</sup> O. Burkemann, ‘UN ‘Ignored’ Abuse at Kosovo Mental Homes’, *The Guardian* 8 August 2002

<sup>43</sup> *The Economist*, ‘Unfriendly Fire’, 18 October 2003, p.43

### 6.3.2 Popular consent II: Elections in Kosovo

The victory of Ibrahim Rugova in the November 2000 elections in Kosovo- with 58% of the vote for his LDK compared to 27% for former KLA commander Hashim Thaci's PDK- was interpreted in the Western media as a sign of hope- a triumph for a "mainstream moderate", opening up opportunities for dialogue with Belgrade.<sup>44</sup> What this interpretation failed to note was that Rugova, though he had favoured different tactics during the 1990s, was just as committed to independence for Kosovo as were the leaders of the KLA. It also glossed over the fact that the election had been boycotted by the Kosovo Serbs.<sup>45</sup>

The 'Institutionalisation Before Liberalisation' blueprint for post-conflict reconstruction advocates that peacebuilders should delay holding elections until there is a good chance that "moderate", peace-oriented candidates will triumph- and that when elections are held, they should be managed to maximise the chances of such an outcome, for example by banning extremist parties and giving financial aid to moderates.<sup>46</sup> This approach was only partially followed in the case of Kosovo. The international authorities did use various methods to 'manage' the elections in the province: political parties and candidates were prohibited from using language or symbols "likely to incite hatred towards others" and were required to be "publicly outspoken in the condemnation of violence, threats of violence or intimidation." Candidates and parties could only participate if they had

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<sup>44</sup> M. Heinrich, 'Kosovans pick mainstream moderate', *The Guardian* 31 October 2000

<sup>45</sup> E. MacAskill, 'Postcard from the Edge: A Serb Widow's Hell', *The Guardian* 1 November 2000

<sup>46</sup> Paris op.cit. pp.189-90

been certified by the internationally-run Central Election Commission as complying with the above code of conduct.<sup>47</sup>

However, the first set of elections were held relatively soon after the end of the bombing campaign- within 18 months, in fact. For this reason, Paris criticises UNMIK, saying that the authorities “may have moved too quickly to hold elections, reinforcing the power of those politicians who are committed to Kosovo’s separation from Yugoslavia,” and that “it is difficult to understand how the empowerment of Kosovo separatists through democratic elections serves the interests of achieving a long-term peaceful solution to the Kosovo problem.”<sup>48</sup> (Paris notes that there is a strong temptation for authorities to hold elections quickly, for reasons of publicity- a peaceful election can be held up as evidence that the mission is working. “Speedy democratisation is one way of creating the appearance of a peacebuilding ‘success’ without resolving difficult issues and underlying sources of conflict.”<sup>49</sup>)

The problem with Paris’s argument is that virtually *all* Kosovo Albanian politicians are separatists, differing only in the tactics they advocate for achieving it- so there is no reason to suppose that delaying the holding of elections for a few years would have produced different results. Indeed, it seems just as likely that delaying elections might have increased popular resentment of the international presence, thereby benefiting extremist parties. After all, the stated aim of the IBL strategy is to produce a stable libera democracy, so elections must surely be held *eventually*.

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<sup>47</sup> Ibid p.214

<sup>48</sup> Ibid pp.216-7

<sup>49</sup> Ibid p.218

Experience in Bosnia also creates potential doubts over the effectiveness of another aspect of the IBL election strategy: that of trying to ensure victories for “moderate” candidates by providing financial aid. In the 1998 elections there, pledges of additional financial assistance appear to have contributed to the defeat of reformist candidates, as some voters resented the intrusion.<sup>50</sup> And of course, if the international authority becomes unpopular with the local inhabitants, any support that it gives to certain parties or candidates is likely to be counterproductive.

### 6.3.3 Minority Rights

The major success in the immediate aftermath of the conflict was the exceptionally quick return of the great majority of those who had been forced to leave Kosovo during the intervention- 800,000 of the 850,000 refugees had returned by March 2000, making this, in the words of Robin Cook, “the fastest refugee return... seen in post-war Europe.”<sup>51</sup> Indeed, the bulk of the returns took place so quickly that they were largely unorganised. Depending on what view one takes on the question of whether the bombing provoked the expulsions (see Chapter 5), this represents either a vindication of the intervention or merely a reversal of some of the damage caused by it.

However, the irony of the occupation of Kosovo is that, while the intervention itself was justified on the grounds of protecting the Albanian population, ever since international troops actually entered Kosovo their main role has been to

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<sup>50</sup> Caplan op.cit. pp.182-3

<sup>51</sup> FAC Report Vol.I op.cit. Para.180

protect every group in Kosovo *except* the Albanians. In the immediate aftermath of the bombing, the swift return of Kosovo Albanian refugees was paralleled by an equally swift exodus of most of the Serbian population. Out of about 200,000 Serbs who lived in Kosovo prior to the bombing, only around 70,000 remained by October 1999.<sup>52</sup> Even more dramatic were the figures for the capital Pristina, where the number of Serbian inhabitants declined from 20,000 before the war to just 1000.<sup>53</sup> Judah states that the Serbian population was “winnowed out” after June 1999, with hardly any left in the major cities apart from an enclave in the northern part of the city of Mitrovica, separated from the Albanian section of the city by the Ibar river.<sup>54</sup> The proportion of the Serb population who left or were expelled in the June-October period was in fact very similar to the proportion of the Albanian population that had been expelled from Kosovo during the bombing.

The exodus was prompted and accompanied by a campaign of violence directed mainly against Serbs but also against other groups who, for one reason or another, had offended the KLA fighters who effectively controlled Kosovo in the aftermath of the bombing. In her memoirs, Madeleine Albright glosses over the violence, merely noting that “as expected, there were some instances of retaliation directed by ethnic Albanians against Serbs”<sup>55</sup>, but independent sources are less sanguine. The *Kosovo Report* states that “after the summer of 1999, Kosovo was characterised by a high level of crime and aggression, much of which was directed

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<sup>52</sup> Herring, in Booth op.cit. p.233

<sup>53</sup> FAC Report Vol.I op.cit. Para.185

<sup>54</sup> Judah loc.cit. pp.36-7

<sup>55</sup> M. Albright with B. Woodward, *Madam Secretary*, London, Macmillan, 2003, p.425

against the minority population, especially Serbs.”<sup>56</sup> For the six month period immediately after the intervention, killings of civilians (mostly Serbs) were running at an average of 30-40 per week- not much lower than in the 12-month period before the bombing, and considerably higher than in the period between the Holbrooke Agreement and the beginning of the bombing. In total, around 300 Serbs were killed and a similar number abducted in the period June-October.<sup>57</sup> KLA hit squads burned, looted or demolished 85 Orthodox churches and monasteries.<sup>58</sup>

