

Secessions, interventions and just war theory: the case of Kosovo

by Hugh Beach



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UN Secretary General Kofi Annan viewing the Kosovar town of Pec, 50 percent of which was destroyed

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IT has been widely observed that the typical wars of the second half of the twentieth century take place within rather than between nations. The International Institute of Strategic Studies lists some 22 such conflicts as currently active compared with less than half a dozen that could properly be called international. (*The Military Balance 1999-2000*). A common theme running through many of these internal conflicts (and indeed most of those listed in the lower category of terrorism) has been the issue of secession -- attempted or achieved -- with the corollary in some cases of intervention by third parties. These episodes pose very difficult questions for intervening states to resolve, political, economic and military factors being closely interwoven. They present equally tortured dilemmas to international and humanitarian organisations. Three recent instances -- Kosovo, East Timor and Chechnya -- have all involved losses of life running into many thousands and refugee movements involving hundreds of thousands. The toll in terms of human suffering has been a challenge to all humanity. This paper attempts a critique of these issues, exposing as far as possible the ethical considerations that underlie decision-making and taking Kosovo as case study.

Secession

Around the second half of the 18th century there were about 35 empires, kingdoms, countries and states in the world. That figure roughly doubled, to 70, by the 1930s and almost doubled again, to 130, by the 1960s. Today some 193 entities are generally recognised as sovereign states and Dr. Boutros Boutros Ghali once predicted that by early in the next century the number might double again to around 400. In short the old dynastic system has broken down. Monarchies in Europe used to rule over different peoples and religions. Political unrest and rebellion came from many causes but not because rulers belonged to a different national group. It was taken for granted that the nation had almost no connection with the state. Germany, France and England are all mixtures of many different ethnic stocks. The Prussians are not Germans but Balts. The French have always understood themselves to be a mixture of Gaulish and Germanic tribes: Celts, Latins and Normans as well as those who have arrived in recent times (40 per cent of all the French have at least one foreign grandparent). The English came from Schleswig in north-west Germany but have been overlaid by the Normans who were Frenchmen of Viking origin. As a result war is now unlikely between Mercia and Wessex, for which relief much thanks. In the whole of Europe the only countries that have no minority language are said to be Portugal and Slovenia.

But the liberals who launched the revolutions of 1848 dreamed about realising liberties through new 'nation states'. It was the Germans, in reaction to the excesses of Napoleon, who set out to glorify the *Volksgeist*, the spirit that is embodied in the culture of a people. What the Enlightenment had dismissed as outworn superstition was seen, on the contrary, as the very substance of a people's life. Nations were now regarded, not as humanly contrived associations based on the rational decisions of individuals, but spiritual realities by which the individual is sustained. People became convinced that they should fight, not only for political and religious liberty, but also against being ruled by foreigners. John Stuart Mill wrote: 'It is in general a condition of free institutions that the boundaries of governments should coincide with those of nationalities'. Lord Acton thought not. It was, he said, 'a retrograde step in history'.

The idea of national self-determination gained impetus at the Conference of Versailles, seeking to bring some order out of the break-up of the Ottoman and Austro-Hungarian empires. Self-determination was recognised as a 'right' much later, and then only in the particular context of de-colonisation, when the UN General Assembly in 1960 adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples. But regional organisations like the Organisation of African Unity then set great store on holding countries together within their colonial borders. One of the great Helsinki principles is the 'inviolability' of frontiers, meaning that they may not be altered by force. Yet further secessions have occurred (Slovakia, Eritrea -- not to mention the Commonwealth of Independent States) and *de*

facto partitions have become semi-permanent (Cyprus, the West Bank). In Yugoslavia the arbitration commission of the European Union, finding the country in dissolution, decided that the frontiers of the five constituent republics deserved recognition in international law. But given the ethnic make-up of those countries this was simply to push the problem one level down.

Problems can be expected whenever nation states have been founded on principles of exclusion, based upon ethnicity, religion, culture or language. In playing up to nationalist sentiment leaders often deliberately bring out the worst in people. Svetlana Slapsak, herself a Serb, writing in the *International Herald Tribune (IHT)* on 27 May 1993 said that the bestialities of war in what used to be Yugoslavia were triggered by words -- cliché put forward by intellectuals and taken over by politicians. 'To nationalist Serbian writers Albanians were "bestial", Croats "genocidal", Slovenes "slavish". Slovenians and Croats in return called Serbs "barbaric", "Balkan" and "Byzantine". These phrases were soon re-cycled by journalists and young conscripted soldiers were sent off to war with such slogans ringing in their ears'. Note that Serbs, Croats and Bosnians are all southern Slavs, speaking the same language, genetically indistinguishable, separated only by the area in which they live, their religion (Catholic, Orthodox, Muslim), and a bloodstained history. They got on together well enough under the Hapsburgs and again for seventy odd years as part of Yugoslavia. Then in 1991, as Haris Silajdzic, co-chairman of the present Bosnian government has said, 'there was a collective paranoia created by the media' and played up for entirely self-serving reasons by the politicians. Another quote: 'The real culprits in this long list of executions, assassinations, drownings, burnings, massacres and atrocities... are those who mislead public opinion and take advantage of the people's ignorance.' That comes from the International Commission to Inquire into the Causes and Conduct of the Balkan Wars of 1912 and 1913. *Plus ça change*.

