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HUMANITARIAN INTERVENTIONS AND JUST WAR:  
LEGAL, MORAL, AND POLITICAL IMPLICATIONS

by

Leslie C. Burns, Major, USAF

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Elective Instructor: Lieutenant Colonel Mark B. San Souci

Maxwell Air Force Base, Alabama

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### *Abstract*

Operation ALLIED FORCE, the NATO air campaign in Kosovo, revealed the legal, moral, and political tensions that leaders must address when contemplating a humanitarian intervention.

State sovereignty is protected under Chapter I, Article 2 of the United Nations (UN) Charter. The Charter provides limited specific exceptions for a state to use armed force against another state, with UN Security Council authorization. Meanwhile, a developing body of human rights law and numerous “humanitarian interventions” provide a growing challenge to state sovereignty. Addressed are the international legal issues that emerge when a state uses armed forces to halt gross human rights abuses by another state, as in Operation ALLIED FORCE.

The discussion also evaluates the moral and political tensions that occur in humanitarian interventions in the context of the just war tradition. *Jus ad bellum* principles of just cause, proportionality, reasonable chance of success, and last resort, help determine whether a specific intervention, like Operation ALLIED FORCE, meets just war standards before action occurs.

Finally, political considerations constrain the ability of states to consistently intervene when a just cause is present. The US-developed criteria for peacekeeping in Presidential Decision Directive (PDD) 25, and British Prime Minister Tony Blair’s five guidelines for intervention are considered in relation to Operation ALLIED FORCE.

Recognition of the legal, moral, and political dimensions to humanitarian interventions may help leaders form prudent decisions before committing armed forces to these operations.

## Part 1

### Introduction

*If states bent on criminal behavior know that frontiers are not an absolute defense, if they know that the Security Council will take action to halt crimes against humanity, then they will not embark on such a course of action in the expectations of sovereign immunity....Massive and systemic violations of human rights—wherever they may take place—should not be allowed to stand.<sup>1</sup>*

— Kofi Annan, Former UN Secretary General

On 20 September 1999, United Nations (UN) Secretary General Kofi Annan opened the UN General Assembly with this bold challenge to the principle of absolute national sovereignty.

He went on to interpret the UN Charter as “a living document whose high principles still define the aspirations of peoples everywhere for lives of peace, dignity, and development....Nothing in the charter precludes a recognition that there are rights beyond borders.”<sup>2</sup> What’s remarkable about his ideas is that they really aren’t new. Immediately after the Gulf War, former UN Secretary General Javier Perez de Cuellar observed the world was “clearly witnessing what is probably an irresistible shift in public attitudes toward the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents.”<sup>3</sup> Interventions spurred by human rights abuses in recent decades include India in Pakistan (1971), Vietnam in Cambodia (1978), and Tanzania in Uganda (1979.) Moreover, in the 1990s, the stabilizing influence of a bipolar world disappeared with the breakup of the Soviet Union and the end of the Cold War. Emerging nationalism and intrastate conflicts erupted with

vicious fervor, fracturing nations along ethnic and religious faults. Since 1989, sovereignty has been compromised in the name of human rights in Iraq, Somalia, Haiti, the Balkans, and East Timor, among others. Situations sparking “humanitarian interventions” challenge a consistent policy for United States (US) participation because of competing legal, moral, and political issues. Fundamental legal tensions exist in international law between rights of sovereign states to act as political agents for their collective societies, and an individual’s basic human rights that are recognized in custom and by agreements or conventions. When the state fails to meet its citizens’ physical needs or attempts to deprive basic human rights—for example, life and property—military intervention may be the only viable means to restore those rights. Yet sovereignty provides a critical freedom for political communities to self-determine without outside intervention. Clearly, moral dilemmas will emerge when military force is introduced to restore individual rights at the expense of sovereignty. The Western “just war” tradition, originating with Saint Augustine, and developed by other great thinkers, provides a useful framework to discuss such moral controversies. In particular, the just war concepts of just cause, proportionality, reasonable chance of success, and last resort help assess the unique moral issues in humanitarian interventions. Further, obviously, moral standards may call for intervention in many cases, but political realities and limited resources make consistent action difficult to execute in the real world.

This discussion broadly considers some of the legal, moral, and political factors that make humanitarian interventions so controversial. In particular, it focuses on Operation ALLIED FORCE in Kosovo as the most recent example of an intervention involving significant military force for a primarily humanitarian cause. The analysis first addresses the state sovereignty question—specifically protected in the UN Charter, but falling short of satisfying human rights

trends in international law. It moves on to introduce *jus ad bellum* standards of just cause, proportionality, reasonable chance of success, and last resort in humanitarian interventions. Political and moral contradictions are then examined within these standards, suggesting the recent Kosovo operation met the just war standards, but not without reservation. Operation ALLIED FORCE clearly illuminated the troubling legal, moral, and political issues that often accompany armed humanitarian interventions, demanding that future similar actions be subject to disciplined analysis before action.

### Notes

<sup>1</sup> Kofi Annan opening remarks to UN General Assembly, 20 September 1999, quoted in "UN Secretary General Kisses Sovereignty Good-bye," *Human Events* 55, no.36 (1 October 1999): 4; *Academic Search Elite*, on-line, Ehost, 23 February 2000.

<sup>2</sup> Ibid.

<sup>3</sup> Quoted in Michael Mandelbaum, "The Reluctance to Intervene," *Foreign Policy*, no. 95 (Summer 1994): 3-19; *Proquest*, CD-ROM, University Microfilms Inc. (UMI), 23 February 2000.

## **Part 2**

# **SOVEREIGNTY, INTERNATIONAL LAW, AND HUMANITARIAN INTERVENTION**

Kofi Annan's adamant statement seems morally laudable, but challenges the internationally cherished value of national sovereignty. It is controversial because it exposes the tension between the human rights of individuals within states, and the need for an ordered international system that respects the state as the political agent of those individuals. This need for order has made state sovereignty the cornerstone of international relations for several centuries. In the modern international system, the UN Charter establishes sovereignty as a fundamental principle in Chapter I, Article 2, particularly in 2(1), 2(3) and 2(4):

1. The Organization is based on the principle of sovereign equality of all its Members.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.<sup>1</sup>

The only exceptions to Article 2, which permit the use of armed force, are in Chapter VII, Articles 39, 42 and 51. Article 39 provides for the Security Council to take measures on threats to the peace:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.<sup>2</sup>

In keeping with Article 42, the Charter permits armed intervention in the cases where diplomatic and economic efforts under Article 41 fail:

Should the Security Council consider the measures provided for in Article 41 would be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.<sup>3</sup>