The OSCE report *Kosovo/Kosova: As Seen, as Told* describes the violence as having been motivated by revenge against those who were believed to have participated in atrocities during the NATO bombing, or who were thought to have actively or tacitly collaborated with the Serbian authorities. However, not all victims fell into these groups; they also included “those individuals and groups who were persecuted simply because they had not been seen to suffer before,” and indeed “the entire remaining Kosovo Serb population”- including the elderly and vulnerable- who were all seen as collectively guilty.<sup>59</sup> The report also concludes that the violence was, at least in part, planned: “although many incidents were disparate, individual acts of revenge, others... assumed a more systematic pattern and appear to have been organised. The evidence in part points to a careful targeting of victims and an underlying intention to expel.”<sup>60</sup>

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<sup>56</sup> Independent International Commission on Kosovo, *Kosovo Report: Conflict: International Response: Lessons Learned*, Oxford, Oxford University Press, 2000, p.7

<sup>57</sup> Herring in Booth op.cit. p.233

<sup>58</sup> J. Pilger, ‘Calling the Kosovo Humanitarians to Account’, 9 Dec 2004, <http://www.antiwar.com>

<sup>59</sup> OSCE, *Kosovo/Kosova: As Seen, as Told*, Part II: 14 June- 31 October 1999, [http://www.osce.org/documents/mik/1999/11/1622\\_en.pdf](http://www.osce.org/documents/mik/1999/11/1622_en.pdf), p.11

<sup>60</sup> Ibid p.12

The violence should not have come as a surprise, given that the KLA had a record from before the bombing for attacking Serb, Roma and Albanian civilians- and the fact that something similar, albeit on a much smaller scale, had happened in the aftermath of the signing of the Holbrooke Accords, when the KLA had taken advantage of the withdrawal of Yugoslav forces to re-occupy territory. In 1998, “together with Serb civilians, Albanian civilians who were perceived by the KLA as refusing to cooperate... were targeted for imprisonment, violence and murder.”<sup>61</sup>

Other minorities also suffered, in particular the Roma. Many Kosovo Albanians viewed the Roma as “collaborators”, accusing them of having carried out the Serbs’ dirty work, such as disposing of bodies, during the bombing<sup>62</sup>; and collective punishment was carried out in a similar manner. By July only about 6000-7000 Roma were left in Kosovo, compared to a population of 30,000- 40,000 recorded by the 1991 Yugoslav census.<sup>63</sup>

Smaller minorities such as Slavic Muslims- who were suspected merely because they spoke Serbo-Croat-<sup>64</sup> and others were also targeted, and many of them also fled the province; a mass exodus of the Croat community occurred in October, and in November the President of the Pristina Jewish community left for Belgrade, complaining of “a pogrom against the non-Albanian population.”<sup>65</sup>

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<sup>61</sup> SENSE news agency, ‘Divisions Among Kosovo Albanians’, 14 Jun 2004, <http://www.sense-agency.com/portal/english.php?sta=3&pid=5387>

<sup>62</sup> OSCE op.cit. pp.11-12

<sup>63</sup> Human Rights Watch, *Abuses Against Serbs and Roma in the New Kosovo*, August 1999, from <http://www.hrw.org/reports/1999/kosov2/>

<sup>64</sup> OSCE op.cit. p.12

<sup>65</sup> Chomsky op.cit. p.136

A certain amount of violence in the aftermath of the intervention was probably inevitable given the inflamed sensibilities caused by the war, but the OSCE concludes that “it is clear that the deficiency in the law enforcement capacity provided by the international community and the lack of sufficient assistance in the administration of justice has fostered the climate within which the human rights violations... have taken place; impunity for the acts committed has resulted from failures to conduct serious investigations and this impunity, in turn, has perpetuated the violence.”<sup>66</sup>

The violence continued to the end of the year; in December 1999, Amnesty International reported that “violence against Serbs, Roma, Muslim Slavs and moderate Albanians in Kosovo has increased dramatically over the past month”, including “murder, abductions, violent attacks, intimidation and house burning... on a daily basis.”<sup>67</sup> In early 2000 Jiri Dienstbier, the US Special Investigator for the former Yugoslavia, calculated a total figure of 330,000 for minorities and “pro-Serb Albanians” either made refugees or internally displaced in Kosovo- meaning that most of the province’s minorities were no longer in their original homes.<sup>68</sup>

Although NATO governments continued to insist that it was “certainly not the official position” that Serbs should not return to Kosovo, in the early months after the conflict the policy of the UN was not to encourage returns. UN Secretary General Kofi Annan’s report of 3 March 2000 stated that the return of minority refugees “cannot be promoted or facilitated by UNHCR at the present time, as the necessary preconditions, in particular a safe and secure environment, are not yet in

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<sup>66</sup> OSCE op.cit. p.13

<sup>67</sup> Chomsky op.cit. pp.136-7

<sup>68</sup> Ibid pp.139-40

place.”<sup>69</sup> More recently a policy of encouraging returns has emerged, but as will be seen later, it has found few takers.

It may be said, then, that what the bombing achieved in the short run was merely the replacement of one ethnic cleansing campaign with another- albeit on a smaller scale, because the population to be targeted was smaller.

Though most of the violence in the immediate aftermath of the bombing was directed against minorities, Albanians were also included among the victims- specifically, those Albanians who were seen as not sufficiently supportive of the KLA. The OSCE notes that “a disturbing theme (of the period after the bombing)... is the intolerance, unknown before, that has emerged within the Kosovo Albanian community.... opposition to the new order, particularly the [former] UCK’s dominance of the self-styled municipal administrations, or simply a perceived lack of commitment to the UCK cause, has led to intimidation and harassment.”<sup>70</sup> Aid worker Tony Vaux wrote of a visit to Kosovo in September 1999 that “all paid jobs were being reserved for supporters of the KLA, and employers who did not contribute to the KLA would find themselves in deep trouble. It was not the victory of the Albanian people but of a new elite, which began to create its own apartheid under the protection of Western power.”<sup>71</sup> The OSCE’s characterisation of this “intolerance” as “unknown before” is surprising, however, given that before the war the KLA had made a practice of targeting perceived Albanian ‘collaborators’.

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<sup>69</sup> FAC Report Vol.I op.cit. Para.186

<sup>70</sup> OSCE op.cit. p.12

<sup>71</sup> T. Vaux, *The Selfish Altruist: Relief Work in Famine and War*, London, Earthscan, 2001, p.20

This indicates that despite the principled objections that may be made to military occupation, the idea of humanitarian intervention as a short-term matter- which, as we saw in Chapter One, has historically been the prevailing view among theorists- is not realistic, at least in cases like Kosovo, where outsiders intervene in an internal territorial conflict. In the case of Kosovo, if there had been no military occupation of the province in the aftermath of the intervention, the result would most likely have been an even bigger exodus of non-Albanians and the creation of an effectively mono-ethnic state under the control of the KLA.

