

Chapter 1

NATO, Kosovo and 'humanitarian intervention'

NATO's employment of military power against the government of Slobodan Milosevic over Kosovo has been among the most controversial aspects of the Alliance's involvement in South East Europe since the end of the Cold War. The air operations between March and June 1999 have been variously described as war, 'humanitarian war', 'virtual war', intervention and 'humanitarian intervention' by the conflict's many commentators and critics. Key features of the debates over NATO's employment of military power have been concerned with its legality and legitimacy (i.e. the role of the UN and international law), its ethical basis and its impact on the doctrine of non-intervention in the domestic affairs of states. The conceptual debates that have raged over these issues are important not only within the context of European security but more generally for their impact on the international system as a whole. This chapter examines these issues by focusing on three broad questions. Why did NATO undertake military action over Kosovo? What kind of armed conflict did it engage in? Can such a resort to force be justified?

'Dirty Harry' or 'a knight in shining armour'? **NATO's decision to use military force over Kosovo**

An implicit UN mandate?

NATO members first declared a willingness to use force over Kosovo in autumn 1998. The pivotal event at this time was the Holbrooke-Milosevic agreement, reached in October. Holbrooke had

been explicitly dispatched to Belgrade by then American Secretary of State Madeleine Albright to ‘underscore [to President Milosevic] the clear requirements of UN Security Council Resolution 1199 and to emphasize the need for prompt and full compliance’.¹ Further, his mission to Belgrade was announced on the day after publication of a report to the Security Council by UN Secretary-General Kofi Annan dealing with the FRY’s lack of compliance with previous UNSC Resolutions. In this report Annan ‘appealed to the international community to undertake urgent steps in order to prevent a humanitarian disaster’ in Kosovo during the winter.² The close proximity of timing suggests that this call provided both a spur and justification for the Holbrooke mission. The UN, via Resolution 1199, was, therefore, centrally if indirectly involved in the framing of the terms of reference for the Holbrooke mission, the accompanying NATO airstrike threat and, later, NATO’s military action between March and June 1999.

It can also be argued that the UN Secretary-General gave a *de facto* green light to military action on a visit to NATO headquarters in January 1999. In his public remarks before meeting the North Atlantic Council, NATO’s top decision-making body, Annan said that ‘the bloody wars of the last decade ... have [not] left us with any illusions about the need to use force, when all other means have failed. We may be reaching that limit, once again, in the former Yugoslavia’.³ According to Bruno Simma, he also told a press conference that ‘*normally* a UN Security Council Resolution is required’ [emphasis in the original] to authorise military action by UN member states; suggesting, perhaps, that one might not be with regard to Kosovo.⁴ Indeed, Tomáš Valášek has claimed that NATO members purposely ‘sought and obtained an indirect endorsement’ of the right to use force over Kosovo from Kofi Annan in January 1999, two months before *Operation Allied Force* was launched.⁵

The launch of *Operation Allied Force* was, nevertheless, accompanied by a major international controversy over the fact that NATO members had not obtained, or sought, an *explicit* mandate in the form of a UNSC Resolution. During the course of the operation, NATO members spent a good deal of time and effort justifying it, usually within a frame of reference to the UN.⁶ Reference was made to NATO’s role in helping maintain the Dayton peace regime in Bosnia (where it was operating under a UN mandate), that could be threatened by uncontrolled violence in Kosovo. Further, it was asserted that NATO had received the implicit authorisation of the Security Council for military action on account of its support for the Holbrooke-

Milosevic agreement, which had, as noted, been concluded with the threat of airstrikes in the background.

An especially commonly cited argument was that NATO was acting 'in the spirit' of the UN Charter in attempting to compel the Milosevic government to cease and desist its repressive activities in Kosovo. The then NATO Secretary-General, Javier Solana, encapsulated this argument at his first press conference after *Operation Allied Force* got underway. He declared that 'the NATO countries think that this action is perfectly legitimate and it is within the logic of the UN Security Council [sic] ... we are engaged in this operation in order not to wage war against anybody but to try to stop the war'.⁷ This line of argument was bolstered by reference to key UNSC Resolutions. The first UN Kosovo Resolution – 1160 – had been passed by the Security Council in March 1998. It spoke of 'the serious political and human rights issues in Kosovo'.⁸ In September, Resolution 1199 used stronger language. It spoke of the need to 'avert the impending humanitarian catastrophe' in the province.⁹ In addition, as noted above, the UN Secretary-General had called upon member states to take action to prevent a 'humanitarian disaster' in Kosovo. Given the inclusion of such phrases, there is some basis for the NATO claim to have been acting in the spirit of the Resolutions and of the UN Charter more generally.

The *de facto* blessing of the UN Secretary-General, although welcome for NATO, had limited value. Kofi Annan's views were, at best, privately encouraging whilst he publicly upheld the principles of the UN Charter. His public position with regard to Kosovo was confirmed in the widely quoted remarks that he made to the press on the day that *Operation Allied Force* was launched:

It is indeed tragic that diplomacy has failed, but there are times when the use of force may be legitimate in the pursuit of peace. In helping maintain international peace and security, Chapter 7 of the United Nations Charter assigns an important role to regional organisations. But as Secretary-General, I have many times pointed out, not just in relation to Kosovo, that under the Charter, the Security Council has primary responsibility for maintaining international peace and security, and this is explicitly acknowledged in the North Atlantic Treaty. Therefore, the Council should be involved in any decision to resort to force.¹⁰

The UN Secretary-General could not, in any event, have bestowed international legitimacy on *Operation Allied Force* even if he had been so minded. He only has the right, under Article 99 of the UN Charter, to 'bring to the attention of the Security Council any matter which in

his opinion may threaten the maintenance of international peace and security'. He cannot, however, give authorisation on behalf of the Security Council or force its members to do so.