Article 51 offers the other exception, which permits use of armed force for acts of self-defense:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.<sup>4</sup>

These portions of positive international law seem clear on the issue of sovereignty. They do not specifically provide for breaches of sovereignty with armed force for humanitarian reasons. As modern states (since the 19<sup>th</sup> century) have progressed into more interdependent relationships, however, commentaries on the Charter suggest a progression from “international law of coexistence” to “international law of cooperation.” Sovereignty has evolved from being an end in itself, to becoming a means to an end for states to cooperate in securing common interests, yet still maintain international order. Among those common interests are the “welfare interests of their constituent peoples.”<sup>5</sup> These welfare interests include the ability of constituents to self-determine the nature of government and the social order under which they live. Sovereignty assists the other international ideal of “nonintervention,” deemed necessary to protect the individual political rights of constituents to determine the character of their political community.<sup>6</sup> Even when that community is politically repressed, or experiencing civil war, nonintervention is critical to allow self-determination. Michael Walzer, a self-acknowledged proponent of nonintervention, notes:

So it seems best that people who have lived together in the past and will have to do so in the future should be allowed to work out their difficulties without

imperial assistance among themselves. The resolution won't be stable unless it is locally grounded; there is little chance that it will be consensual unless it is locally produced.<sup>7</sup>

Yet conversely, today, a moral dilemma arises when a state abuses individual human rights on a scale which shocks human consciences (as with genocide or slavery for example); or is unable or unwilling to respond to disasters or other extreme human suffering. Strict respect for nonintervention may result in the sacrifice, by large numbers of people, of natural law rights to life, freedom, and property. John Charvet (London School of Economics) concludes:

The recognition of human rights in international law can be seen to be required by the ideal basis of its authority. For on the general will theory of the sovereignty of a state, the authority of any state over its citizens depends on its recognition of their equal rights to the basic human goods of life, liberty and property; on this basis a state that lacks such authority should not be recognized as a valid member of international society.....On this view, the general will of the states, is ultimately composed of all the general wills of the members of those states. In this sense, the ultimate sovereign of international society is humanity as organized into distinct states.<sup>8</sup>

The scope of this discussion limits exploration of the evolution and interpretation of where sovereignty begins and ends. Suffice to say, in theory, it embodies complex moral, political and legal dimensions, and is an important element in orderly global relations.

### **Humanitarian Intervention Defined; Previous Interventions and the UN**

Given this complexity, it is important to establish the definition of a “humanitarian intervention” in order to recognize the controversies invoked by these operations, in relation to sovereignty. In *Humanitarian Intervention and the Legitimacy of the Use of Force*, Peter Malanczuk excludes various intervention definitions. For example, state action to rescue nationals, UN or unilateral humanitarian operations performed at the invitation of a state, and interventions by states with interests other than humanitarian, fall outside the “humanitarian intervention” definition.<sup>9</sup> In particular, humanitarian interventions include military operations—

not merely economic, diplomatic, and political interference—in a sovereign state’s affairs to protect human rights recognized under natural, customary, or positive international law. For this discussion, Malanczuk’s framework for humanitarian intervention is used:

....whether and under which conditions it is permitted under international law to intervene – or threaten to intervene – by armed force in another state for humanitarian reasons without the consent of its government. This includes two different types of action: first, intervention as a collective action by, or authorized by, a competent global or regional organization and, second, multilateral or unilateral action by states without such authorization.<sup>10</sup>

Interestingly, these two different types of action form the basis for many legal debates about the legitimacy of interventions, like NATO’s Operation ALLIED FORCE air campaign in Kosovo. The debates center on the legality of intervention under the UN Charter as it is written, versus customary law and international human-rights law. The Charter fails to provide for the use of force (when political, diplomatic, and economic means have failed or are not timely enough) to stop massive human rights abuses when state sovereignty under Article 2(4) may be violated. This clashes with an ongoing trend to prioritize human rights in international law, in keeping with the 1948 UN Declaration of Human Rights. The developing international human-rights law, such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the 1984 Convention Against Torture, holds states responsible for respecting the conventions.<sup>11</sup> Yet, Catherine Guicherd, Deputy for Policy Coordination to the Secretary General at the NATO Parliamentary Assembly, notes, “a definition of ‘gross and massive violations of human rights’ is nowhere to be found.” The conventions lack the means to enforce provisions or prevent these crimes, thus creating the impetus for either UN-sanctioned or unilateral humanitarian interventions.<sup>12</sup> She concludes:

But what is also common to international human-rights law and humanitarian law is that however sophisticated they are becoming in laying out sanctions, they are silent on preventative measures. Yet, it is precisely the prevention of massive human-rights violations or humanitarian catastrophes that has become the basis of

‘humanitarian intervention’ practices in recent years. These practices have not yet been codified into law. The only certainty about them is that, increasingly, they give primacy to human rights over the sovereignty of states, when the two principles conflict.<sup>13</sup>

Uncomfortable with “legally” disregarding sovereignty, states have historically sought UN support to intervene under Chapter VII as responses to threats to international security, or under Article 51, as acts of self-defense. For example, on 5 April 1991, the ground-breaking Resolution 688 authorized intervention in Iraq to protect the Kurds, but stopped short of sanctioning armed force to enforce protected enclaves in northern Iraq.<sup>14</sup> Resolution 770 (13 August 1992) permitted “all measures necessary” for providing humanitarian relief in Bosnia-Herzegovina.<sup>15</sup> On 3 December 1992, the Security Council authorized Operation RESTORE HOPE under Resolution 794, using the “threat to international peace and security” justification.<sup>16</sup> Subsequent resolutions for operations in Rwanda (Resolution 929, 22 June 1994), Haiti (Resolution 940, 31 July 1994), and Albania (Resolution 1101, 28 March 1997) followed similar thinking and included the provision for any means necessary, i.e., armed force.<sup>17</sup> India argued for UN support on behalf of the Bengali people in East Pakistan in 1971. Receiving none, the subsequent attack by India on Pakistan, to stop atrocities against the Bengalis, was “legally” justified under the Article 51 self-defense provision, after a Pakistani air strike on India.<sup>18</sup>

Despite these successful efforts to gain legal legitimacy under the UN Charter, states will continue to face difficulty in legally justifying humanitarian interventions at the expense of sovereignty. This is particularly true for unilateral interventions. Even if attempting to justify intervention under human rights aspects of customary international law, sovereignty is weighted heavily in that custom. Dr. Albrecht Randelzhofer, in a legal commentary on Article 2, asserts: “The overwhelming majority of writers on international law consider Art. 2(4) to be part of customary international law.”<sup>19</sup> Yet he acknowledges the inadequacy of the Charter in balancing

the compelling moral and political factors which must be weighed with the legality of humanitarian interventions. He notes:

It must be admitted, though, that as long as a functioning system of collective sanctions is not in place, states might find it difficult to abide by Art. 2(4). This applies in particular to cases, such as the Israeli raid on Entebbe, where the requirements of the prohibition of the use of force conflict with moral values.<sup>20</sup>

In the end, legalities may conflict with the moral forces that must sometimes compel multilateral or unilateral interventions—even without UN Security Council support.