The longer-term aftermath of the intervention has been characterised by a general decline in the level of violence directed against minorities (with the exception of the riots of March 2004, which we will come to later). In an interview given in early 2004, Bernard Kouchner- the former head of the UN administration, said that “after six months in Kosovo, I was still dealing with 40 assassinations a week. Today there’s only one or two.”<sup>72</sup>

However, this decline has occurred less because of any reconciliation than because almost all of Kosovo’s minorities had either left the province by the end of 1999 or were confined within ethnic enclaves under the protection of KFOR troops. Although the violence has subsided, the population remains segregated, and the freedom of movement of the remaining minority populations is still extremely limited. Serbs now constitute “a locally concentrated minority of about 7% in Kosovo”, and “continue to live in scattered, isolated enclaves... lacking the minimal preconditions for normal life.” Efforts to facilitate the return of Serb refugees have produced meagre results, despite the “abominable circumstances” in

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<sup>72</sup> Interview with Bernard Kouchner, *Newsweek* 12 January 2004

refugee camps in Serbia- just 9000 had returned to Kosovo by early 2004. Some reports in 2003 suggested signs of a “nascent trust” appearing between Serbs and Albanians- Serbs had begun to venture out of their enclaves without KFOR protection- but these were destroyed by the riots of March 2004.<sup>73</sup> Meanwhile, outside the borders of Kosovo there have been periodic outbursts of guerrilla action by Albanian nationalists in the neighbouring regions of the Preshevo Valley and Macedonia.

In an ironic echo of the situation in the early 1990s, Serbs have responded to official discrimination by setting up their own set of ‘parallel’ public institutions- including courts, security structures and medical facilities- supported and maintained by the government in Belgrade. This has caused resentment among Kosovo Albanians, who fear that Belgrade is aiming to create a *de facto* cantonisation of the province- and some have accused UNMIK of failing to do enough to challenge these structures. But in truth, UNMIK has effectively been forced to tolerate the parallel structures since, due to discriminatory practices, Serbs find it almost impossible to get access to Albanian-dominated public services.<sup>74</sup>

In essence, then, the current situation in Kosovo is a kind of mirror-image of the situation in the province in the first half of the 1990s, with one ethnic group in control and the other systematically excluded from power. It is merely that the identities of the controlling and the excluded group have changed. As was stated in

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<sup>73</sup> Judah loc.cit. p.36

<sup>74</sup> Human Rights Watch, *Failure to Protect: Anti-Minority Violence in Kosovo, March 2004*, July 2004, <http://www.hrw.org/reports/2004/kosovo0704/>, p.16

the introduction to this chapter, Kosovo has changed from a tyranny of the minority to a tyranny of the majority.

Not much progress has been made with regard to dealing with offences committed against minorities. UNMIK was forced to allow the appointment of international judges and prosecutors in early 2000 after its early insistence that these posts should be filled by locals produced unfair trials; Serb judges were intimidated while Albanian judges delivered perverse and biased verdicts. KFOR officers admitted that “no fair trials were possible for inter-ethnic crimes, while mono-ethnic crimes were very difficult to investigate.”<sup>75</sup> Successful prosecutions of ethnic Albanians for violent acts against minorities remain fairly rare; this has created a climate of impunity, which was one factor that helped spark the riots of March 2004.<sup>76</sup>

#### 6.3.4 Minority Rights II: The Violence of March 2004

The continued potential for renewed conflict in Kosovo was dramatically illustrated in March 2004, when, according to figures from Human Rights Watch, 19 people died and 954 were injured in two days of riots that marked the worst outbreak of inter-ethnic violence since 1999.<sup>77</sup> The riots were sparked off by a series of seemingly minor events: first, on March 12, a grenade exploded at the home of Ibrahim Rugova, causing damage to the house but no injuries; then on March 15 an 18-year-old Serb was shot, causing local Serb villager to put up roadblocks, which angered the Albanian public; finally on 16 March three

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<sup>75</sup> FAC Report Vol.I op.cit. Paras.216-217

<sup>76</sup> Human Rights Watch (2004) op.cit. p.15

<sup>77</sup> Human Rights Watch (2004) op.cit. p.2

Albanian boys were drowned in the Ibar river. Rumours were immediately spread that they had been chased into the river by Serbs, although later investigations cast doubt on these claims.<sup>78</sup> However, it is clear that the violence also reflected the various deeper frustrations outlined above, which had left the province ripe for unrest of this sort.

In the rioting on March 17 and 18, 36 Orthodox churches, monasteries and other important sites were set on fire or damaged during the violence, and the UN reported that 4366 people had been forced to flee. Of these, about 360 were Albanian and a similar number were Roma; the rest were Serbs.<sup>79</sup> Some 2000 people still remained displaced in July. The report by Human Rights Watch on the riots notes that “in many of the communities affected by the violence, in attacks both spontaneous and organised, *every single* Serb, Roma, or Ashkali home was burned.”<sup>80</sup>

In addition to showing the extremely fragile nature of the ‘peace’ in Kosovo, the March 2004 riots demonstrate several other things. Firstly, they showed the error of what the International Crisis Group describes as the international community’s “naive assumption that delaying the decision (on Kosovo’s final status) would allow passions to cool.”<sup>81</sup> Secondly, they showed that UNMIK and KFOR do not have the capacity to protect Kosovo’s minorities against any really determined assault. KFOR troops were unable to halt the riots, and in some cases did not even attempt to intervene; for example, French KFOR troops refused to

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<sup>78</sup> Ibid pp.15-19

<sup>79</sup> Judah loc.cit. p.37

<sup>80</sup> Human Rights Watch (2004) op.cit. p.2 (emphasis in original)

<sup>81</sup> International Crisis Group, *Collapse in Kosovo*, Europe Report no.155, 22 Apr 2004, <http://www.crisisgroup.org/home/index.cfm?id=2627&|1>

come to the aid of the Serb residents of Svinjare, and all 137 of their homes were burned, even though the troops' base was located only a few hundred metres from the village. Human Rights Watch has accused the international community of being "in absolute denial about its own failures", stating that figures in UNMIK, KFOR, NATO and the UN have been happy to criticise Albanian leaders for their response to the riots, but have been unwilling to discuss the inadequacy of their own response- so there is a serious risk that the lessons of the riots will not be learned.<sup>82</sup>

Secondly, the response of many Kosovo Albanian politicians to the riots did not provide much reason to expect that minority rights would be protected in an independent Kosovo. While some made real and creditable attempts to halt the violence- for example, the then Prime Minister Bajram Rexhepi made a visit to the town of Caglavica on March 18 and succeeded in persuading the rioting crowd to go home- many initially made statements that seemed to legitimise it. Nexhat Daci, the Speaker of the Parliamentary Assembly, described those Kosovo Albanians who were killed in the riots as "people [who] died fighting for democracy and freedom". Ibrahim Rugova, often described as the voice of peace and moderation in Kosovo, "repeatedly failed to condemn attacks against Serbs and other minorities" (though he did condemn attacks on UNMIK police and KFOR soldiers).<sup>83</sup> Whether the politicians concerned made these responses out of genuine conviction or because they believed that it would be politically disadvantageous for them to express sympathy for Serbs, it still does not bode well