The lack of explicit UN authorisation provoked serious opposition to NATO's military action, not least among two of the permanent members of the Security Council; China and Russia. The Chinese Ambassador to the UN, Qin Huasun, described NATO's military operations as a 'blatant violation of the UN Charter, as well as the accepted norms in international law'.¹¹ He was categorical in expressing the view that 'the Chinese Government strongly opposes such an act'. Russian condemnation was even more forthright. President Boris Yeltsin called NATO's operation 'nothing other than an open aggression'. It had, in the Russian government's view, 'created a dangerous precedent' that 'threatened international law and order'.¹² Forthright criticism was not only limited to those that predictably took a strong view on the sanctity of state sovereignty. The Rio Group of Latin American states similarly expressed its 'anxiety' over the use of force in 'contravention of the provisions of Article 53' of the UN Charter.¹³ Clearly therefore, important components of the international community did not accept notions of an implicit mandate for NATO's action.

Humanitarian and strategic imperatives?

Apart from justifying its action within the context of previous UN decisions, NATO presented another set of arguments based on humanitarian and regional stability considerations. In a press statement on 23 March 1999, Solana outlined the reasons behind the decision to begin airstrikes against Yugoslavia. He stated that NATO action resulted from the fact that 'all efforts to achieve a negotiated, political solution to the Kosovo crisis having failed, no alternative is open but to take military action'. He made clear that 'NATO is not waging war against Yugoslavia' but instead military action had been initiated to 'support the political aims of the international community'. In supporting these aims, Solana emphasised that NATO's action was intended to 'avert a humanitarian catastrophe' and 'prevent more human suffering and more repression and violence against the civilian population of Kosovo'.

This was a point Solana stressed on three occasions in his statement. He also indicated that NATO wanted to see the end of human

suffering embodied in a 'political settlement' with an 'international military presence' to underwrite it. A further overarching aim of NATO was to 'prevent instability spreading in the region'.¹⁴

In another press release issued on 23 March, NATO echoed the themes in Solana's remarks. This additional statement, however, placed more of an accent on the Alliance endeavouring to support the aims of the international community to find a political solution:

NATO's overall political objectives remain to help achieve a peaceful solution to the crisis in Kosovo by contributing to the response of the international community. More particularly, the Alliance made it clear in its statement of 30th January 1999 that its strategy was to halt the violence and support the completion of negotiations on an interim solution ... Alliance military action is intended to support its political aims. To do so, NATO's military action will be directed towards halting the violent attacks being committed by the VJ [Yugoslav Army] and MUP [Interior Ministry Forces] and disrupting their ability to conduct future attacks against the population of Kosovo, thereby supporting international efforts to secure FRY agreement to an interim political settlement.¹⁵

The most definitive statement of NATO's initial war aims was issued as air operations continued in early April 1999. In forthright terms, NATO made clear that military action was driven by compelling humanitarian reasons and in support of the political aims of the international community:

The Federal Republic of Yugoslavia (FRY) has repeatedly violated United Nations Security Council resolutions. The unrestrained assault by Yugoslav military, police and paramilitary forces, under the direction of President Milosevic, on Kosovar civilians has created a massive humanitarian catastrophe which also threatens to destabilise the surrounding region. Hundreds of thousands of people have been expelled ruthlessly from Kosovo by the FRY authorities. We condemn these appalling violations of human rights and the indiscriminate use of force by the Yugoslav government. These extreme and criminally irresponsible policies, which cannot be defended on any grounds, have made necessary and justify the military action by NATO ... NATO's military action against the FRY supports the political aims of the international community: a peaceful, multi-ethnic and democratic Kosovo in which all its people can live in security and enjoy universal human rights and freedoms on an equal basis.¹⁶

The major powers within the Alliance, in their individual public statements, echoed the NATO line. President Bill Clinton, in a television address on 24 March, maintained that military action came only 'after

extensive and repeated efforts to obtain a peaceful solution to the crisis in Kosovo'. 'Only firmness now', Clinton declared, 'can prevent greater catastrophe later'.¹⁷ British Prime Minister Tony Blair, in a statement to the House of Commons, said that, for the Kosovar Albanians driven out of the province, 'we have in our power the means to help them secure justice and we have a duty to see that justice is now done'.¹⁸ French President Jacques Chirac asserted that what was at stake was 'peace in Europe' and 'human rights'.¹⁹ German Chancellor Gerhard Schröder argued that the 'Alliance wants to stop serious, systematic human rights violations and prevent a humanitarian catastrophe in Kosovo'.²⁰

In providing a rationale for military action, NATO and its member states made clear that exhaustion of all diplomatic avenues, urgent humanitarian considerations and a desire to support the political aims of the international community justified the decision to employ military power. Furthermore, the desire to avoid a spillover of the conflict into neighbouring states, with the consequential destabilisation of the region, was an important consideration.²¹ Finally, there was an underlying sense that Serb actions in Kosovo represented an unacceptable violation of the core norms and values embodied in the contemporary 'Atlantic Community'. This latter dimension will be explored further in Chapter 6.