### **Operation ALLIED FORCE's Legal Issues**

The NATO intervention in Kosovo provides an excellent example of Randelzhofer's point. NATO countries debated within the alliance to establish legitimate legal authority for military action in Kosovo, after the UN Security Council passed Resolution 1199 on 23 September 1998. Resolution 1199 invoked Chapter VII provisions, declaring the Yugoslav army's action against the Kosovo Liberation Army (KLA) in the summer of 1998, a threat to international peace and security. The action against the KLA resulted in the eviction of over 250,000 ethnic Albanians from their homes, with 80,000 refugees flowing into neighboring countries.<sup>21</sup> The moral imperative to act was clear—especially given the history of previous atrocities committed by all parties in Bosnia. Yet the Resolution did not specifically authorize force, and later on 24 October 1998, Russia and China established their opposition to the use of force by abstaining on Resolution 1203.<sup>22</sup> Resolution 1203 endorsed an October 1998 agreement between Ambassador Holbrooke and Serb President Milosevic, but left room for NATO to use necessary force for “rescue” of OSCE monitors in Kosovo. Russia and China specifically worded their voting statements to exclude the use of force in Kosovo under any circumstances.<sup>23</sup> Without further specific Security Council authorization, NATO was not on solid legal footing to carry out

their threats of force. Further, the Council had not yet voted to exercise other coercive options under Chapter VII, such as sanctions. This might suggest that force was not yet the last resort, but Serb noncompliance with previous resolutions left the door open for NATO arguments.

Without the Security Council's specific authorization, NATO's decision to use force fell outside the clear mandate of the UN Charter. Nevertheless, NATO countries presented substantial arguments for legal legitimacy under the existing Security Council resolutions and under general international law.<sup>24</sup> The first of these arguments suggested that Resolutions 1199 and 1203 made references to possible further action and also demanded Serb compliance with the NATO Air Verification Mission over Kosovo.<sup>25</sup> Because the references suggested that future action was likely, NATO argued that the resolutions provided a legal basis for military operations. Second, in response to a Russian sponsored resolution to cease all military action against Yugoslavia, 12 countries voted against it and 3 voted for it. This collective response, coupled with the solidarity of 19 nations in NATO, also demonstrated enough international consensus to support multilateral military intervention by a regional security organization within its geographic influence.<sup>26</sup> A troubling factor, though, was the nature of the NATO alliance. The offensive action of the Kosovo air war contradicted the defensive mandate of NATO. However, the NATO alliance could claim, congruent with a US argument citing a threat to international peace and security, that the operation acted to defend stability in the European theater. Under general international law, the UK argued that previous UN resolutions in Bosnia and Somalia established legal precedent for humanitarian interventions. Moreover, in October 1998, the UK Foreign and Commonwealth Officer clearly articulated the need for a timely response to avert a humanitarian disaster:

There is convincing evidence of an impending humanitarian catastrophe (SCR 1199 and the UNSG's and UNHCR's reports). We judge on the evidence of FRY

handling of Kosovo throughout this year that a humanitarian catastrophe cannot be averted unless Milosevic is dissuaded from further repressive acts, and that only the proposed threat of force will achieve this objective....if action through the Security Council is not possible, military intervention by NATO is lawful on grounds of overwhelming humanitarian necessity.<sup>27</sup>

Taking a different approach, the US turned to the threat to international peace and security and considered the destabilization of neighboring countries as a central argument for legitimacy. Germany and France attacked the issue with a combination of arguments. They interpreted the intent of UN resolutions 1160 and 1199 provided for the use of force and also emphasized the unique emergency nature of the human situation.<sup>28</sup> Clearly, this intense effort by NATO reflects the continued reluctance of nations to reject sovereignty without international legal legitimacy and compelling human rights arguments.

### **Legal Conclusions on Kosovo**

Standing alone, the UN Charter does not legally support the NATO armed intervention without the Security Council's specific authorization. China and Russia's specific opposition to force in their voting statements on Resolution 1203 emphasized the lack of support. Yet, the absence of adequate international law to address humanitarian interventions does not eradicate the moral and political imperatives that may be present. In his article, "NATO's 'Humanitarian War' Over Kosovo," Adam Roberts best acknowledges the legal difficulties:

The question of the military means pursued by NATO to secure the proclaimed political and humanitarian ends was bound to affect judgements about the legality of the operation. NATO's reliance on bombing did give rise to questions....about its appropriateness so far as protecting the inhabitants of Kosovo was concerned, and about its conformity with the laws of war.<sup>29</sup>

This recent humanitarian intervention may stand on shaky legal grounds, but the debate's controversy suggests that NATO had substance for action on moral grounds. In this case, moral judgments by NATO leaders carried more weight than international law under the UN Charter.

Up to this point, the discussion has considered the importance of sovereignty in the international system; suggests a traditional debate exists between individual and state rights in respecting sovereignty; establishes the general definition of humanitarian intervention; and discusses Kosovo as a recent study in the legal debate over such interventions. Aside from the legal contradictions, cases like Kosovo illuminate the competing moral and political factors that must be weighed in each unique situation. The just war tradition provides an appropriate framework to explore these factors. To begin, it's helpful to review the just war principles governing decisions to initiate war—*jus ad bellum* factors—which might be debated in considering such operations.

### Notes

<sup>1</sup> Bruno Simma, ed., *The Charter of the United Nations: A Commentary*, (New York: Oxford University Press, Inc., 1994), 72.

<sup>2</sup> *Ibid.*, 605.

<sup>3</sup> *Ibid.*, 628

<sup>4</sup> *Ibid.*, 661.

<sup>5</sup> *Ibid.*, 85.

<sup>6</sup> Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, (Upper Saddle River, N.J.: Prentice-Hall, Inc., 1999), 197.

<sup>7</sup> Michael Walzer, "The Politics of Rescue," *Social Research* 62, no. 1 (Spring 1995): 2; *Academic Search Elite*, on-line, Ehost, 4 February 2000.

<sup>8</sup> John Charvet, "The Idea of State Sovereignty and the Right of Humanitarian Intervention," *International Political Science Review* (1997)18, no. 1: 47.

