

## **Ethics, Diplomacy and Intervention in Kosovo**

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From the perspective of international law, NATO intervention in Kosovo suggests the potential for two developments. Whether motivated by genuinely normative concerns or by an awareness of the need in liberal democratic polities to maintain popular consensuses behind initiatives, there has been a more conscious effort made in the determination of bombing targets. This effort in the case of Kosovo continued the practice of the 1991 Persian Gulf War. The multilateral character of such interventions imposed certain constraints on the application of force. In the case of Kosovo, targets had to be cleared with military lawyers and with coalition partners. While such a process was followed, some would argue that no modern aerial bombardment can avoid producing an unacceptable level of collateral damage. In the absence of a ground war, Serbia was able to disperse its military forces, rendering it more difficult for bombers to distinguish between civilian and military targets. Serbian anti-aircraft defences, while not extremely effective in downing NATO planes, did have the effect of making NATO aircraft fly at high altitudes, again with the effect that discrimination between civilian and military targets becomes more difficult. To have flown at lower altitudes would have had the effect of enhancing the ability of bombers to discriminate between targets, reducing casualties among Serbian and Kosovar Albanian civilians, at the cost of potentially increasing casualties among pilots. NATO use of ground troops within Kosovo would have forced Serbia to concentrate their ground forces making it easier for a bombing campaign to hit military targets and to distinguish those targets from civilian facilities. The problem from NATO's point of view with both lower-altitude bombing and the use of ground troops was the risk of casualties. NATO understandably was concerned about the safety of its personnel for its own sake but, in addition, there was the fear that public

support in NATO nations for intervention might have eroded quickly if there had been casualties.

The other issue is the justification of the intervention itself. Traditional notions of international law and sovereignty presume that all states respect the authority of each state within its borders. While Slovenia, Croatia and Bosnia were republics with a constitutional right to secede, Kosovo had the status of an autonomous region within Yugoslavia as part of the Republic of Serbia. When efforts to bring about a negotiated settlement failed, NATO intervention was justified on humanitarian grounds, and some suggest that this marks a milestone in the development of international law, recognizing human rights and humanitarian concerns anywhere as a matter of concern for international law. Others are more skeptical.

In his impressive work, *The Balkans: Nationalism, War and the Great Powers, 1804-1999*, Misha Glenny surveys the history of the Balkans over the last 200 years. The Balkans have traditionally been an economically backward region of Europe, and have been the scene over at least the last 200 years of incredibly nasty and brutal violence. Glenny makes clear that the conventional assumption that the recent problems in the region reflect practically continuous nationalist conflict extending back over at least the last 1,000 years represents an inaccurate picture. Rather, Glenny argues that, in the midst of the trend throughout nineteenth-century Europe toward nationalism, nationalist movements consciously revived elements of medieval history - as in the Serbian case, the myths associated with the Battle of Kosovo were revived - in an effort to foster a sense of national identity.

Glenny suggests that the emergence of nations in the Balkan region reflected not only developments within the region but, as well, rivalries among the European powers. The Ottoman Empire, weak and unable to exert its authority effectively throughout much of the region as the nineteenth century went on, was at times propped up by other European powers to the frustration of nationalist movements because European powers were concerned with maintaining the balance of power among themselves. Glenny maintains that there have been occasions periodically such as the Congress of Berlin, World War I, World War II and the current crisis over Kosovo in which the Balkan region has attracted intense interest on the part of the great powers, occasions separated by extended periods of inattention.

Branimir Anzulovic's *Heavenly Serbia: From Myth to Genocide* suggests that, as the Serbian nationalist movement emerged in the nineteenth century, it embraced the notion of language and myth as defining ethnicity and the nation. For Serbians, the myth of Kosovo celebrating the defeat of Serbian forces under Prince Lazar in 1389 came to be seen as the defining event of the history of a Serbian nation. Anzulovic suggests that the notion of the Serbian nation as one that sacrificed itself for the sake of a divine mission and for the salvation of European civilization and Christian values produced a sense on the part of Serbs that theirs was a nation that had been denied its just place because of aggression by more powerful states. Anzulovic suggests that, over the centuries following the Serbian defeat at Kosovo, the Serbian Orthodox Church preserved the