The need is obvious for governments to promote tolerance of minority populations within their own borders and protect their human rights. Mother countries must refrain from stirring up trouble among their own nationals living in other lands. The setting of standards for the rights of minorities is important, and welcome progress on this front is to be seen in Central Europe. Another step forward would be commonly accepted rules on citizenship and the rights attached to it in international law. These vary widely even within the European Union. In Germany there are 2m. Turks, many of them second- or third-generation residents, who have been able to get German citizenship only with great difficulty if at all. But it is available, more or less on demand, to a similar number of *aussiedler* from Russia who have lost all touch with German language and culture but are still regarded as of German blood. It is good news that these rules are now being re-thought. All people of influence, writers, broadcasters, politicians must guard their tongues, never play up to communal hatreds

that so easily become self-justifying and self-sustaining. The trick in a successful society is to get people to feel that they are more than one thing at once: Orthodox Christian and Bosnian, Muslim and Indian, Black and American. As George Robertson (Lord Robertson) remarked, on assuming the post of Secretary General of NATO: 'if you cannot ride two horses at once, what are you doing in this circus?'

In this process devolution may have an important part to play. As *The Economist* explained (20 September 1997) 'experience elsewhere in Europe suggests that devolution has proved widely popular without generally leading to secession; indeed it can help to hold a country together. When strong regional or national identities, silent or suppressed for many years, are suddenly given a voice, the paradoxical result has often been greater harmony and a desire to stick together, rather than anguish, chaos and disintegration'. The article said that Bavaria and Saxony have as much sense of historic identity as Scotland and much more constitutional power than is coming to Edinburgh. It quoted the success of France in containing the aspirations of Corsica and Brittany, of Spain in Catalonia and the Basque country. It suggested that separatism had peaked in Northern Italy and did not rate the chances of greater Flanders. Somewhat ironically, in the light of recent events, they congratulated Russia, with its score of autonomous ethnically named regions and republics, on holding things together. The Russian majority in the Crimea has been given a fair amount of self-rule within the Ukraine and seems to be settling down, likewise the Russian minorities in the Baltic States. 'If there is a turn-of-the-century message in Europe it may be 'devolve or die', said *The Economist*.

Meanwhile cases continue to crop up where countries conspicuously fail to accommodate the legitimate requirements of minorities for some degree of autonomy or indeed deliberately suppress them. Morally it can be argued that secession from an existing state can be justified when certain conditions are met. There may be cases where ethnic groups have long suffered gross infringements of their human rights, where there is no practical way short of separation to safeguard those rights, where the effects of secession are not simply to establish another illiberal state provoking fresh injustices, in short where separation may do more good than harm. But most of the recent examples are unpromising. Eritrea, after secession, is engaged in a bloody war with Ethiopia. Bosnia seems likely to need a protective military presence to hold the ring indefinitely. So with good reason the international community remains reluctant to sacrifice the principle of territorial integrity to the notion of self-determination. Dr. Boutros Ghali said bluntly that the international community should 'repel separatism'. Strobe Talbott, the US Deputy Secretary of State, speaking to CBS television on 11 April 1999, said that one of the things NATO was fighting against is the idea that 'statehood, nationhood, citizenship should be defined in terms of ethnicity and religion'. On the one occasion that the question was litigated, the Permanent Court of

International Justice ruled that self-determination could trump national sovereignty and justify the break-up of a state only during 'times of transition' when the central government was unable to do its job and regular rules no longer applied. (*International Herald Tribune*, 23 June 1999). This suggests that those seeking secession by violence, in order to qualify for international support, would have to establish that the larger nation to which they have belonged had effectively failed. They would have to show that they made prolonged efforts in good faith to renegotiate their status peacefully before resort to arms. And even then only extreme oppression would justify forceful secession. But since secessionist conflicts continue to occur, the question arises how the international community should react to them?