<sup>9</sup> Peter Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force* (Amsterdam: Het Spinhuis Publishers, 1993), 2.

<sup>10</sup> *Ibid.*, 3.

<sup>11</sup> Catherine Guicherd, "International Law and the War in Kosovo," *Survival* 41, no. 2 (Summer 1999): 21; *Proquest*, CD-ROM, UMI, 23 February 2000.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, 22

<sup>14</sup> *Ibid.*, 23

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Michael Walzer, *Just and Unjust Wars*, 2d ed. (United States: BasicBooks – div Harper Collins Publishers, 1977; Preface to Second Edition, 1992), 106.

<sup>19</sup> Simma, 126.

## Notes

<sup>20</sup> Simma, 128.

<sup>21</sup> Guicherd, 25.

<sup>22</sup> Guicherd, 28.

<sup>23</sup> Guicherd, 29.

<sup>24</sup> Adam Roberts, "NATO's 'Humanitarian War' over Kosovo," *Survival* 41, no. 3 (Autumn 1999): 105; *Proquest*, CD-ROM, UMI, 23 February 2000.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, 106.

<sup>28</sup> Guicherd, 27.

<sup>29</sup> Roberts, 108.

## Part 3

### JUS AD BELLUM PRINCIPLES

Although Saint Augustine is considered by many to be the father of the modern just war tradition, the ideas of Saint Thomas Aquinas and Hugo Grotius refine and expand Augustine's *jus ad bellum* concepts with more secular emphasis. In *Summa Theologica*, using Roman ideas from Cicero, Aquinas described the concept of "natural law," saying, "It follows therefore that natural law in its first common principles is the same among all men, both as to validity and recognition (i.e. something is right for all and is so by all recognized.)"<sup>1</sup> This very important principle establishes that natural laws exist which apply to all individuals. It thereby forms the foundation for customary law (dynamic norms and standards internationally recognized and respected, even if not documented) and positive law (documented agreements in treaties, charters, conventions, etc). Aquinas expanded Augustine's *jus ad bellum* conditions (further completed by Grotius), introducing the concept of proportionality and the **doctrine of double effect**:

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental...Accordingly, the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore, this act, since one's intention is to save one's own life, is not unlawful, seeing that it is natural to everything to keep itself in "being," as far as possible. And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end.<sup>2</sup>

Although this idea was intended to evaluate morality of self-defense, it carries over to other aspects of just war. Unintended bad effects are weighed against the intended good effects to determine if they remain proportional to the good effect. If so, then the war may be considered just, if all the other just war criteria have been met. In the case of a humanitarian intervention, this idea of proportionality is very important and can be complicated by the unique nature of these endeavors—more discussion on this later.

Grotius developed and secularized the just war tradition. Considered the father of international law, his ideas refined moral ideas, practices, custom, and reason into a more objective basis for justice in human activities.<sup>3</sup> Full attention to his motivation and body of work, including a discussion of his *jus in bello* principles related to the conduct of a war, is outside the scope of this paper. However, one can look at Grotius' six conditions—just cause, proportionality, reasonable chance of success, public declaration, legitimate authority, and last resort—to help examine the moral, political and legal dilemmas that humanitarian interventions raise. The condition of public declaration is not particularly relevant in modern practice and is omitted. Additionally, right intention is another condition that Augustine introduced, but Grotius excluded.<sup>4</sup> Right intention, for example, might be questioned if one state claims to intervene in another for gross human rights violations, but is in fact motivated to replace a government for economic self-interest.

Humanitarian interventions explored in this discussion, such as NATO's recent action in Kosovo, illustrate clear cases of large-scale human rights abuses. For this paper, right intention is assumed if just cause is established, regardless of other political interests that support collective or unilateral international action. Legitimate authority is increasingly associated with international legitimacy—either through direct UN Security Council authorization or a politically

viable, but internationally undefined, standard of consensus. The example of legitimate authority in Kosovo has been discussed earlier in the context of legal legitimacy. Legitimate authority for NATO action was not clearly established by UN Security Council authorization, and was marginally supportable under international human-rights law. The lack of legal legitimacy, however, is countered by moral legitimacy. So, the remainder of this analysis focuses on just cause, proportionality, reasonable chance of success, and last resort, particularly in the case of Operation ALLIED FORCE in Kosovo.

### **Just Cause**

For Grotius, just cause meant that an injury had occurred. This could mean an act of self-defense was necessary or that some violation of rights warranted a response with force. Often, humanitarian interventions have responded to aggressive acts taken by states against groups of its constituents. Although the abuses frequently occurred in the context of civil wars or secessionist movements, the interventions were warranted based on the scope and indiscriminate nature of the aggression against noncombatants. Walzer writes:

Humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts “that shock the moral conscience of mankind.” The old-fashioned language seems to me exactly right. It is not the conscience of political leaders that one refers to in such cases....The reference is to the moral convictions of ordinary men and women, acquired in the course of their everyday activity.<sup>5</sup>

A classic example of just cause in a humanitarian intervention is India’s 1971 invasion of East Pakistan, in defense of the Bengali people. The Pakistani government faced a secessionist movement in Bengal and responded with brutal force. Walzer again:

The government of Pakistan...literally turned an army loose on its own people....a Punjabi army loose on the Bengali people....The army was not entirely without direction; its officers carried “death lists” on which appeared the names of the political, cultural, and intellectual leaders of Bengal. There was also

a systematic effort to slaughter the followers of these people: university students, political activists and so on. Beyond these groups, the soldiers ranged freely, burning, raping, killing.<sup>6</sup>

Millions of refugees fled into India. The Indian government responded in December 1971, effectively driving the Pakistani army out, and then departed. Although the Indian government achieved political benefits by ultimately reacting to a Pakistani air strike, their action was compelled by the Pakistani brutality. The cause was just—regardless of the full intention of the Indian government. Yet under Article 2(4) of the UN Charter, the violation of Pakistan's sovereignty was illegal. Customary law also recognizes the importance of sovereignty, as discussed earlier, thus explaining India's efforts to gain UN support. But the scope of the repression clearly crossed the line which "shocked" the average human conscience. One could easily argue that the natural law rights of the Bengalis were massively violated. The morality of inaction would be as arguable as military intervention to stop the atrocities.