Because NATO undertook military action without the explicit authorisation of the UN Security Council, but with a number of compelling humanitarian and strategic justifications, the basis of the operation was bound to generate a great deal of controversy. The controversies were not all political. Just as the action pushed the envelope of international politics and legality, it also opened up important military conceptual debates.

Was Kosovo a 'war'?

General Wesley Clark, Supreme Allied Commander Europe (SACEUR) – the highest ranking military officer in NATO and leader of the Alliance's military operations during the 1999 conflict – has commented in his memoirs that 'we were never allowed to call [this] a war. But it was, of course'.²²

Probing further into Clark's memoirs gives a fuller picture of his analysis of the nature of the conflict:

Operation Allied Force was modern war – limited, carefully constrained in geography, scope, weaponry, and effects. Every measure of escalation was excruciatingly weighed. Diplomatic intercourse with neutral countries, with those opposed to NATO's actions, and even with the actual adversary continued during and around the conflict. Confidence-building measures and other conflict prevention initiatives derived from the Cold War were brought into play. The highest possible technology was in use, but only in carefully restrained ways. There was extraordinary concern for military losses, on all sides. Even accidental damage to civilian property was carefully considered. And 'victory' was carefully defined.²³

Such eminent academic figures as Professor Sir Adam Roberts have echoed Clark's view. Roberts has written that 'NATO leaders were reluctant to call their action "war". However, it was war – albeit war of a peculiarly asymmetric kind. It indisputably involved large-scale and opposed use of force against a foreign state and its armed forces'.²⁴ The commentator Michael Ignatieff called the Kosovo conflict a 'virtual war', one in which NATO 'obtained its objectives without sacrificing a single Allied life'.²⁵ Ignatieff went on to argue that Kosovo was a 'paradigm of ... [a] paradoxical form of warfare: where technological omnipotence is vested in the hands of risk-averse political cultures'.²⁶ Others called the conflict a 'humanitarian war'.²⁷ From Charles Krauthammer's point of view, 'humanitarian war requires means that are inherently inadequate to its ends'.²⁸ Given this spectrum of opinion, can NATO's military action over Kosovo be accurately termed a 'war' at all?

War has been defined as the 'systematic application of organised violence by one state to another to accomplish adjustments in political, economic, cultural, or military relations'.²⁹ *The Penguin Dictionary of International Relations* defines war as 'direct, somatic violence between state actors'.³⁰ These broad definitions, on first reflection, seem to describe the armed conflict over Kosovo but they only really scratch the surface of the concept of war. In Carl von Clausewitz's 'ideal' type of 'total' or 'absolute' war, there is an enemy against whom war is to be waged employing all available resources until the 'terms of victory' can be dictated.³¹ Given NATO's relatively limited aims (not 'regime change' in Belgrade, for example, but to compel Milosevic to come to terms over Kosovo) and its self-imposed constraints on the use of force, the Kosovo conflict did not match these classical criteria.

General Clark's analysis, however, does classify the armed conflict over Kosovo as a 'modern' *limited* war. The idea of limited war is not new. As Robert Osgood, one of the Cold War period's principal analysts of the idea noted, 'the concept and practice of limited war are

as old as war itself'.³² During the Cold War, the idea of limited war was the subject of considerable interest, particularly in the United States.³³ Osgood, one of the major contributors to the discussion, defined it in the following way:

A limited war is one in which the belligerents restrict the purposes for which they fight to concrete, well-defined objectives that do not demand the utmost military effort of which the belligerents are capable and that can be accommodated in a negotiated settlement.³⁴

Expanding on Osgood's definition, these types of conflicts can be limited geographically, are fought over limited objectives, use limited means (weaponry) and have limitations regarding the targets that can be subjected to attack.³⁵ A more contemporary analysis of the characteristics of limited war suggests that another limitation needs to be added – to prevail with a minimum cost in lives. As one analyst has written: 'casualties may soon represent a dominant, perhaps the dominant measurement of success or failure in wars of limited ends and means such as Operation Allied Force in Kosovo'.³⁶ In short, limited war means 'that either the ends or means or both, are limited in the conflict'.³⁷

It is recognised that one of the problems of waging a limited war is that those asked to fight it are often inculcated with an *absolutist* perspective of war that works against limitations on the use of force.³⁸ Much analysis, moreover, narrowly places the accent on the nature of the military conduct of conflict rather than fully integrating its political dimension. Yet, as Clausewitz has long reminded us, 'war is the continuation of politics by other means'.³⁹ This suggests that the concept of limited war is of use in reference to the Kosovo conflict only in the most generic sense of helping us to understand the limitations placed by politicians on the military conduct of operations, rather than fully capturing the nature of the conflict itself.

A further constraint on seeing the Kosovo conflict as a limited war in classical terms is the strong contemporary association of the concept with the Cold War. Although of long lineage, limited war thinking today is very much rooted in the experience of the Cold War, particularly that of the 1950s and 1960s. Thinking regarding limited war became linked to the need to avoid a total war that would entail the large-scale employment of nuclear weapons by the two superpowers. As a consequence of this, John Garnett has argued, 'only conflicts that contain the potentiality for becoming total can be described as limited'.⁴⁰ This legacy of Cold War thinking on the

limited war concept suggests that it is not applicable to the conflict over Kosovo.