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<sup>82</sup> Human Rights Watch (2004) *op.cit.* pp.21-23

<sup>83</sup> *Ibid* pp.57-60

for Kosovo's future. The International Crisis Group states that the incidents of March 2004 "revealed Kosovo Albanian society to be deeply troubled, lacking institutions, leadership and the culture to absorb shocks and contain its violent, criminal minority. In its current state, this society will continue to push out minorities and ultimately consume its own wafer-thin layer of liberal intelligentsia."<sup>84</sup>

#### 6.3.4 Self-Determination: the 'Status Question'

In 2000, the House of Commons Foreign Affairs Committee concluded that, because all the potential options for Kosovo's future status seemed to have equally major disadvantages, "the current ambiguity about the future may well be the best course of action to follow."<sup>85</sup> It is hard to dispute this conclusion- in the short term. However, ambiguity cannot be maintained forever without incurring serious risks. Those who favour a strategy of ambiguity may hope that, over time, passions may cool, memories may fade and former antagonists may feel more able to deal with each other. But this can take a very long time- in the case of Cyprus, for example, an international security force has remained on the island for 40 years, waiting for a more conciliatory political elite to emerge.<sup>86</sup> However- particularly in a situation as charged as that in Kosovo- it is perhaps more likely that ambiguity maintained for an indefinite period may cause a buildup of frustration and resentment on all sides, with the risk of a resumption of conflict.

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<sup>84</sup> International Crisis Group op.cit.

<sup>85</sup> FAC Report Vol.I op.cit. Para.246

<sup>86</sup> Caplan op.cit. p.254

This is in fact what has occurred in Kosovo. The UN authorities, initially welcomed by the Albanian population as liberators, are now increasingly seen as an occupying force. Resentment has grown up against international officials who are believed only to be in Kosovo for “their fat-cat salaries and CVs”.<sup>87</sup> This experience has also occurred with a number of other post-conflict stabilisation missions, for example that in East Timor, where little more than a year after the establishment of the UN administration- which, as with that in Kosovo, was initially welcomed by the bulk of the population- local leaders were already becoming frustrated and calling for the UN to leave.<sup>88</sup>

The violence of March 2004 provided a warning of what might happen in the future if the ‘status question’ is not sorted out to the satisfaction of the various parties. But finding an acceptable solution has proven to be extremely difficult. The complexity of the situation in Kosovo is indicated by the fact that, by my count, at least ten different options have been seriously put forward for the future status of the province:

- 1) Unconditional independence
- 2) Independence with federalisation or cantonisation, either into two entities (one Albanian, one Serb) or a number of small ethnically-defined units
- 3) ‘Conditional independence’ based on guarantees of state functionality and protection of minority rights
- 4) Union with Albania

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<sup>87</sup> H. Smith, ‘Angry Kosovars Call on ‘Colonial’ UN Occupying Force to Leave’, *The Observer* 19 October 2003

<sup>88</sup> Ibid p.217

- 5) Autonomy within Serbia
- 6) Reintegration as the third constituent part of the Union of Serbia and Montenegro
- 7) Permanent international protectorate
- 8) UN trusteeship (this differs from the protectorate option in that full legal sovereignty would be transferred to the UN via a new Security Council resolution)
- 9) EU integration- some argue that the transfer of sovereignty rights in EU integration would render the sorting-out of rights between Belgrade and Pristina superfluous
- 10) Partition, with part of the province joining Serbia with the rest either becoming independent or joining with Albania<sup>89</sup>

Yet other options, less often mentioned, include such possibilities as population exchange.

Every one of these options has serious drawbacks. In fact, it is probably best to deal with these in another list:

- 1) Representatives of Kosovo Serbs, and the government in Belgrade, have so far refused to consider even conditional independence, let alone full independence; also, giving independence to Kosovo carries the risk of encouraging Albanians in Macedonia and extreme nationalists in Bosnia to

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<sup>89</sup> List partially adapted from van Meurs loc.cit. p.4

pursue similar demands.<sup>90</sup> If independence was allowed without a genuine commitment among Kosovo Albanian leaders to respect the rights of the remaining Serbs, it might even potentially lead to an invasion by Serbia, whose military and police are said to have “contingency plans” to exploit new violence against Serbs in Kosovo by intervening in support of partition.<sup>91</sup>

- 2) Federalisation into two entities would be virtually impossible because of the way the Serbian population is presently scattered in numerous small enclaves; cantonisation is seemingly a more practical option, but it would still most likely produce the same problems that have resulted from federalisation in Bosnia- ie “a political system deadlocked by ethnic loyalties... and the multiplication of public institutions without a corresponding increase in the functioning and output legitimacy of the ‘state’.”<sup>92</sup>
- 3) This was the option suggested by the Independent International Commission on Kosovo- the international community would provide an initial security guarantee, oversee the protection of minority rights and integrate Kosovo into a stability pact.<sup>93</sup> Potential drawbacks include the determination of independence *ex ante* as the final status, giving Serbs an incentive to obstruct the process, and the fact that “logically, independence once awarded cannot be revoked and sovereign rights once transferred

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<sup>90</sup> FAC Report Vol.I op.cit. Paras.242-3

<sup>91</sup> S. Tisdall, ‘Time Running out to Stop Kosovo’s Descent in Violence’, *The Guardian* 27 January 2005

<sup>92</sup> van Meurs loc.cit. p.6

<sup>93</sup> Independent International Commission on Kosovo op.cit. p.9

cannot be withdrawn”<sup>94</sup>- meaning that guarantees of minority rights might not be worth very much once international oversight had ended

- 4) Unification with Albania has little support among Kosovo Albanians and is rarely discussed today- historical differences and a lack of recent contact have led to splits between the two populations<sup>95</sup>
- 5) This and 6) are the only acceptable options for the Serbs- but restoration of anything more than nominal Serbian sovereignty over Kosovo would assuredly produce a new civil war. Autonomy for Kosovo would also provoke demands for equal status from Vojvodina
- 6) See 5) – no.6) disappeared from the list of practicable options in 2006 when the people of Montenegro voted for independence
- 7) The protectorate option is the one that, by default, has been adopted ever since the bombing- but for reasons that have already been explored, it is not a good long-term option
- 8) Trusteeship is effectively the same option as 7), and would suffer from the same problems
- 9) This is described by van Meurs as “largely utopian”- Kosovo plainly does not meet the basic criteria for EU membership, and will not do so for many years- and the sovereignty rights that would be transferred to the EU are not those that are in dispute<sup>96</sup>
- 10) There is little support for partition inside Kosovo, and because of the scattered nature of the remaining Serbian population it would be very

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<sup>94</sup> van Meurs loc.cit. p.5

<sup>95</sup> FAC Report Vol.I op.cit. Para.242

<sup>96</sup> van Meurs loc.cit. p.6

difficult to work out a logical border. Partition would also encourage nationalists to demand the same treatment for the Preshevo Valley (a majority-Albanian area of Serbia near the eastern border of Kosovo), Bosnia and Macedonia, and would provide explicit endorsement for the idea of the mono-ethnic state- something that Western policy for the whole of the Balkans has been specifically aimed at avoiding.<sup>97</sup>

Other options, such as population exchange- which would be a form of officially-approved ethnic cleansing- are more unacceptable still.