### **Just Cause and Kosovo**

Kosovo provides another example of just cause for intervention. Although an internal political struggle existed between the KLA and the Serb government, Milosevic's well-planned strategy to terrorize and expel Kosovo's Albanian population showed no discrimination between combatants and noncombatants. In fact, his objective was to isolate the KLA by assaulting and ethnically cleansing the ethnic Albanian population.<sup>7</sup> Reverend J. Bryan Hehir makes the decisive argument for just cause in Operation ALLIED FORCE:

The first question of the traditional ethic is determining just cause: Are the values at stake in a particular conflict of such character that the conscious, systematic taking of life (and risking lives) may be required to preserve them? At one level, the story of Kosovo yields a decisive yes to this question: over one million people driven from their homes by brutal methods of killing, rape, burning, and looting of their villages....If the product of this planned rationality does not constitute just cause, it is difficult to know what the category means.<sup>8</sup>

Just cause in humanitarian interventions can be more difficult to determine in cases where ethnic conflicts and civil war cause widespread suffering for multiple groups of people. Certainly the conflicts in the Balkans over the last decade have spawned atrocities against all ethnic groups. Kosovo offered a clear just cause for intervention to help ethnic Albanians. But additionally, bitter feelings left by the Yugoslav army and Serb paramilitary atrocities threaten the remaining Serb civilian minority in Kosovo with retaliatory abuse. In such interventions, political considerations may weigh more heavily than moral ones, as decision-makers sort out whose cause justifies a military response. Clearly the political climate in America, as a result of failures in Somalia, contributed to the United States' reluctance to help stop genocidal atrocities in Rwanda—in spite of “just cause.” In the Balkans, the track record of atrocities, NATO interests, previous air strikes and diplomatic efforts, the media, and the absence of a US presidential election, created a more favorable political climate to act in Kosovo. Many could effectively argue that abuses of Serb citizens in earlier conflicts offered just cause for intervention as well. However, the plight of Serb civilians was likely overlooked because of common perceptions of Serb forces as “aggressors.” So despite moral evidence for just cause, the balance of other factors often makes action (or inaction) inconsistent among humanitarian interventions.

### **Proportionality**

Similarly, proportionality offers perhaps the most difficult *jus ad bellum* standard in interventions and it must be reevaluated for relevance even after hostilities commence. The introduction of military force, with expected collateral civilian casualties and property damage, makes the decision to use such measures—in the name of human rights—morally and politically

controversial in democratic societies. Assuredly, innocent people can be expected to lose their basic rights to life and property in collateral damage incidents, regardless of sincere efforts to minimize the damage. Political leaders can expect these events to fuel the fire of opposition for forceful humanitarian interventions. In response to the moral dilemma, ironically, civilian and military leaders now more readily turn to air power as a “clean” answer to this difficult issue. The remarkable advances in military technology provide significant improvement to targeting accuracy and reduced potential for collateral damage. Such advancement, coupled with political reluctance to accept friendly casualties, tempts politicians to see airpower as a panacea for the complexities of humanitarian interventions. The irony is that airpower may make proportionality in the conflict more acceptable, morally and politically. Therefore military intervention may be more readily employed in lieu of skillfully exercised diplomacy and negotiation, backed by a credible military deterrent.

### **Proportionality and the Balkans**

In spite of its effectiveness, the use of airpower in the ongoing Balkan conflicts suggests political leaders may rely too heavily on it for bloodless solutions to complex problems. In 1993-1994, “US political leaders were the most outspoken advocates of the punitive use of airpower in the Balkans.”<sup>9</sup> Operation DENY FLIGHT escalated into Operation DELIBERATE FORCE in 1995, with airpower used as the weapon of choice to leverage diplomatic efforts to bring Serbs to conclusive peace negotiations.<sup>10</sup> That success perhaps established unrealistic expectations in NATO about airpower’s value as a deterrent to Serb policies in Kosovo. Some argue that the increasingly successful Croat and Bosnian ground war against the Serbs, combined with airpower, influenced the negotiations more effectively than airpower alone. However, the US political leadership was not prepared to commit large numbers of ground troops for a peace

enforcement operation in either Bosnia or Kosovo. Precision weapons in airpower provided the essential element to meet the challenge of proportionality and make the intervention politically feasible. In his air campaign study of the Balkans, Colonel Robert Owen's assessment is clear:

Precision guided munitions (PGM) made DELIBERATE FORCE possible...Precision weapons gave NATO airmen the ability to conceive and execute a major air campaign that was quick, potent, and that likely would not kill people or destroy property to an extent that would cause world opinion to rise against and terminate the operation...Had NATO and UN leaders expected enough collateral damage to give the Serbs a political lever, they probably could not have approved initiation of DELIBERATE FORCE, or, if it had begun, they probably could not have sustained it politically for long.<sup>11</sup>

Politically, Operation DELIBERATE FORCE seemed a success, as it culminated in the Dayton Accords in November 1995. Yet the history of ethnic violence in the Balkans is a complex one. The bitterness left from the Croatia/Serbia conflict and the Bosnian war has dictated protracted peace enforcement operations in Bosnia. The US must continually weigh the political proportionality of entering such a long-term commitment, with the moral urgency and national interests at stake. The danger lies in political leaders relying on airpower to remedy *jus in bello* proportionality issues, at the expense of weighing the *jus ad bellum* proportionality decisions for the long term. In other words, morally and politically it's easier to intervene with airpower thinking that it provides a "cleaner" and quicker option. In fact, an air war might be morally cleaner in avoiding collateral damage, and politically more palatable in the short term, but may not be decisive in the long term. Reliance on airpower can invite intervention without the national moral commitment to self-sacrifice for that decision in the long term. Self-sacrifice means a long-term commitment of money, troops, and resources to maintain stability in the region, in addition to possible combatant casualties. This sacrifice may be required in a humanitarian intervention to establish favorable conditions for other agencies and indigenous sources to address issues underlying the problem.

## Proportionality and Kosovo

The United States and NATO's plan not to commit ground forces in Kosovo reflected this continued idealism about airpower. Interestingly, political leaders regarded an air campaign of 37,465 sorties, that employed 912 aircraft and 35 ships as, "...not a war."<sup>12</sup> Perhaps not in legal terms, but realistically, an airpower campaign can be expected to cause some unintended damage to noncombatants and friendly casualties. Further, the bombing campaign adopted attacks on Serbia to directly influence the leadership by hitting strategic military targets, and indirectly, through pressuring the Serb populace. This employment of airpower can have unintended consequences. In today's interdependent global environment, civilian and military infrastructures have become increasingly tied together. The destruction of this infrastructure, such as communications networks and electrical grids, can have adverse affects on essential emergency services, particularly in urban areas.<sup>13</sup> Exacting targeting and careful effects analysis can alleviate some of these moral concerns, however, the politically sensitive nature of such operations can constantly drive formerly tactical decisions to the strategic level. Such centralized control and centralized execution burdens efficiency in a military air campaign. Further, the restriction of NATO aircraft to 15,000 ft, to minimize friendly casualties at the expense of potential noncombatants, indicated political aversion to explain losses for a mostly humanitarian effort. The lesson here is that airpower alone has its own *jus in bello* moral limitations that affect *jus ad bellum* proportionality considerations.