It seems clear that the Kosovo conflict is better described metaphorically rather than conceptually as a 'war' or 'limited war'.⁴¹ As for constructions such as 'humanitarian war' or 'virtual war', they are labels bereft of any real conceptual meaning. If, therefore, the Kosovo conflict cannot be conceptually best understood as a form of war, how can it be conceived?

The intervention and non-intervention debates

The military operations conducted by NATO in 1999 have been described as an 'intervention' by many commentators and governments. The idea of intervention is well-trodden ground in terms of the international relations discourse. As a concept, however, it has spawned a variety of permutations; from 'collective' to 'humanitarian' intervention.⁴² Moreover, intervention is often viewed critically against the backdrop of the doctrine of non-intervention in the affairs of states. Richard Little represented this view well when he wrote that 'in the international arena intervention is generally seen to be a violation of sovereignty, and a threat to world order'.⁴³ Others, however, see intervention as a 'ubiquitous feature' of the international system. Hedley Bull has argued that 'no serious student can fail to feel that intervention is sometimes justifiable' and that there are 'exceptions to the rule of non-intervention'.⁴⁴ Whichever of these views one may subscribe to, it is clear that intervention in the affairs of another state raises a number of questions regarding the ethics, legality and ultimately the legitimacy of the intervention. The contested issues of intervention and non-intervention are not new in terms of the international system. Since the end of the Cold War, however, the debates have been reinvigorated, not least as a result of the Kosovo crisis and conflict. The crisis, and NATO's response, represents one of the key watersheds in the post-Cold War debates on the question of intervention.

The doctrine of non-intervention

The doctrine of non-intervention in the affairs of sovereign states is a well-understood facet of the international system. It is grounded in the principle of sovereignty – what many consider to be the *grundnorm* of

the state-centred international order. Sovereignty is the default setting of the Westphalian state system that emerged after 1648. Simply expressed, sovereignty means the independence of a territorially defined state that also, within its boundaries, enjoys the right to order its internal affairs as it sees fit.⁴⁵ Following on from the central tenet of a state's right of domestic jurisdiction is the idea that a state should be free from outside interference. This corollary forms the substance of the doctrine of non-intervention.

This doctrine of non-intervention is well established in the fabric of the international system. The UN Charter, in Article 2 paragraph 7, famously reflects the degree to which non-intervention is enshrined as a guiding concept. It states that 'Nothing in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter'.⁴⁶

The strength of support for the idea of non-interference is undoubtedly very strong within the international community. Further proof can be seen in two UN General Assembly Resolutions on the 'Inadmissibility of Intervention in the Domestic Affairs of States', passed in December 1965 and in an updated version in December 1981. The latter document declared that 'No State or group of States has the right to intervene or interfere in any form or for any reason whatsoever in the internal and external affairs of other States'.⁴⁷ The 1981 Resolution elaborated on the 'rights and duties' entailed under the doctrine of non-intervention, categorically stating that it is:

the duty of a State to refrain from armed intervention, subversion, military occupation or any other form of intervention and interference, overt or covert, directed at another State or group of States, or any act of military, political or economic interference in the internal affairs of another State, including acts of reprisal involving the use of force.⁴⁸

Despite its status as a *grundnorm*, the integrity of the doctrine of non-intervention has never been unchallenged in application. The underpinning concept of sovereignty, as Alan James has argued, has a dual meaning. It encompasses an understanding of sovereignty both as status and rights. James argues that 'the link between sovereignty as status and sovereignty as rights is that, although the second sense of sovereignty is intimately associated with the first, it is not a concomitant but a consequence of it. Sovereign rights attach to those entities that enjoy sovereign status'.⁴⁹

In the age of the 'failed state', what constitutes 'sovereign status' is a question with important implications for the doctrine of non-intervention. When a country ceases to have a functioning and effective central government, and contains an anarchical condition within its borders, it is difficult to sustain the idea of the doctrine of non-intervention in either a *de facto* or *de jure* sense. As Fowler and Bunck have argued, 'it is ultimately the international community that determines whether a particular political entity qualifies as a sovereign state'.⁵⁰ Moreover, the boundary line between sovereignty and intervention is a shifting one conditioned by 'what it means to be a state at a particular place and time'.⁵¹

The idea that a universal norm of human rights applies to all individuals and transcends notions of sovereignty also has implications regarding statehood. It suggests that the criteria of legitimate statehood include respect for human rights. When this is viewed against the background of the development of international human rights norms, it points to more perforations in the doctrine of non-intervention and provides opportunity, if not intent, for intervention.⁵²

Intervention

Defining intervention is a difficult business because of the number of forms it can take. As Thomas Otte has observed, 'there is no precise and generally acknowledged concept of intervention'.⁵³ The multifaceted quality of intervention is often reflected in standard definitions. Indeed, one dictionary of international relations describes it as 'a portmanteau term which covers a wide variety of situations where one actor intervenes in the affairs of another'.⁵⁴ Hedley Bull has called it a 'dictatorial or coercive interference, by an outside or outside parties, in the sphere of jurisdiction of a sovereign state'.⁵⁵ This definition implies a range of modes of intervention that could embrace political, economic or even normative ones through institutions acting on behalf of the international community. It also suggests that, in the light of the doctrine of non-intervention, it can be perceived as a negative phenomenon. John Vincent has defined it in a similar manner to Bull, but attaches a more neutral proviso – that intervention is 'not necessarily lawful or unlawful, but it does break a conventional pattern of international relations'.⁵⁶ These broad definitions do not, by themselves, offer much precision or utility for considering NATO's military action over Kosovo. What they do highlight is the need to consider the ways and means of intervention.