Yet further options have been suggested which would deliberately leave the final status of Kosovo unclear, giving the province “independence without full sovereignty” or “full sovereignty without independence”. There are precedents for this: for example the case of Taiwan, which is a *de facto* independent state but is not a member of the UN and is legally still a province of mainland China; and that of northern Cyprus, which has existed as a *de facto* state for 30 years but has never received international recognition, except from Turkey. In each of these cases the outcome, though not perfect, was at least reasonably stable and the parties involved have generally chosen to respect it. However, neither in Taiwan nor in northern Cyprus is there the same potential for *internal* conflict within the disputed province- as opposed to conflict between the states or state-like entities- that exists in Kosovo, so it is doubtful that a similar solution would prove sustainable.<sup>98</sup>

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<sup>97</sup> Ibid p.6

<sup>98</sup> Ibid pp.10-11

6.3.5 Self-Determination II: “Why should I be a minority in your country if you could be a minority in mine?”<sup>99</sup> Albanian and Serb Attitudes Towards the Status Question

Since the international community- for reasons stated in the section on ‘closure’- could not come up with a workable imposed solution for Kosovo’s final status, the only option was to encourage negotiations between Belgrade and Pristina in the hope that an agreed settlement might result. This hope has not, however, been fulfilled, despite some initial hopeful signs (or at least, signs that were interpreted as hopeful).

In fact, the positions of the two parties have remained every bit as entrenched after the war as they were before it. Van Meurs writes that “as national sovereignty is indivisible from an Albanian-Kosovar perspective and as Belgrade is ready to consider any option *but* independence, room for compromise seems to be non-existent.”<sup>100</sup> The lack of any willingness to compromise on either side has meant that negotiations have been a zero-sum game, since any change in the status of Kosovo would be disadvantageous for one of the sides- a situation which could sow the seeds for future instability.<sup>101</sup>

The near-absolute split in attitudes on the status question exists among the people of Kosovo as well as among the politicians. A UNDP opinion poll conducted in 2004 found that 100% of Kosovo Albanians wanted all links with

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<sup>99</sup> Ibid p.7

<sup>100</sup> Ibid p.4

<sup>101</sup> K. Klotzle, ‘Kosovo: Critical Questions on the Road to Final Status’, March 2005, from [www.cap.lmu.de](http://www.cap.lmu.de), p.2

Serbia to be dissolved (86% desired independence for Kosovo, 14% preferred union with Albania), while 95.5% of Serbs wanted the link maintained (82% thought that Kosovo should be an autonomous province within Serbia, 13.5% favoured partition).<sup>102</sup>

The fall of the Milosevic regime after electoral defeat in October 2000 raised hopes that some willingness to compromise might emerge, at least on the Yugoslav side; but Milosevic was replaced not by pro-Western liberals but by rival Serbian nationalists who were committed to ensuring that Belgrade retained its sovereignty over Kosovo. Any 'window of opportunity' after the fall of Milosevic- if one had existed at all- was finally closed by the results of the Serbian elections of December 2003, in which the nationalist Serbian Radical party- led by the war crimes indictee Vojislav Seselj, who at the time of the vote was in a remand cell at the UN detention centre in the Hague- became the largest single party in the parliament, gaining 81 out of the 250 seats.<sup>103</sup> This result "tied the hands of even the most liberal politicians in Belgrade"- accepting the loss of Kosovo remains a taboo there, and reformist politicians go no further than advocating partition or federalisation of the province.<sup>104</sup>

When Serbian and Kosovan leaders finally met for talks in Vienna in October 2003- even with the status issue explicitly excluded from the agenda- there was still no real dialogue; the two sides merely read out prepared statements.<sup>105</sup> The negotiations were characterised by brinkmanship beforehand by both parties- the

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<sup>102</sup> Judah loc.cit. p.39

<sup>103</sup> I. Traynor, 'Serb Democrats Urged to Join Forces', *The Guardian* 30 December 2003

<sup>104</sup> van Meurs loc.cit. p.10

<sup>105</sup> *The Economist* op.cit. p.42

Kosovo parliament threatened to declare independence, and then Prime Minister of Kosovo Bajram Rexhepi withdrew from the delegation at the last moment, while the Orthodox Church in Belgrade epithetised Kosovo as “Serbia’s Jerusalem”. The meeting did produce an agreement to set up four working groups, meeting alternately in Pristina and Belgrade, to deal with outstanding “non-status” issues: the electricity supply for Kosovo, transport and telecommunications, refugee return and missing persons. But, according to van Meurs, “the conclusion from the Vienna meeting is that the political leaders in Belgrade actually had no master plan for a sustainable and domestically acceptable solution for Kosovo. Nor had their interlocutors from Pristina a concept for the Serb minority in the envisaged independent Kosovo.”<sup>106</sup> In other words, more than four years after the war, the positions on both sides had shifted not one inch.

The possibility that negotiations may not produce agreement on the final status of Kosovo has led to speculation that the international community will have to impose an outcome. The problem with this is that any imposed outcome which leads to independence for Kosovo- conditional or otherwise- and does not have the consent of Belgrade, will suffer from a legitimacy deficit; and it might well prove impossible to pass a UN resolution endorsing such a settlement. (This is so even though some politicians in Belgrade would actually prefer an enforced settlement, since this would get rid of the ‘Kosovo problem’ without them having to take personal responsibility for the loss of the province.)<sup>107</sup>

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<sup>106</sup> van Meurs loc.cit. p.9

<sup>107</sup> Ibid p.2

Just as in the period before the bombing, the international community has been criticised in some quarters for not being sufficiently imaginative in its tactics in its attempts to encourage a negotiated settlement, particularly with regard to gaining Belgrade's consent. Just as it has been suggested that a few more carrots to go with the sticks might have helped in persuading Milosevic to at least negotiate seriously over Kosovo before March 1999, the offering of inducements- for example, in the form of removal of visa restrictions, debt reduction or cancellation and increased development assistance- has been suggested as a strategy for keeping Belgrade on board today- and it is an option that the international community has not yet really explored. The inducement of EU membership has been offered, but given that this almost certainly could not happen for another 15-20 years, and then only after the many painful reforms that would be necessary to meet the EU's accession criteria- it is not perhaps as glittering a prospect for the politicians in Belgrade as the EU would like to think it is.<sup>108</sup>

Walzer's criterion of 'legitimacy' in the *jus post bellum* includes the idea of 'self-determination'. One of the more obvious lessons of the aftermath of the Kosovo war, however, is that 'self-determination' is a meaningless concept if no-one can agree on who the 'self' is that should do the determining. Both Serbs and Albanians believe that they have a legal and moral claim to the province (each basing their legal claim on the old Yugoslav constitution, and their moral claim on past atrocities committed by the other side).