notion of Serbian national identity that defined the Serbian nationalist movement when it developed. In doing so, he argues, it was not that Serbian nationalism reflected genuinely Christian values. Indeed, he observes that many of the most militant Serbian nationalists in recent years have seemed unconstrained by the Christian moral message. Rather, he argues, prior to the emergence of a Serbian state, the Serbian Orthodox Church as the one distinctly Serbian institution became the focus of Serbian identity in such a way that religious beliefs did not influence politics so much as the politics of nationalism came to politicize the church and Christian values were, to a degree, subverted by politics and pre-Christian pagan values.

As Tim Judah recounts developments, Slobodan Milosevic exploited the anxieties and protests of Kosovo Serbs to come to power in Serbia. By Serb accounts, Serbs represented the majority population in Kosovo going back to the days of the 1389 Battle of Kosovo in which Serbia suffered a defeat in this temporal sphere while dedicating itself to a higher spiritual mission as a nation. According to Serbian accounts, it has only been in the post-World War II era that Kosovar Albanians have become the majority within this sacred heart of the Serbian homeland. In contrast, by Kosovar Albanian accounts, the majority group within Kosovo has been ethnically Albanian for centuries. Through the 1970s and 1980s, Kosovar Albanians had been pressing for greater autonomy within Yugoslavia. While Yugoslavia represented a federation of republics, Kosovo was not a republic but an autonomous region. Kosovo was considered an autonomous region within the Yugoslav Republic of Serbia, but since 1974 Kosovo as an autonomous region, as well as the region of Vojvodina, was represented along with the six republics on the federal presidency.

Kosovo lacked both the same access to armaments as Croatia, Slovenia and Bosnia, as well as the support of international governments for a Kosovo right of secession that existed for the secession of Croatia, Slovenia and Bosnia because the latter three had a constitutional right of secession from the Yugoslav federation as republics which Kosovo, as an autonomous region rather than a republic, was deemed not to have. As a result, the Kosovar Albanian nationalist movement opted for passive resistance and setting up parallel public institutions in fields like education and health care under a parallel government under Ibrahim Rugova and the Democratic League of Kosovo (LDK). With so much of its resources committed to fighting in Croatia, Slovenia and Bosnia, the Serbian government was not prepared to clamp down beyond a certain point in Kosovo lest violence erupt there. Kosovar Albanians feared the same sort of atrocities that were taking place in Croatia and Bosnia would happen in Kosovo, particularly as they lacked arms and access to arms. Kosovar Albanians believed that, whatever Western governments might say about the prospects for Kosovo independence, a comprehensive settlement in the former Yugoslavia would address the status of Kosovo. Ironically, they saw proposals for enhanced autonomy as a distraction and possibly even a threat to the movement for independence. They were not that concerned about overthrowing Milosevic within Serbia. From their point of view, if Milosevic's policies brought down Serbia, it would enhance the prospects for Kosovo independence; and if Milosevic's policy of support for the secession of Serbian Krajina from Croatia and for Bosnian Serb territories from Bosnia on the grounds that Serbs represented popular

majorities in those areas was approved, then, under the principle this policy established of recognizing the rights of self-determination of popular majorities, the right of the Kosovar Albanians could not be denied.

However, a wrench was thrown into the strategy of the LDK by the Dayton Accords' failure to address the issue of Kosovo. While Rugova and the LDK continued to enjoy considerable support within Kosovo, some were becoming frustrated by their strategy of passive resistance. The Kosovar Albanian diaspora was influential because many who had emigrated sent money back not only to family but to the LDK and other groups like the Popular Movement for the Republic of Kosovo (LPRK), which eventually split into the National Movement for the Liberation of Kosovo (LKCK) and the Peoples Movement of Kosovo (LPK). The KLA (Kosovo Liberation Army) developed out of the LPK. Its supporters advocated armed resistance. The apparent lack of success for the LDK's strategy of passive resistance and creation of a parallel government, and the collapse of the Albanian government in the wake of a financial scandal altered the dynamics of Kosovo. Suddenly arms that Albania had been unwilling to send to the Kosovar Albanians, because Albania feared Serbian intervention, became available with the collapse of civil authority in Albania. The KLA started to smuggle arms into Kosovo, and guerrilla units declaring themselves in support of the KLA emerged. Some of these units were under KLA control; others, apparently not. In any case, initially the KLA lacked a strong central command structure. At the outset, Serbia was reluctant to intervene strongly to suppress the LDK, LPK and KLA for fear of arousing Western media attention, public opinion and governments. What emerged was a nasty guerrilla war that took a different form from those that had just occurred in Croatia, Slovenia and Bosnia. The Serbian response polarized the situation in Kosovo, and inflamed the situation. In an attempt to repress the KLA, Serb forces took part in human rights abuses.