Interventions can be classified in a number of categories; such as the employment of political, economic or military power. In the international system, military force continues to be ‘the most widely available instrument’ for intervening in a country’s domestic affairs.⁵⁷ According to Thomas Otte, ‘military intervention is the planned limited use of force for a transitory period by a state (or group of states) against a weaker state in order to change or maintain the target state’s domestic structure or to change its external policies’.⁵⁸ Contemplating military intervention, however, produces its own admixture of challenging political and military decisions.⁵⁹ Typically, military intervention means embarking on a conflict where there is an asymmetry in military power. The intervener almost invariably enjoys considerable military advantages over the target state. Such supremacy, however, cannot be taken for granted as military interventions risk becoming protracted and leading to escalation.⁶⁰ It is more often than not the case that it is easier to become enmeshed in a military intervention than to find a viable exit strategy. Such risks mean that the intervener must practice ‘selectivity’ before undertaking military intervention.⁶¹

Otte’s definition of military intervention is certainly useful in characterising NATO’s action over Kosovo. Nevertheless, as in the case of the consideration of ideas of limited war discussed earlier, such a conceptualisation does not adequately take into account the political reasons for the military intervention. Stanley Hoffmann’s observation that ‘the purpose of intervention is the same as that of all other forms of foreign policy; it is to make you do what I want you to do, whether or not you wish to do it’⁶² indicates the underlying generic purpose of military intervention. It does not, however, adequately reveal *why* a state or group of states launches a military intervention. In particular it omits those crucial initial factors of political motivation or aims that triggered military intervention in the first place and subsequently shape its ethical qualities, legality and legitimacy.

For that icon of the realist school of international relations, Hans Morgenthau, the rationale for military intervention was clear: ‘all nations will continue to be guided in their decisions to intervene and their choice of intervention by what they regard as their respective national interests’. According to Morgenthau, the doctrine of non-intervention was something political leaders ‘never ceased to pay lip service to’. Moreover, he was dismissive of the prospect of international norms supplanting national interest when it came to justifying a military intervention. ‘It is futile to search’, argued Morgenthau, ‘for

an abstract principle which would allow us to distinguish in a concrete case between legitimate and illegitimate intervention'.⁶³

Others, such as Freeman, have taken a broader view; that other, systemic, factors contribute to military intervention even if ultimately national self-interest lies at the foundation of the decision to intervene:

A state or society that descends into civil strife or anarchy is a cancer on the international body politic that endangers its neighbours and its region. Segments of its population may destabilise neighboring states by seeking refuge there. Its domestic violence may spill over its borders. Such internal disorder is a threat to international order and the interests of other states. It invokes the logic of reason of system ... Direct or indirect intervention by states in the internal proceedings of others is never disinterested. States carry out such intervention as a matter of self-interest, the interest of the international state system, or both. Of these motives, the most compelling is self-interest.⁶⁴

The idea that universal norms could provide legitimacy to military intervention and override the doctrine of non-intervention moves the intervention debate, in political terms, beyond the paradigm of national interest guiding the intervener. Writing in 1984, Hedley Bull envisaged circumstances where the norms of international society could lead to intervention:

It is clear that the growing legal and moral recognition of human rights on a world-wide scale, the expression in the normative area of the growing interconnectedness of societies with one another, has as one of its consequences that many forms of involvement by one state or society in the affairs of another, which at one time would have been regarded as illegitimate interference, will be treated as justifiable.⁶⁵

It is on this question – whether or not military intervention can be driven by norms such as human rights – that NATO's military action over Kosovo has been most debated. It has been the most significant source of dispute amongst the conflict's many interpreters. This type of intervention, a humanitarian one, is among the most contentious as its claim to legitimacy can arguably supersede both national sovereignty and the authority of the UN or any other legitimating international organisation. From the point of view of contemporary European and international security, therefore, the crucial issue is whether or not a right to humanitarian intervention actually exists.

'Humanitarian intervention'

James Mayall has observed that 'the concept of humanitarian intervention occupies an ambiguous place in the theory and practice of international society'.⁶⁶ Humanitarian intervention not only occupies an ambiguous place but is also a concept steeped in controversy. Most of the controversy centres on its ethics and legitimacy. In terms of defining the concept, there is not yet a consensus on its meaning but one factor seems to predominate, the issue of violation of human rights. One of the most succinct definitions, in focusing on this *raison d'être* of humanitarian intervention, is that of Sean Murphy, who has defined it as being:

The threat or use of force by a state, group of states, or international organisation primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights.⁶⁷

Francis Abiew has defined humanitarian intervention in a way akin to that of Murphy: 'humanitarian intervention, understood in the classical sense, involves forcible self-help by a state or group of states to protect human rights'.⁶⁸ Pressing this line of argument to its limits, Mervyn Frost maintains that 'humanitarian intervention must be understood as directed at maintaining civil society – the global society of rights holders which has no borders'.⁶⁹

Not everyone, however, accepts the narrow rationale of just protecting human rights. According to Oliver Ramsbotham, 'humanitarian intervention means cross-border action by the international community in response to human suffering' more broadly.⁷⁰ Ramsbotham identifies various forms of humanitarian intervention including 'coercive' and 'non-coercive governmental humanitarian intervention' as well as 'transnational, intergovernmental and non-governmental humanitarian intervention'.⁷¹ Implicit in all of these are drivers of humanitarian intervention that go beyond upholding human rights.