The same fact also constitutes a problem for some other theoretical ideas. Frost argues that the future status of places where an intervention has occurred should be

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<sup>108</sup> Ibid p.3

decided by “the civilians in the region”.<sup>109</sup> The problem with this in the case of Kosovo is that there is no way of arriving at a definition of ‘the region’ that would be accepted by both sides.

### 6.3.5 Self-Determination III: ‘Standards Before Status’

In an effort to sort out the status question (or to find a new way of avoiding the issue) in April 2002 the UN announced a strategy of “standards before status” for Kosovo, making the opening of negotiations on the final status of Kosovo conditional on the fulfilment of the following eight benchmarks:

- 1) Functional state institutions
- 2) Enforcement of the rule of law
- 3) Freedom of movement
- 4) Right of return for all Kosovars
- 5) Market economic development
- 6) Clarity of property title
- 7) Normalised dialogue with Belgrade
- 8) Reduction and transformation of the Kosovo Protection Corps<sup>110</sup>

All of these except no.5 are related either directly or indirectly to the question of minority rights.

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<sup>109</sup> M. Frost, ‘The Ethics of Humanitarian Intervention’, in K. Smith & M. Light, eds. *Ethics and Foreign Policy*, Cambridge, Cambridge University Press, 2001, p.777

<sup>110</sup> van Meurs loc.cit. p.8

One major problem with the ‘standards before status’ idea is that it provides an incentive for Serbs- whether in Kosovo or Belgrade- to obstruct progress on the fulfilment of the listed objectives, since without such progress there can be no final status negotiations and therefore no independence for Kosovo. Equally, just as the Kosovo Albanian representatives in the Rambouillet negotiations required extra assurances on the prospect of a referendum on independence for Kosovo before they accepted the text of the Interim Agreement, under ‘standards before status’ they only have an incentive to meet the conditions on minority rights if it is indicated to them that independence is to be the likely outcome of the negotiations. Van Meurs concludes that “the fundamental flaw of ‘standards before status’ is that it can unfold its incentive function for one party *only* and *only* if it prejudices the final status outcome.”<sup>111</sup>

This links with the principled criticism of military occupation mentioned in Chapter One: that it denies those subject to it the status of fully responsible human beings. Have the Serbs and Albanians refused to compromise because they are chronically incapable of doing so, or because they have been put into a situation of dependence on outsiders? It might be replied to this that when the two sides were essentially left to themselves- in the period up to 1998- they showed little more wish to compromise than they have done since the war.

In the aftermath of the 2004 violence, any hopes for a revival of the ‘nascent trust’ of 2003 were made still more forlorn by the appointment of Ramush Haradinaj, a former KLA commander, as Prime Minister of Kosovo in December

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<sup>111</sup> Ibid p.8

2004- which called Serbia to pull out of talks.<sup>112</sup> Haradinaj had to resign in March 2005 after he was indicted for war crimes; a year later, another former KLA commander, Agim Ceku (who has also been accused by Belgrade of committing war crimes in both Kosovo and Croatia) was nominated as Prime Minister.<sup>113</sup> The rise of figures like Haradinaj and Ceku, alongside the nationalist victories in Serbian elections of 2005- and the death in January 2006 of Ibrahim Rugova, which has led to fears of a power vacuum in the Kosovo Albanian leadership that could be exploited by hardliners- indicates a worrying possibility; that, in the words of van Meurs, “the opening of a negotiation process more readily invokes the forces of the past than peaceable visionaries”.<sup>114</sup>

Having failed to produce any real progress, the ‘standards before status’ strategy has effectively been dropped in recent months in favour of a push to final status negotiations. In June 2005, US Under-Secretary of State for political affairs Nicholas Burns pre-empted the UN review on whether the conditions set out in the ‘eight points’ had been fulfilled when he said immediately before a visit to Kosovo that “it’s the view of my government that sufficient progress has been made to start final status talks. Kosovo was put on the backburner for years. We have to go back and complete the job.”<sup>115</sup>

However, the ‘final status talks’ originally scheduled for late 2005 were delayed by several months, and up to the time of writing the positions of both sides

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<sup>112</sup> E. Jansson, ‘Choice of Kosovo PM disrupts Serbia talks’, 8 December 2004, from <http://news.ft.com>

<sup>113</sup> ‘Former Rebel Set to Lead Kosovo’, BBC News online report, 2 March 2006, from <http://www.news.bbc.co.uk>

<sup>114</sup> van Meurs op.cit. p.10

<sup>115</sup> J. Steele, ‘US Pushes for Decision on Kosovo Status’, *The Guardian* 8 June 2005

remain as entrenched as ever. Within the past year or so, given the unlikelihood of a negotiated agreement between Belgrade and Pristina, momentum has been building up behind the idea of an imposed solution based around ‘conditional independence’, and as of the time of writing (Autumn 2006) it looks increasingly likely that this will happen. However, even when the ‘final status’ question is settled, the idea of Kosovo becoming a fully self-governing, multi-ethnic democracy still seems a somewhat distant prospect.

#### **6.4 The Fall of Milosevic**

The fall of Milosevic in October 2000 has been claimed in some quarters as providing retrospective justification for the war in Kosovo- and hence, perhaps, for the idea of humanitarian war.

This is a very difficult issue to evaluate. Milosevic was overthrown not by the war directly but by a popular revolution; and it should be remembered that he had come close to being overthrown on more than one previous occasion (see Chapter 3). Some accounts of humanitarian war specifically rule out the idea of ‘regime change’ as a legitimate objective. Equally, though a wish to weaken Milosevic has been widely cited as one of the factors which motivated NATO to launch the war, toppling his regime was never one of the Alliance’s official objectives. And, given that virtually all of the Kosovo Albanians expelled during the bombing had returned to the province long before Milosevic fell- and that from June 1999 on, Serbia’s continued sovereignty over Kosovo amounted to no more than a legal

fiction- it is clear that his overthrow was not necessary for the achievement of the war's stated humanitarian aims.

Though his defeat in the war undeniably weakened Milosevic, his fall did not reflect any support in Serbia for NATO's actions.<sup>116</sup> He was replaced by fellow nationalists who had opposed the bombing and made clear that they were determined to hold on to Serbia's sovereignty over Kosovo.