In *Kosovo: War and Revenge*, Judah, a broadcaster and journalist who covered events in the former Yugoslavia and who wrote the earlier book *The Serbs: History, Myth, and the Destruction of Yugoslavia* [New Haven and London: Yale University Press, 1997], performs an excellent job of making this complicated situation clear. Western governments, Judah observes, hoped that intervention at an earlier stage, which had happened in the case of Bosnia, might avert atrocities, or, at least, reduce the scale of commitment that would be necessary. This inspired efforts at Rambouillet to bring about agreement between the Serbian government and the Kosovar Albanians.

Each side had problems with the proposed agreement. The Serbs objected to the plan that the Serbian army would withdraw from Kosovo while NATO troops would undertake peacekeeping in what they considered an integral part of Serbia. The Kosovar Albanians objected to the fact that the proposed agreement indicated that Kosovo would remain at least nominally under Serbian sovereignty. If both sides rejected the agreement, then Western governments would not have been able to justify intervention. Ultimately, it was because the Kosovar Serbs accepted the proposed agreement and Serbia rejected it that Western governments were prepared and politically able to intervene.

Milosevic seems to have made a series of fatal miscalculations. He may have assumed that the Kosovar Albanians would reject the proposed agreement, and, because the failure of negotiations could be blamed in part on the Kosovar Albanians, Western intervention would be precluded. He seems to have assumed that the Russians would act more forcibly for fellow Slavs than they did. The Russians took part at Rambouillet in the effort to bring about agreement. As well, the Russians made it clear that, if Western governments sought a United Nations mandate, Russia would exercise its veto in the Security Council. Consequently, intervention would be through NATO, not the UN. Beyond this, Russia was not prepared to go, although it demanded that it be treated with the respect and status consistent with its position as a superpower. The Russians had come to distrust Milosevic, and appreciated that they needed Western economic assistance which they were not about to jeopardize for Milosevic. Milosevic apparently miscalculated, as well, in seeming to think that the possibility of mass expulsions and ethnic cleansing, and the potential this posed for destabilization of neighbouring states might deter Western powers from translating their threats to use force into actual resort to force. He seems to have miscalculated, as well, by assuming that an alliance supporting NATO intervention would disintegrate if hostilities lasted more than a brief period. NATO governments, as well, seem to have miscalculated in assuming that a brief period of bombing would be sufficient to induce Serbia and the Milosevic regime to come to terms. Judah takes the view that there are no obvious lessons to be drawn from the Kosovo experience to inform a broader understanding of international politics. It would be premature, he suggests, to assume that Kosovo necessarily presages a new era in international law.

A similar, although briefer, account to that provided by Judah, of events leading to the war may be found in Part I of the Independent International Commission on Kosovo's Kosovo Report. This commission included individuals from a number of countries. The Kosovo Report argues that the international community should have responded at an earlier stage, and might have, by demonstrating support for the LDK's parallel state, exercised sufficient influence on the LDK to persuade them to compromise its commitment to independence and bring about some sort of accommodation with Serbia. This accommodation might have brought about the fall of Milosevic from power in Serbia if Kosovar Albanians had formed a political alliance with anti-Milosevic political forces in Serbia instead of boycotting Serbian elections. The Report suggests that such progress might have rewarded the LDK's strategy of passive resistance, and forestalled the emergence of the KLA. Western intervention, it suggests, was legitimate and perhaps unavoidable but not legal. It recommends that Kosovo should remain as an international protectorate for no longer than a limited period, but that all ethnic communities should be able to believe that their rights are secure. The Commission overcomes the apparent conflict between Serbian sovereignty over Kosovo and Kosovar Albanian demands for independence by recommending something called "conditional independence."