These broader considerations are also sometimes evident where the concept of humanitarian intervention has made its way into the lexicon of policy-makers. For example, a Finnish security and defence policy paper published in June 2001 defined humanitarian intervention in a way that embraces a broader perspective:

Humanitarian intervention means military intervention by the international community or some other actor in an internal or international

conflict, if necessary without the consent of the country in question, in order to save human lives, protect human rights and to ensure that humanitarian aid reaches its target.⁷²

The Finnish definition incorporates the related concept of 'military-civilian humanitarianism'. It suggests that the need to alleviate human suffering resulting from natural disaster, famine or conflict provides still more reasons for humanitarian intervention than simply thwarting human rights abuses.⁷³ Overall, the heart of the matter lies in how one defines 'humanitarianism' and how one addresses the important paradox presented by lethal armed force being applied in the name of saving life.⁷⁴

*The ethics of humanitarian intervention:
the problem of criteria*

Establishing a set of criteria to guide humanitarian intervention presents a difficult problem. Although analysts had long been willing to provide criteria, politicians holding the reins of power and responsibility had been more reticent, at least until the time of the NATO intervention over Kosovo. In this context, it is worth exploring the British example of an official and public discussion of criteria for humanitarian intervention.

The Kosovo crisis and the ongoing NATO air operations provided the impetus and the spur for a key speech given by Tony Blair in Chicago in April 1999. Here, he declared that 'the most pressing foreign policy problem we face is to identify the circumstances in which we should get actively involved in other people's conflicts'. In addressing this question, Blair suggested that there were ethical considerations that took precedence over established norms of non-intervention. In particular he argued that:

The principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter. When oppression produces massive flows of refugees which unsettle neighbouring countries, then they can properly be described as 'threats to international peace and security'.

Blair went on to outline a possible test, consisting of a series of questions, to determine the appropriateness of an intervention:

- First, are we sure of our case?

- Second, have we exhausted all diplomatic options?
- Third, on the basis of a practical assessment of the situation, are there military operations we can sensibly and prudently undertake?
- And finally, do we have national interests involved?⁷⁵

The ‘Blair Doctrine’ was further elaborated nearly a year later by Robin Cook, then Foreign Secretary. Cook raised what is the central question concerning the ethics and criteria of humanitarian intervention – ‘how can the international community avert crimes against humanity while at the same time respecting the rule of international law and the sovereignty of nation states?’. Cook’s speech was clearly designed to contribute to the debate regarding this question. In particular he offered some ‘guidelines for intervention in response to massive violations of humanitarian law and crimes against humanity’. These were:

- First, any intervention, by definition, is an admission of failure of prevention.
- Second, we should maintain the principle that armed force should only be used as a last resort.
- Third, the immediate responsibility for halting violence rests with the state in which it occurs.
- Fourth, when faced with an overwhelming humanitarian catastrophe, which a government has shown it is unwilling or unable to prevent or is actively promoting, the international community should intervene ... It must be objectively clear that there is no practicable alternative to the use of force to save lives.
- Fifth, any use of force should be proportionate to achieving the humanitarian purpose and carried out in accordance with international law.
- Sixth, any use of force should be collective. No individual country can reserve to itself the right to act on behalf of the international community.⁷⁶

Proving massive human rights violations or genocide to the point of initiating a humanitarian intervention is a daunting problem for policy makers, however elaborate the early warning mechanisms that can be put into place.⁷⁷ Obtaining incontrovertible evidence is a difficult enough issue for individual governments, let alone amorphous bodies such as the international community. Moreover, the conduct of military interventions since the Cold War has generated a number of dilemmas for the intervener, particularly ones in response to massive human rights violations. One of these significant intervention

dilemmas is the contradictory desire of the populations of democratic states to see human rights norms enforced whilst being unwilling to pay a price, either in lives or treasure.⁷⁸

Yet, against all the hurdles, the option of doing nothing, for those governments and international institutions capable of undertaking humanitarian intervention, does not seem credible. The legacy of the terrible bloodletting of the twentieth century points to a higher moral *grundnorm* that no civilised state or community of states can lightly cast aside. Although it was certainly not the only factor, there was undoubtedly a sense of this motivating NATO leaders in 1998 and 1999 towards the view that 'something had to be done' about the humanitarian situation in Kosovo.

Establishing criteria for humanitarian intervention is centrally about the problem of applying morality to politics and conflict. This is certainly nothing new, as illustrated by the long-standing existence of well-articulated principles of a 'just war' doctrine. These principles are organised around *jus ad bellum* and *jus in bello*; meaning justice in going to war and justice in the conduct of war.⁷⁹ The criteria of just war can be summarised as shown in Table 1.1 (p. 28).