Again, there were some questionable aspects about Western policy towards Serbia between the end of the bombing and Milosevic's fall. The issue of reconstruction funds has already been touched upon; it has also been alleged that the CIA encouraged rebellion by Albanians in the Preshevo Valley area of southern Serbia in order to undermine Milosevic- but then lost control of the guerrillas, who continued fighting for their own cause after he fell.<sup>117</sup> However, although the West did certainly attempt to encourage Serbs to overthrow Milosevic in the period between June 1999 and October 2000, the means adopted were mainly peaceful- for example, funding opposition groups- and thus fall outside the scope of this thesis. It is, however, worth wondering what might have happened if there had been a similar effort by the international community to encourage- by purely peaceful means- the overthrow of Milosevic during, say, the period between 1996 and 1998.

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<sup>116</sup> S. Henig, 'Conclusion: Retrospect and Prospect', in Weymouth & Henig op.cit. p.283

<sup>117</sup> R. Carroll, 'West Struggles to Contain Monster of its Own Making', *The Guardian* 12 March 2001

## **6.5 Conclusion**

The experience of the aftermath of the Kosovo intervention shows the fallacy of demonising all members of an ethnic group while exalting those of another as spotless victims. Crimes are committed by individuals, not peoples, and no ethnic or national group is morally superior or inferior to any other. As we saw in Chapter 5, some pro-war pundits justified the bombing of Kosovo on the grounds of the unique perfidy of the Serbian people, who were ‘Milosevic’s willing executioners’. However, as soon as the bombing was over, members of the KLA began to behave in much the same way as Milosevic’s thugs had done before and during the bombing; the violence was on a far smaller scale, but this was largely because the KLA did not have the same level of weaponry and there were fewer Serbs for them to expel.

An important lesson of the aftermath of the Kosovo intervention is that it should be incumbent on theorists of humanitarian war to be realistic about what military force can and cannot achieve. The NATO bombing campaign did not deal with the underlying causes of the conflict, nor did it bring it any closer to a resolution. The ideal of a peaceful multi-ethnic Kosovo is probably further away from being achieved today than it might have been in the first half of the 1990s had the international community been prepared then to make the same kind of efforts to achieve a negotiated settlement that it has made over the past five years. The same thing should be said about military occupation in the aftermath of an intervention. By itself, occupation can never serve to do any more than postpone future conflict, and even while doing so it creates tensions of its own; even when

they are initially welcomed, occupying forces tend to become less and less popular with the people they are occupying the longer they stay.

The most that can be expected from a military intervention is that it might create an atmosphere in which it is possible for a final resolution to a conflict to be achieved. But this requires a strong commitment to the *jus post bellum*, particularly in the form of economic reconstruction; and this is only likely to exist if the intervening states truly are motivated by humanitarian concerns.

# **Conclusion**

This project has attempted to use the case of the NATO intervention in Kosovo to evaluate and inform the theory of humanitarian war; to check the arguments of both proponents and critics of the concept against this real-world example of what is generally agreed to be a reasonably good case of humanitarian war.

Plainly one cannot draw absolute conclusions from a single case. In the future we may see humanitarian wars that are more straightforwardly legitimate in their conception and less ambiguous in their effects than the war in Kosovo. But an examination of the history of the Kosovo conflict, before, during and since the NATO intervention, does provide good reasons to be cautious about the idea of using military force for humanitarian ends.

## **C.1 *Jus ad Bellum***

To begin with the matter of the *jus ad bellum*, we have seen that there are problematic aspects to a number of the established criteria: most of all, that of the 'last resort'. It is here that the realist charge that the concept of humanitarian war is too open to abuse seems to have the greatest backing. It is easy for states to either sin by omission, failing to pursue the diplomatic track with sufficient commitment in the early stages of a crisis; or by commission, pursuing the diplomatic track cynically with the aim of showing that the last resort has been reached. In the case of Kosovo, a mixture of these two problems led in the end to a war that might have

been avoided with greater commitment to addressing the crisis in the province during the period (probably before the spring of 1998) when there was still the possibility of a peaceful resolution. However, in practice outside action with regard to the Kosovo crisis was all too often characterised by lack of interest in the years before 1998 and lack of seriousness in the period immediately before the war. There is strong circumstantial evidence, contained mainly in the more unnecessary provisions of the Rambouillet accords, that the decision to go to war was effectively taken some time before the end of negotiations.

Some theorists of humanitarian war have tried to avoid the issue of motive, knowing that the motivations of intervening states are rarely pure.<sup>1</sup> In some cases it may be true that this does not matter. But in the case of Kosovo, motives- particularly the perceived need to protect NATO's credibility- strongly influenced the course of events in the months and years leading up to the war. The issue of motive, we have seen, ties in with the issue of 'last resort'. The fact that 'NATO's credibility' was at stake was an important factor in motivating the war, but 'credibility' only became an issue because NATO had pursued a one-dimensional diplomatic strategy relying purely on the threat of force. It may also be remarked that perhaps stronger humanitarian motivations on the part of Western leaders might have led the search for a peaceful solution to be pursued with greater commitment in the early stages.

There is a need, then, following on from this, for a revival of interest in methods for the peaceful settlement of disputes. It has been seen that, if Western

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<sup>1</sup> See eg N. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford, Oxford University Press, 2000, p.38

nations had been more engaged and more imaginative in pursuing a diplomatic solution, there is at least a possibility- not a certainty by any means, but a possibility- that the crisis in Kosovo might not have reached the state it eventually did. In this respect, humanitarian war may indeed be a dangerous concept; the seductiveness and apparent neatness of the use of military force may lead to alternative strategies being ignored. Diplomacy, with its necessity sometimes for compromise with unattractive regimes, may appear a somewhat messy and dirty affair, but then so is war.

A further matter, not often noted by theorists but shown up by the development of the crisis in Kosovo, is the possibility that the prospect of a humanitarian war being launched may serve to inflame internal crises by giving members of an oppressed group an incentive to turn to violent tactics, thereby favouring extremist currents within that society and reducing the chances of a peaceful settlement. With regard to Kosovo, the nature of Western policy- focused as it was on dealing with whatever seemed to be the most urgent crisis at any given time- served to reward the violent tactics of the KLA while ignoring the earlier LDK-led peaceful resistance.

The case of Kosovo serves to illustrate the- widely acknowledged- selective nature of humanitarian war in practice. The human rights abuses that occurred in Kosovo prior to March 1999 were not exceptionally severe on a global scale; but they happened to be occurring within Europe, and were committed by a government which, for other reasons, had outlived its usefulness and had indeed become a nuisance as far as Western powers were concerned. If the doctrine of

humanitarian war is applied in future, it will surely be in the same selective fashion. This is not a reason for declaring the idea illegitimate- interventions undertaken selectively for only partially humanitarian reasons may still have good outcomes- but it is a reason to be sceptical about some of the more overblown rhetoric of a ‘new age’ of humanitarianism that accompanied and followed the war in Kosovo.