Without US commitment to insert ground forces, NATO countries were unlikely to embark in a ground campaign alone. One might expect, however, that the risk of combatant losses and the collateral damage to noncombatants in a ground war might be morally disproportionate in a humanitarian operation. Furthermore, the air campaign was ultimately successful in forcing the

Serb forces out of Kosovo with NATO-inflicted noncombatant casualties proportionate to the magnitude of the Albanian expulsion. The United Nations High Commissioner for Refugees (UNHCR) estimated that close to 500,000 people were displaced within the region and to bordering areas by 23 Mar 99.<sup>14</sup> After the bombing campaign commenced, stepped-up ethnic cleansing drove close to a million refugees into neighboring countries and regions.<sup>15</sup> NATO and Kosovo's Albanians—who suffered the most—reject reports that the bombing caused the magnitude of the crisis. Jonathan Steele, a reporter in Kosovo for London's *The Guardian*, wrote:

Whatever motive best explains the atrocities committed by the Serbs after NATO started its bombing, no Albanians say NATO was wrong. Those Western critics who condemn the bombing for turning a humanitarian crisis into a catastrophe get short shrift in Kosovo. Albanians were the primary victims and there is an almost universal feeling that, although the price was far bloodier than expected, it was worth paying for the sake of liberation from Serb rule.<sup>16</sup>

In sum, in Kosovo, the air campaign was a morally and politically proportional choice. However, a credible commitment to send ground troops, coupled with airpower, more appropriately supports the decision to get involved at all. That commitment would have reflected careful consideration of long term political proportionality and a decision in favor of long-term improvements. Previous NATO jitters about political proportionality in the Balkans had damaged its credibility for action with the Serb government. Milosevic only needed to look to Somalia and the Bosnian war for predictors of US political resolve to accept long-term involvement in the face of friendly losses. The lack of commitment by the US to accept casualties will continue to be used by potential adversaries in the future to deter our involvement in largely “humanitarian” matters. Political proportionality may outweigh moral just cause in these cases.

## Reasonable Chance of Success and Last Resort

The previous discussion of *jus ad bellum* proportionality in Kosovo only scratches the surface of moral and political issues in interventions. In addition, proportionality will require constant reassessment as the operation continues and political objectives may change as a result—another onerous characteristic of interventions. The *jus ad bellum* principles of reasonable chance of success and last resort are also important tests for intervention. Reasonable chance of success incorporates realistic limitations that constrain moral action in all cases. The operation must offer realistic opportunity to succeed within the test of proportionality. For example, military intervention in China, North Korea, or Russia to stop human rights abuses could likely escalate into a devastating conflict or even nuclear war. The adverse effects for noncombatants and combatants alike are certain. That defeats proportionality and does not offer a reasonable chance of success to change policy except by a costly war.

Last resort is a related notion, but can be difficult to meet in cases of extreme human necessity. Diplomatic and economic measures should normally be exhausted before resorting to force. However, in cases where human suffering or genocidal acts are occurring, waiting to exhaust these methods compounds the suffering to an unacceptable level. In 1994, the genocidal rampage of Hutu extremists in Rwanda resulted in the deaths of over half a million Tutsis and moderate Hutus in 100 days.<sup>17</sup> The massacre could have been averted with a military intervention:

...Tutsis and moderate Hutus were hacked to death by extremist mobs, generally armed only with machetes. A competent infantry force could have subdued the murderous minions of the Hutu extremists; indeed, the UN peacekeeping commander on the scene at the time, Canadian Gen. Romeo Dallaire, believed the worst of the killings could have been prevented had his 2,500-strong force been augmented to a total size between 5,000 and 8,000.<sup>18</sup>

In this case, last resort would have been a moot point since thousands would be dead in the time taken to find diplomatic or economic solutions. Further, with failed states or a country in political disarray, diplomatic or economic measures may be empty methods. In such cases the humanitarian intervention poses competing moral and political values as well. A reasonable chance of success for stopping the tragedy in the short term is morally and politically high. The test of last resort is met because no other means is effective. In the long run, however, reasonable chance of success may be politically impossible if conflict resolution mechanisms in the country are absent, even with long term outside assistance. Moral commitment to help becomes politically unfeasible. Michael Mandelbaum observes, “The task of alleviating suffering inevitably involves political consequences when suffering has political causes....Stopping a war requires settling the questions—political questions—over which it is being fought.”<sup>19</sup> Somalia, after Operation RESTORE HOPE, offers a good example. In this case, an absence of political cohesion among the population is the political question. Until the country can muster enough internal political unity, coherent leadership, and material resources to benefit from long term outside assistance, its status as a state seems out of reach.

### **Reasonable Chance of Success, Last Resort and Kosovo**

Unlike Somalia, Operation ALLIED FORCE passes the test for reasonable chance of success and last resort in the short term, but may fail reasonable chance of success in the long term. Morally, the decision to conduct an air war offered a proportional opportunity to expel Serb forces from Kosovo, in spite of stepped up Serb attacks on ethnic Albanians after it commenced. It seems very unlikely that the Serbs would have been abandoned their plans to ethnically cleanse Kosovo, if NATO didn't initiate an air campaign. Last resort was justifiably met. Serb violations of the October 1998 agreements brokered by US envoy Richard Holbrooke

to reduce security forces and end mass murder and expulsions in Kosovo surfaced again on 15 January 1999. 45 ethnic Albanians were killed in Recak, near Pristina, and more killings and expulsions soon followed.<sup>20</sup> Further, the Rambouillet Accords in February 1999 ended in failure as well. Given the track record of the Serbs, force seemed inevitable and a last resort. The long term reasonable chance for success may eventually fail because the political basis of the conflict—Kosovo’s move for autonomy and Serbia’s attempt to expel ethnic Albanians from a region closely linked to Serb national identity—has not been satisfactorily resolved. The June 1999 settlement provided autonomy for Kosovo within the Federal Republic of Yugoslavia (FRY), on similar footing with Montenegro and Serbia, but was ambiguously worded.<sup>21</sup> Yet the bitter legacy of the Serb atrocities leaves the small minority of remaining Serbs in Kosovo extremely vulnerable to backlash from the KLA. Further, with a primarily Albanian population, the temptation to seek independence as a state seems a likely incentive for future unrest between Kosovo and the FRY.<sup>22</sup> The Kosovo Force (KFOR) established under Security Council Resolution 1244 can provide security to rebuild a workable political consensus, but only if local political players really want it for the long term. History has shown the reluctance of residents of the region to let go of old grudges.