What is striking about the criteria for humanitarian intervention outlined by Blair and Cook, against the backdrop of the Kosovo crisis and its aftermath, is the way in which they follow the principles of the just war. The ideas propounded in Blair's and Cook's speeches emphasising last resort, proportionality and the legitimacy of the case, reflect criteria of the just war doctrine. Because the just war doctrine is, centrally, concerned with establishing moral criteria governing the use of force, its applicability to the problem of establishing criteria for humanitarian intervention should be readily apparent. Mona Fixdal and Dan Smith, writing on 'Humanitarian intervention and just war', emphasise that 'in seeking a framework that is simultaneously both ethical and political for discussing decisions to resort to force, the Just War tradition seems a self-evident path to explore'.⁸⁰ Taking a broader view of the application of the just war doctrine to the post-Cold War security environment, J. Bryan Hehir has stressed the factors that make it relevant:

The post-Cold War setting for intervention is shaped by two realities: the erosion of sovereignty and intensifying interdependence. These two distinct features of international politics promise an increase in the kinds of intervention and its incidence. To assess the moral character of intervention will require an emphasis on the political aspects of the just war ethic.⁸¹

Table 1.1 *Just war criteria*

<i>Jus ad Bellum – Justice in Recourse to War</i>	
<i>Legitimate or Right Authority</i>	Only legitimate governments or supranational authority can lawfully engage in war
<i>Just Cause</i>	Defence against a violent, unwarranted aggression against the state
<i>Just Intention</i>	Goals must be just; restore peace to all parties engaged in conflict
<i>Last Resort</i>	Military force can only be employed after all other options exhausted
<i>Proportionality</i>	Means of war must be proportional to the offence; recourse to war must lead to more good than harm
<i>Reasonable Hope</i>	The recourse to war must stand a reasonable chance of success and not be undertaken in the absence of such reasonable hope
<i>Comparative Justice</i>	No state possesses absolute justice in pursuit of aims
<i>Jus in Bello – Justice in the Conduct of War</i>	
<i>Discrimination</i>	Non-combatants protected from direct or intentional attack
<i>Proportionality</i>	Military actions limited by necessity to achieve goals and to avoid unnecessary suffering of non-combatants

Sources: A. Coates, *The Ethics of War* (Manchester, Manchester University Press, 1997), pp. 123–272; Major General The Rev. I. Durie, ‘Just War in an Unjust World’, unpublished paper for the International Symposium in Military Ethics, Royal Norwegian Air Force Academy, Trondheim, November 1999; M. Fixdal and D. Smith, ‘Humanitarian intervention and just war’, *Mershon International Studies Review* (1998), 4.

Not everyone, however, agrees that the just war doctrine provides criteria to guide humanitarian intervention. Mervyn Frost argues that ‘humanitarian intervention is not best understood as an action which fits into theories of just warfare, as they involve war between states. The concerns of just war theory about proper authority, just cause and just means are not readily applicable to humanitarian intervention’.⁸² Despite this caveat, just war doctrine has occupied a central place in the debates on establishing criteria for humanitarian intervention.⁸³ What is more, analysts seeking to establish such criteria draw on the just war doctrine whether or not they make an explicit link between it and their criteria.⁸⁴

Not all criteria in the humanitarian intervention debate draw on the just war doctrine.⁸⁵ What is, however, characteristic of the strands of the debate over criteria for humanitarian intervention is the desire to establish an ethical basis for taking action. The fact that there is a need to articulate ethical criteria highlights questions about the legality of humanitarian intervention (in terms of international law) and the difficult political choices that humanitarian intervention presents to members of the international community. Ultimately, the quest to articulate ethical criteria for humanitarian intervention is a debate born out of the contested legality and legitimacy of the phenomenon.

The UN, NATO and the legality and legitimacy of intervention

NATO's military intervention over Kosovo brought into bold prominence, as noted earlier, ongoing debates about the legality and legitimacy of the Alliance's action.⁸⁶ One side of this debate has been largely critical of NATO's action, arguing that it lacked the legal basis necessary to give it legitimacy. 'NATO countries – ', wrote *The Economist*, 'albeit with the best of motives – have put themselves, like Mr Milosevic, outside the law'.⁸⁷ Similarly, Mark Littman QC, in a critique of the legality of NATO's action, concluded that 'given the weight of opinion and legal authority against the NATO position ... it is difficult to avoid the conclusion that the NATO action was illegal'.⁸⁸ In his detailed analysis of humanitarian intervention and international law, Simon Chesterman takes the view that 'there is no "right" of humanitarian intervention in either the UN Charter or customary international law'.⁸⁹ Friedrich Kratochwil generally takes a similar line, coming to the conclusion that no right of humanitarian intervention exists save in the cases of the 'institution of the protection of nations' or authorised under Chapter VII of the UN Charter.⁹⁰ As noted earlier, major states such as China and Russia opposed NATO's Kosovo operation over questions essentially related to its legality. The arguments were not entirely one-sided. Other commentators maintained that NATO's action could in fact be justified under international law.⁹¹ On balance, however, the debate on the legality of NATO's action over Kosovo for the most part supports the view that *Operation Allied Force* lacked a firm grounding in international law.

At the nexus of this debate stands the United Nations, the international organisation charged with 'the maintenance of international

peace and security'. The absence of a formal UN mandate for the NATO air operation was problematic in this respect as the UN, with its global remit and broad security and humanitarian roles, is widely regarded as being the principal (some would say sole) international legitimising agency for military action.

The UN's Charter stresses, as noted, the principle of non-intervention and its legal superstructure is optimised for dealing with interstate aggression rather than intervention in the affairs of a state.⁹² Indeed, some critics of the UN argue that these attributes of the Charter make it less relevant to the current international security environment characterised, as it has been, by intrastate violence and attendant human rights abuses.⁹³ The UN Charter, however, does emphasise the importance of human rights, even if the document does not make upholding them an explicit function of the UN. This does not necessarily mean that the UN and, in particular, its Security Council is powerless to act in the face of massive human rights abuses within states. A number of analysts have argued that, under Article 39 of the Charter, the UNSC could sanction intervention in the affairs of a state on the strength of it posing a 'threat to the peace'.⁹⁴ Not all agree with this view of the Security Council's powers, arguing that such an interpretation 'is expanding the scope of its authority beyond that originally envisioned'.⁹⁵ Overall it may be said that, on the issue of human rights, the UN is strong on norm articulation but weaker on the instruments to ensure adherence to those norms.