The Commission accepts the view that the Milosevic regime was guilty of extensive human rights abuses and made intervention justifiable. It takes the view that intervention is justifiable in cases of serious violations of human rights and humanitarian

law, and that any justified intervention must aim at bringing about an end to abuses and limiting civilian casualties and collateral damage. While asserting that Western intervention was legitimate, the Commission suggests that NATO failed to anticipate the number of refugees, and that NATO reliance on air power was not conducive to exercising a restraining influence on Serbian human rights abuses and ethnic cleansing. The Commission also expresses concern for the rights of Serbian Kosovars and ethnic minorities in Kosovo in the aftermath of the war.

Michael Ignatieff addresses many of these same issues in his book, *Virtual War: Kosovo and Beyond*, and, as well in such earlier works as his *Blood and Belonging: Journeys into the New Nationalism* [Toronto: Viking, 1993], which includes a chapter on the conflict between Croatia and Serbia; and his *The Warrior's Honour: Ethnic War and the Modern Conscience* [Toronto: Penguin, 1998]. Ignatieff uses the concept of the “narcissism of minor difference” to approach the issue of the vehemence that appears to characterize the attitudes of the various communities that once composed Yugoslavia toward each other in the aftermath of the collapse of that entity.

*Virtual War* consists of several essays, most of which have previously appeared elsewhere in some form. In one of these, ‘The War of Words: A Dialogue on Intervention,’ Ignatieff argues, in response to Robert Skidelsky, that NATO’s intervention was a morally justifiable response to ethnic cleansing and the resulting flood of refugees, and not the cause of the flood of refugees. Ignatieff notes, as did Judah, the effort, not always successful, on the part of NATO to minimize civilian casualties while undertaking an effective campaign of aerial bombardment.

In the last essay, “Virtual War,” Ignatieff raises a number of issues. Improvements in command, control, communications and intelligence systems, he observes, have facilitated a greater degree of precision targeting than was possible in previous conflicts. However, this, he notes, enhances the possibility of striking military targets, while limiting collateral damage. This possibility, he also observes, was compromised by two factors. One is that many potential targets were neither strictly military nor strictly civilian in nature. The other factor is that Serbian anti-aircraft defences, and NATO desire to avoid casualties resulted in NATO resorting to high-altitude bombing, making discrimination in practice between military and civilian targets more difficult, especially given the Serbian ability to disperse forces in the absence of a NATO ground assault. The outcome, Ignatieff suggests, was what might, on several levels, be considered a “virtual” war. For one thing, NATO’s ability, by resorting to high-altitude bombing, to avoid casualties produced a war in which one side could undertake the use of military force, inflicting casualties on the enemy, immune from jeopardy. For another thing, the price of this immunity from NATO casualties was a compromised capability for discriminating between military and civilian targets, and, therefore, an increased loss of life among both Serbian and Kosovar Albanian civilians. The war was also “virtual,” he suggests, in that NATO governments were never required to mobilize their citizens in the manner traditionally necessitated by the decision to undertake military action, and that those citizens were reduced, so long as NATO casualties could be avoided, to the role of observers, watching that day’s war action on the television news. Ignatieff also points

out that, unlike traditional war, the NATO intervention in Kosovo resulted in an apparent victory which left Kosovo's ultimate future unclear.

Fromkin's *Kosovo Crossing: American Ideals Meet Reality on the Balkan Battlefields* is less a study of the Kosovo intervention than an essay on American attitudes concerning the appropriate goals for foreign policy and on the instruments available for the pursuit of those goals. For Fromkin, Kosovo represents a return in the context of the post-Cold War world to pre-Cold War issues. He argues, as well, that Kosovo represents one of a number of recent conflicts in which the issues about the nature of foreign policy and of the relation between means and commitments that were raised by Wilsonian idealism in the context of the post-World War I peace talks once more come to the fore.