### Notes

<sup>1</sup> Christopher, 50.

<sup>2</sup> Ibid., 53.

<sup>3</sup> Ibid., 81.

<sup>4</sup> Ibid., 82.

<sup>5</sup> Walzer, *Just and Unjust Wars*, 107.

<sup>6</sup> Ibid., 105.

<sup>7</sup> Air University, “Final Report of the Air University Balkans Air Campaign Study,” *Air Command and Staff Resident Reading Programs Aerospace Operations Course Reading Book 6*, (Maxwell AFB, AL: Air University Press, 1999), 601.

<sup>8</sup> Reverend Bryan J. Hehir, “Kosovo: A War of Values and the Values of War,” *America* 180, no. 17 (15 May 1999): 8; *Proquest*, CD-ROM, UMI, 23 February 2000.

## Notes

<sup>9</sup> Robert C. Owen, "Final Report of the Air University Balkans Air Campaign Study," *Air Command and Staff Resident Programs International Security and Military Studies Course Reading Book 3*, (Maxwell AFB, AL: Air University Press, 1999), 634.

<sup>10</sup> *Ibid.*, 646.

<sup>11</sup> *Ibid.*, 652-3.

<sup>12</sup> Roberts, "NATO's War," 112.

<sup>13</sup> Charles Dunlap, "Technology: Recomplicating Moral Life for the Nation's Defenders," *Parameters*, Autumn 1999, 4; *Academic Search Elite*, on-line, Ehost, 23 February 2000.

<sup>14</sup> Roberts, "NATO's War," 114.

<sup>15</sup> *Ibid.*, 113.

<sup>16</sup> Quoted in Roberts, "NATO's War," 114.

<sup>17</sup> Michael O'Hanlon and Stephen J. Solarz, "Humanitarian Interventions: When is Force Justified?" *Washington Quarterly* 20, no. 4, 5; *Academic Search Elite*, on-line, Ehost, 4 February 2000.

<sup>18</sup> *Ibid.*, 5.

<sup>19</sup> Mandelbaum, 4.

<sup>20</sup> Roberts, "NATO's War," 113.

<sup>21</sup> *Ibid.*, 117.

<sup>22</sup> *Ibid.*, 117.

## **Part 4**

### **POLITICAL CONSIDERATIONS - PDD 25 AND FIVE GUIDELINES**

In concluding the analysis of reasonable chance of success and last resort, it is important to point out that the US and United Kingdom developed some political guidelines for the complex affairs of humanitarian interventions. These guidelines hope to ascertain when a “politically” reasonable chance of success in an intervention is present. On 3 May 1994, after US experiences in Iraq, Somalia, and Rwanda, President Clinton signed a Presidential Directive (PDD 25) “U.S. Policy on Reforming Multilateral Peace Operations.” This directive provides criteria to address the conflicting moral and political issues and establish a framework for US involvement.

It first establishes that:

Territorial disputes, armed ethnic conflicts, civil wars (many of which could spill across international borders) and the collapse of governmental authority in some states are among the current threats to peace. While many of these conflicts may not directly threaten American interests, their cumulative effect is significant.<sup>1</sup>

Secondly, it acknowledges US participation may serve US interests:

First, U.S. military participation may be necessary, at times, to persuade others to participate in operations that serve U.S. interests. Second, U.S. participation may be one way to exercise U.S. influence over an important UN mission, without unilaterally bearing the burden. Third, the U.S. may be called upon and choose to provide unique capabilities to important operations that other countries cannot.<sup>2</sup>

By these statements, the US establishes that it is able and interested in assuming a leadership role. Additionally, it acknowledges that the types of events often ripe for humanitarian

interventions (i.e. armed ethnic conflicts and failed states) can cumulatively create an effect that becomes a US interest. The PDD goes on to identify eight criteria for US support to UN proposed peace operations and nine criteria for actual US participation. A detailed review of the criteria is beyond this discussion, but a few key points jump out in regard to Kosovo.

Paraphrasing, they are:

1. UN participation must advance US interests and there is an international community collectively interested in multilateral operations.
2. There is a threat to or breach of international peace and security defined partly as “...gross violations of human rights coupled with violence, or threat of violence.”
3. The means to accomplish the mission are available, including the forces, financing and mandate appropriate to the mission.
4. Among the nine additional criteria for US participation are: Domestic and Congressional support exists or can be marshaled and the role of U.S. forces is tied to clear objectives and an endpoint for U.S. participation can be identified.<sup>3</sup>

Referencing these points respectively, NATO countries were compelled to intervene in Kosovo for humanitarian reasons, destabilizing refugee flows in the region, and foreign policy credibility. U.S. interests, while not vital, were tied to its leadership within NATO and the action was consistent with national security policy on human rights. The UN Security Council Resolution 1199, while not authorizing force specifically, did establish the international community’s objection to the events in Kosovo. The threat to international peace and security was specified in the resolution. A lack of a clear UN mandate for force was missing, but NATO consensus might be construed as a mandate for US involvement. The means to intervene clearly existed with the combined forces of NATO. However, continued demands on US troops to participate in these operations must be constantly considered, especially in light of significant domestic military reductions. Domestic and Congressional support was divided over ALLIED FORCE, as might be expected in this type of scenario. The existence of friendly casualties would have likely eroded support for the intervention, thus explaining the political hesitation to

use ground forces. Finally, the last point is most problematic in many humanitarian interventions. Clear objectives are critical to keep a focused strategy. They may be adjusted, however, as proportionality is reconsidered throughout the conflict. That creates a slippery political slope and forces military leaders to execute combat operations in an ambiguous political climate. Ambiguity associated with extra political “fog and friction” introduces increased risk to successful prosecution of the conflict. Further, as discussed earlier, a clearly defined endpoint may not be possible. Kosovo will take a long time to bridge its ethnic divisions, if ever. The political proportionality of US involvement will assuredly be reassessed against moral proportionality there in the future.

Interestingly, the PDD includes a caveat to eliminate the discipline of strictly meeting each criteria before proceeding:

These factors are an aid in decision-making; they do not by themselves constitute a prescriptive device. Decisions have been and will be based on the cumulative weight of the factors, with no single factor necessarily being an absolute determinant.<sup>4</sup>

This caveat acknowledges that peacekeeping doesn't easily conform to a standardized recipe for action and gives political wiggle room to respond accordingly. The danger, of course, is an apparently incoherent foreign policy. Unlike peacekeeping, the ideal humanitarian intervention would permit rescuers a rapid response to correct a problem and then withdrawal of forces—reasonably sure of no repeat occurrence. Unfortunately, that scenario seems unlikely, with Africa offering many future prospects for other “Kosovos.” But PDD 25 at least provides guidelines for action in a tough global environment. Every situation demands careful analysis and discipline before committing forces, especially with the media instantaneously illuminating many world tragedies. Sovereignty still must hold its critical place in international law and order.