Ironically, perhaps, NATO members seemed to reaffirm the need not to give up on the UN at the very moment that they were acting without its explicit authority *vis-à-vis* Kosovo in the spring of 1999. At the NATO Washington summit, held when *Operation Allied Force* was in full swing in April, a deliberate effort seemed to have been made to build UN-friendly language into the key declarations. Both the *Washington Summit Communiqué* and the new NATO *Strategic Concept* included affirmations that, 'as stated in the Washington Treaty [i.e. NATO's founding treaty], we recognise the primary responsibility of the United Nations Security Council for the maintenance of international peace and security'. The *Strategic Concept*, in formally setting out a new (in *de jure* terms) role for NATO of being prepared to engage in 'crisis management [and] crisis response operations', stipulated that these would be undertaken 'in conformity with Article 7 of the Washington Treaty'.⁹⁶ This states that the treaty 'does not affect, and shall not be interpreted as affecting in any way the rights and obligations under the Charter of the Parties which are members of

the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security'.⁹⁷

Various causal factors have been suggested in explanation of the inclusion of what seemed, at first sight, to be a clear statement of intent in Washington to ensure that NATO does not undertake military action without UN authorisation again. It has been argued that the UN-friendly language was included at French insistence, with the US acquiescing in order to preserve allied unity in the midst of the pressing crisis.⁹⁸ Others have suggested that the failure of *Operation Allied Force* to coerce Milosevic into backing down by the time of the Washington summit had 'tempered the interventionist urge considerably' amongst NATO members generally.⁹⁹

Historically, however, NATO's view of itself has been that of a free-standing regional organisation not hierarchically subordinate to the UNSC. Sure enough, voices have since been heard arguing that the overall tone of the 1999 Washington documents does *not* suggest that NATO and its members will feel, in future, bound by acceptance of UN primacy. Dick Leurdijk and Dick Zandee have drawn attention to passages in the *Washington Summit Communiqué* and *Strategic Concept* where NATO is described as 'an Alliance of nations committed to the Washington Treaty and the United Nations Charter'. This form of words seems innocuous but, according to Leurdijk and Zandee:

By thus binding itself once more to both documents, NATO appears to give itself an equal position to the UN and not a subservient one ... Thereby NATO assures itself of an autonomous freedom of action, also in those cases where an explicit consent by the Security Council would be impossible. From a legal point of view it comes down to a lessening of the importance of the UN as compared to that of NATO.¹⁰⁰

In sum, the wording of the 1999 summit statements is ambiguous and capable of being interpreted in different ways. As with many diplomatic documents, such ambiguity is almost certainly intentional – if only to satisfy the differing agendas of NATO member states. In considering their response to future cases where military intervention might be required, it is unlikely that NATO members – or at least the more powerful among them – would regard their hands as being tied by statements agreed to under the pressure of a major and ongoing crisis in the spring of 1999.

Conclusions

NATO's intervention in Kosovo during 1999 was undertaken with humanitarian reasons being among several factors driving the armed action. Although the UN did not authorise the intervention in a *de jure* sense, NATO's action derived *some* legitimacy from prior UNSC Resolutions. It gained more from the fact that it was clear to nearly all outside observers that FRY forces had been responsible for serious abuses of the human rights of the Albanian population in Kosovo.

It was the moral and ethical dimension underpinning NATO's action, coupled with the employment of military coercion that led to it being labelled a 'humanitarian intervention'. The descriptor thus gained a new currency as a result of the events of spring 1999. Kosovo was, arguably, the first such action in Europe. The descriptor was not widely used at the time of the UN-sponsored international relief efforts in Bosnia between 1992 and 1995. Also, it can be argued that these efforts did not qualify as 'intervention' in the sense in which the term has been defined here. The UN did not seek at the time to compel the various warring factions and their state sponsors to alter the behaviour (i.e. the civil war) which had produced the humanitarian crisis.

The NATO action in Kosovo gave significant impetus to debates about the nature, justification and relevance of such activities in the post-Cold War European security environment. Interventions driven by ethical considerations reveal important contradictions in the international system. On one level, as Nicholas Wheeler has observed, 'humanitarian intervention exposes the conflict between order and justice at its starkest'.¹⁰¹ NATO members' efforts to justify their Kosovo intervention also reflected the contradictions and frustrations of attempting to uphold some norms (regarding human rights) while seemingly violating others (relating to the legality or otherwise of the use of armed force).

The difficulties and contradictions have helped to ensure that, in the minds of many analysts and commentators, the Kosovo crisis offers a dubious precedent for future international intervention in Europe or elsewhere. Adam Roberts has suggested that, at most, NATO's military response to the crisis 'may occupy a modest place as one halting step in a developing but still contested practice of using force in defence of international norms'.¹⁰² Whatever one's views of its merits or otherwise, the controversies surrounding NATO's action over Kosovo are likely to help ensure that it continues to stand less as

a precedent for future such interventions than as an exceptional response to violence, human suffering and the perceived need to restore security and stability in a particularly volatile region of Europe.

Notes

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