The intervention in Kosovo represents, for Fromkin, a deviation from the realism which focussed on power and interest, and which dominated American Cold War foreign policy in that the United States through NATO intervened in the domestic affairs of a sovereign state, not to protect any American vital interest but to attempt to impose some sort of just order. Fromkin clearly has reservations about this deviation in terms of Kosovo and as a potential precedent. The war itself, he cautions, was the easy part. NATO has become committed to supporting indefinitely an outcome supported ultimately by neither the Kosovar Albanians who want independence nor by the Serbs who desire a Kosovo that would be an integral part of Serbia, he warns, and an extended period of NATO control over Kosovo may witness erosion of the popular support inspired by the intervention. As happened in the case of the intervention in Somalia, in the absence of an American vital interest at stake, support in American, or for that matter Western, public opinion may erode very quickly, he fears, if NATO forces suffer even limited casualties.

*Kosovo: Contending Voices on Balkan Interventions* edited by William Joseph Buckley includes reflections on the intervention in Kosovo from residents of Kosovo and Serbia, students of the Balkans, scholars in religious studies, historians, philosophers, journalists and political scientists. Many of the authors represented - like Henry Kissinger, Zbigniew Brzezinski, Michael Walzer, Jurgen Habermas, Edward Luttwak, Kofi Annan, Morton Halperin, Hans Kung, Vaclav Havel and Jean Bethke Elshtain, for example - will be familiar to many readers. Tim Judah is represented, as well as the exchange, also found in Ignatieff's *Virtual War*, between Skidelsky and Ignatieff. Few contributors express any sympathy for the Serbian position but there is some difference of opinion on what sort of response was appropriate.

Quite a few contributions reflect concern for tempering commitment to a just cause with a genuine attempt to adhere to just means. For such observers, the impact of the military intervention on civilians, whether Serbian, Serbian Kosovar or Albanian Kosovar, was a concern. Some, such as Walzer, wondered whether the attempt by NATO to fight a war without sustaining casualties by avoiding the use of ground troops and relying on high-altitude bombing might not be resulting in a higher incidence of civilian casualties because, for all NATO's efforts at screening targets, high-altitude bombing could not be as precise as that from lower altitude. Miller similarly expresses concern that NATO seemed prepared to accept a certain level of civilian casualties in order to avoid placing

NATO forces in potential jeopardy, where NATO troop casualties might lead to the loss of public opinion in NATO countries. He questions the morality of this trade-off in just war terms. Little suggests that the intervention raised issues of authority, given the lack of authorization by the United Nations Security Council and the apparent violation of Serbian sovereignty, of effectiveness, and of the means employed, given the reluctance of NATO states to chance casualties among their combatants for the sake of limiting civilian casualties. Little is inclined in NATO's favor on the first two of these issues but has misgivings about the degree to which civilians were placed in jeopardy.

What may have emerged is a situation in which technological developments in precision targeting and delivery systems permit one side, NATO in this case, to undertake military action without the traditional restraint of casualties. On the other hand, in this case, the fear of any casualties and the potential erosion of public support for military intervention in the event of any casualties operated to restrain NATO from pursuing other strategies. States are responsible for the welfare of their military personnel, and in democratic systems, are answerable to legislatures and electorates for their actions. However, once one accepts the notion of humanitarian intervention, states presumably take on some obligation to civilian populations on both sides of the conflict. style="mso-spacerun: Kosovo poses the question of how the responsibility for the safety of one's own forces can be balanced against the safety of civilians in the zone of conflict. This issue recurs again and again in works on the intervention in Kosovo.

Writers differ on two other points. Some see the intervention as heralding a new era in international law; others are more skeptical. At this point, it would probably be fair to say that declarations of a new era in international law in which universal rights and humanitarianism occupy as important, or more important, a place in international law as sovereignty may be a bit premature yet. The other point is the ultimate future for Kosovo. NATO takes the view that the motive for the intervention was humanitarianism and not support for Kosovo independence. On the other hand, Kosovar Albanians have grave reservations about any return to effective, rather than the current nominal, Serbian sovereignty. What seems likely is an indefinite commitment of outside forces to peacekeeping in Kosovo, and the continuation of the ambiguous status quo for an indefinite period.

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