Similar to PDD 25, British Prime Minister Tony Blair devised five guidelines for intervention in the midst of Operation ALLIED FORCE. They warrant highlighting because he specifically expressed them in the context of Kosovo and reflect the notions of just cause, proportionality, reasonable chance of success, and last resort. He laid out five tests:

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?...Fourth, are we prepared for the long term?...And finally, do we have national interests involved?<sup>5</sup>

Embedded in the first point is the need to establish just cause for international legitimacy. The second suggests the notion of last resort before introducing military force. Sensible and prudent military operations imply proportionality considerations. Preparation for the long term shows respect for proportionality and reasonable chance of success. If military intervention is necessary, with all its related negative aspects, then long-term commitments must be anticipated to facilitate conflict resolution. Finally, national interests are broad and can be argued to include the character of the world in which we live. Ultimately, moral judgements must be made about that character. As global interdependence grows, it's becoming more difficult to retreat to previously comfortable arguments about sovereignty to avoid entanglements. However, harsh realities of political relationships, legal inconsistencies in international law, and resource limitations may make that argument an attractive alternative to violence.

### Notes

<sup>1</sup> Presidential Decision Directive 25, "U.S. Policy on Reforming Multilateral Peace Operations, 22 February 1996, 10; on-line, Internet, 6 March 0000, available from <http://www.fas.org/irp/offdocs/pdd25.htm>.

<sup>2</sup> Ibid., 4.

<sup>3</sup> Ibid., 4.

<sup>4</sup> Ibid., 5.

<sup>5</sup> Roberts, "NATO's War," 119.

## **Part 5**

### **Summary**

There is no single right answer for humanitarian intervention. Good or bad, the information explosion on the planet brings harsh realities of the human condition into our living rooms. US response to this information is limited in legal, political, and moral dimensions and Operation ALLIED FORCE clearly exemplifies the depth of those dimensions.

Respect for state sovereignty introduces the first legal dilemma to consider before taking military action to intervene. Most states recognize moral correctness in observing international law as a critical restraint on state behavior in the international system. One can look at the active state arguments for legal legitimacy in humanitarian interventions like Kosovo to affirm this. Respect for sovereignty is reflected in its written protection in the UN Charter, as well as its valued place in customary international law. Sovereignty provides protection for political communities to self-determine and govern their own affairs. However, equally valued are human rights for individuals within those communities. The trends in international human rights law, the spirit of the UN Charter—eloquently referenced by Kofi Annan in his remarks, and natural law as the fundamental basis of natural law, suggest that state sovereignty cannot replace important individual human rights. The UN Charter fails to adequately resolve the unique conflicts of these ideals in humanitarian interventions. Operation ALLIED FORCE evoked

important legal controversies over these conflicting principles, but fails to meet strict legal standards for legitimacy under the UN Charter as it exists today.

Moral dimensions to humanitarian interventions emerge through the lens of *jus ad bellum* standards of just cause, proportionality, reasonable chance of success, and last resort. Just cause is usually easy to establish, especially with well-documented atrocities, but proportionality offers the more challenging principle. Proportionality regarding *jus in bello* standards, or how the war is conducted, affects the *jus ad bellum* proportionality standard. The interventions' objectives are to end suffering, not to create more. A military conflict will create some suffering and proportionality must be constantly weighed as it progresses. The *jus in bello* issues, like precision weapons and selective targeting in the Operation ALLIED FORCE air campaign, are very influential considerations for political leaders weighing proportionality.

Reasonable chance of success and last resort are difficult as well. A reasonable chance of success suggests that conditions creating the suffering should be corrected to prevent further occurrence. This leads to conflict resolution—likely to be a long-term commitment in the current global environment. Kosovo will require long term involvement and may ultimately fail to resolve its wounds from the war. Time will reveal the answer. Last resort may be impossible to meet if the intensity of the atrocities negates extensive diplomatic and economic measures. The mass killings in Rwanda demonstrated the urgency of quick action. Likewise, Kosovo could not endure protracted reluctance for action, considering NATO's diplomatic history with Milosevic.

Operation ALLIED FORCE met the standards for just cause. The air campaign was a morally and politically proportional choice to prosecute the intervention, however ground troops should not have been ruled out to satisfy political proportionality. Air power is not a panacea to

messy interventions. Morally, a credible commitment to the intervention demanded a willingness to accept casualties. This concern for losses, while morally responsible and desirable, weakens US resolve to prosecute its political objectives. Ultimately, the political objective becomes the limitation of casualties at the expense of other objectives. Similarly, in the short term, Operation ALLIED FORCE offered a reasonable chance of success. Long term stability in Kosovo, unfortunately, remains in question. Yet the immediate threat to the Albanian population has been removed and UN presence in KFOR, expanded beyond NATO, has restored legitimacy to the intervention.

The political dimension of intervention is revealed in its tensions with the moral side of *jus ad bellum* factors. PDD 25 criteria for peacekeeping and Prime Minister Blair's guidelines provide a political framework with which to analyze proposed interventions. Like the caveat in PDD 25, though, opposing priorities leave room for judgements. Ultimately, moral values of leaders and citizens determine the outcome of decisions to intervene. Respect for the law carries moral implications, but written legal standards will never be able to address all situations. Interpretations of whether *jus ad bellum* standards are met constitute a moral judgement. In sum, Former UN Secretary General Javier Perez de Cuellar accurately foreshadowed the challenges of Kosovo, eight years before Operation ALLIED FORCE:

We must now ponder this issue in a manner that is at once prudent and bold. In a prudent manner, because the principles of sovereignty cannot be radically challenged without international chaos quickly ensuing. In a bold manner, because we have probably reached a state in the ethical and psychological evolution of Western civilization in which the massive and deliberate violation of human rights will no longer be tolerated. It falls to us, therefore, to forge a new concept, one which marries law and morality.<sup>1</sup>

## Notes

<sup>1</sup> Speech given at University of Bordeaux, 1991; quoted in Kenneth R. Himes, "The Morality of Humanitarian Intervention," *Theological Studies* 55, no. 1 (March 1994): 88; *Academic Search Elite*, on-line, Ehost, 4 February 2000.

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