### **C.2 Jus in Bello**

To move on to the question of *jus in bello*, it may be concluded that, in the case of Kosovo, the term ‘humanitarian war’ did indeed prove to be a contradiction in terms. The means employed by NATO- high-level aerial bombing aimed at least in part at coercing the civilian population of Serbia to put pressure on their leaders- cannot be termed humanitarian. The war certainly did not succeed in preventing a humanitarian crisis in the short run, and the available evidence strongly suggests that, by inviting reprisals by Serbian forces against the only available targets- the Kosovo Albanian civilian population- the bombing made the situation a good deal worse.

The ‘coercive’ intervention was considerably more successful than the ‘humanitarian’ one. It did succeed in forcing Serbian forces to withdraw from Kosovo and in allowing the refugees to return (although the reversal of this one wave of ethnic cleansing was immediately succeeded by a second wave in the reverse direction). The same pattern can be seen in the wars in Afghanistan and Iraq, both of which had essentially ‘coercive’ aims- forcing regime change- and

both of which were successful in terms of achieving those aims (although whether they can be considered successful in a wider sense is another matter). In the case of Kosovo, however, it is doubtful whether the bombing itself actually played the decisive role in forcing Milosevic's capitulation. Other factors, such as pressure from Russia, and the face-saving concessions in the final settlement (cosmetic as they proved to be in the long term) may have been just as significant.

There were alternative strategies available to NATO, and it must be said that we will never know what would have happened if NATO had sent in ground troops, as was advocated by many proponents of humanitarian war. It is possible that a ground invasion would have led to a swift Serbian capitulation; but if there had been resistance, the result might have been more bloodshed than in fact occurred. Ground troops were used in a more recent alleged humanitarian war in Iraq, and this did not lead to a bloodless victory or to long-term stability. We have seen, however, that the use of ground troops was never a serious option in the case of Kosovo in the mind of any of the main decisionmakers, so the question is somewhat academic. The fact that an exclusive reliance on air power greatly reduces the risk of casualties on the part of intervening powers- as witnessed by the Kosovo war, casualty-free on the NATO side- is likely to create a strong temptation in favour of using it in future crises. It is instructive to note the contrast between Kosovo, a humanitarian war where the use of ground forces- though widely advocated- was not seriously considered by governments- and the war in Iraq, where the US and UK, with vital economic and power interests at stake, were prepared to use ground forces from the beginning.

What this does confirm is that at present, for all the talk about humanitarian war, Western governments have yet to find a politically feasible *immediate* way of halting human rights abuses on the ground by military means. Interventions with a coercive intent are more likely to succeed by weight of force, but on the evidence of Kosovo- and other recent wars- it is very doubtful whether such interventions can be considered humanitarian.

### **C.3 Jus Post Bellum**

To turn finally to the *jus post bellum*, the case of Kosovo shows that the traditional understanding of humanitarian intervention- as a short-term matter focused on restoring the *status quo ante* any humanitarian crisis- is inadequate for dealing with modern humanitarian wars. If the intervention in Kosovo had been treated as a purely short-term matter, and NATO had left along with the Serbian forces, the result would have been a total exodus of the non-Albanian population of the province and the creation of a mono-ethnic state- precisely what the war was supposed to prevent (to a partial extent this happened anyway, despite the occupation). The Kosovo war shows that military intervention by itself cannot deal with the underlying causes of an intra-state conflict; at best, by altering the power structure of the conflict, it may provide a better opportunity for a long-term resolution (at worst, by inflaming passions and creating grievances on the part of the 'losing' side, it may make a conflict even harder to resolve). In such cases postwar commitment is required to obtain a sustainable settlement. One may of course imagine a case of a humanitarian war occurring in a state where there are

no major internal ethnic or religious cleavages, no potential for internal conflict and violence is instigated purely by the government. In such a case, post-conflict involvement by outsiders- except for economic reconstruction- would be unnecessary- indeed unwelcome- and the traditional view of humanitarian intervention would hold. However, we have seen no such cases in recent times. Iraq (if one discounts the Kurdish regions) had no major internal conflicts before the 2003 war, but it has certainly acquired some since then.

So it seems that a concept of *jus post bellum* is necessary for the full understanding of modern humanitarian wars. Given the growing recognition of the problems of post-war settlements in places like Kosovo and Iraq, it is very likely that, in coming years, the issue of the *jus post bellum* will gain a higher profile in discussions surrounding the idea of humanitarian war. However, it will be very difficult for theorists to formulate an appropriate set of criteria for this concept- certainly far more difficult than is the case for the *jus ad bellum*. Adopt too maximalist a position on the postwar responsibilities of intervening states, and one risks justifying a reborn Western imperialism; some have in fact called specifically for this, but there is no evidence that states of today are any better equipped than the imperial powers of old to rule over people for their own good.<sup>2</sup> However, adopt too minimalist a position and one risks allowing unwilling governments to cut and run, leaving people theoretically ‘liberated’ but with their country in ruins.

Regardless of whether one accepts the principled objections to people being ruled over by outsiders ‘for their own good’, for purely practical reasons this is a

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<sup>2</sup> W. Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power*, Oxford, Oxford University Press 2003, p.192

situation that should be avoided wherever possible. Occupation creates resentments of its own, that become more difficult to deal with the longer it goes on- and the problem is that occupations in the aftermath of recent wars have shown a disturbing tendency to become permanent. The cases of Bosnia, Kosovo, Afghanistan and Iraq have not yet shown that the modern model of trusteeship can be successful in creating functioning states, though at present the timescale is still too short for any firm conclusions in this area. So far, the long-term outcome of the recent spate of humanitarian wars has been the creation of one failed state after another. Indefinite occupations of the type existing in all four of the cases mentioned above carry major problems, one of the most important being that they risk creating perverse incentives. In the case of Kosovo, for example, the Serbian side (whether in the form of Kosovo Serb leaders or the government in Belgrade) has been well aware that it is only likely to lose from any successful negotiated solution. Since a resumption of more than nominal Serbian sovereignty over the province remains unthinkable for the majority Albanian population, the likely outcome of negotiations would be some form of independence; and, for Serbs, the current situation of permanent trusteeship has so far seemed preferable to that.

#### **C.4 A Final Word**

In conclusion, then, there is a need for theorists to display a more realistic attitude about what can actually be achieved through the use of military force, and to be more cautious about advocating and endorsing its use. Praiseworthy as the ideals behind humanitarian war may be, one must always remember that going to war is

never a neat or a simple affair, and it is no good 'doing something' about a humanitarian crisis if the 'something' that we do just makes matters worse. The historical legal and theoretical barriers to the legitimate use of military force should not be lowered without good reason.

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