Intervention

Another of the great Helsinki principles is non-intervention in the internal affairs of other countries. It is stated explicitly that participating states will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating state, regardless of their mutual relations. Countries will accordingly refrain from any form of armed intervention or threat of intervention against another participating state. This clause was inserted, largely at the insistence of the western powers, hoping it might slightly reduce the chance that the Soviet Union would again intervene in Eastern Europe as it had done in Hungary in 1956 and Czechoslovakia in 1968. But the principle is of far wider application. In Africa, for example, during the cold war outside powers provided some of the most repressive regimes with arms and aid for no better reason than their rival super-power was supporting another faction. The Americans supported Savimbi in Angola, Mobutu in Zaire, and Doe in Liberia. The Soviet Union supported Neto in Angola and Mengistu in Ethiopia. These regimes helped to bring already poor countries very close to the bottom of the UN Human Development Index. During the whole of this period a policy of non-intervention would have been far preferable. But over recent years this situation has been turned on its head. The time is now ripe for quite different principles to be adopted, pointing towards legitimate and co-operative international interventionism.

The question of armed intervention, on behalf of the international community, in the internal affairs of a state, even against the wishes of the government of that state, in order to prevent widespread death or suffering amongst the population is certainly not a new one. Imperial Rome grappled with the same problems in Dalmatia and Judaea as the international community does in those same regions today. The UN Charter, in Article 2.7, says bluntly that nothing contained in it shall authorise the UN to intervene in matters that are essentially within the domestic jurisdiction of any state. But it half-contradicts itself by saying that this principle shall not prejudice the

application of enforcement measures under Chapter VII of the Charter. That Chapter relates not only to acts of aggression but also to threats to the peace and breaches of the peace. Until recently it was assumed that this implied an international threat. Thus UN Security Council Resolution (UNSCR) 688 of 5 April 1991 described Iraqi repression of the Kurds and Shias as a threat to international peace and security. It was on the strength of this resolution that France, followed by the US, Britain and a number of other countries, took action with ground and air forces to compel the Iraqis to desist. But the supposed threat to international security was largely a pretext. On 3 December 1992, the Security Council (UNSCR 794) broke new ground by deciding to intervene in Somalia for strictly humanitarian purposes. There was not even a pretence of consent by the government of Somalia because such a government did not exist. There was negligible spill-over to other countries in the form of refugees. The plight of the Somali people was the sole rationale for invoking Chapter VII of the Charter, authorising the use of 'all necessary means' to establish a 'secure environment for humanitarian relief'. This meant in practice taking sides and acting with far from minimal force. A *de facto* Right of Humanitarian Intervention was thus beginning to emerge. The task of the UN forces in Bosnia was not described in terms of peacekeeping at all. Its task was to secure the delivery of humanitarian goods and services and to protect civilians in declared 'safe havens'. The deployment of UNPROFOR was carried out, initially at least, with the consent of the host states (Croatia, Bosnia, Macedonia). But its mandate was subsequently extended to include, for example, deterrence of attacks on safe havens and the use of air power to that end, with the clear invocation of Chapter VII. The NATO air campaign in August 1995 was justified (if somewhat tenuously) under UNSCR 836 and 844 of June 1993. During this decade the view has been strengthening that where a state is inflicting upon its own people gross, flagrant and continuing infringements of their common humanity the international community has a right -- some would even argue an obligation -- to try and restrain it. We now turn to our case study.

Kosovo

This territory has been disputed between Serbs and Albanians for generations and their respective fortunes have ebbed and flowed. For most of this century Serbs have been a minority in Kosovo. In 1912 Serbia annexed the province. This situation was recognised by the Treaty of Versailles in 1918 but in the next quarter century Serbian rule created great antagonism in the Albanian population. In 1941 the incorporation of Kosovo into greater Albania (under Italian control) led to thousands of Serbs being killed. After the war Tito ruled Kosovo as a Yugoslav Republic in all but name until the late 1960s. Then a policy of 'Albanianisation' caused many Serbs to leave, complaining of discrimination, and reduced the Serb share of the population to about

ten percent. In 1986/7 Slobodan Milosevic rose to power in Serbia on the back of Serb grievances against the Albanians in Kosovo. In 1989 he revoked Albanian autonomy and banned their language in schools and offices. In 1992, under the moderate (indeed pacifist) leadership of Ibrahim Rugova, a strategy of passive resistance was adopted, a parallel state set up, a new constitution proclaimed and elections held. In 1995, however, the Dayton agreement recognised Serbia and Montenegro as the new Yugoslavia, within existing boundaries, with no special recognition for the status of Kosovo. Arguably this was a great opportunity missed. Many Albanians switched allegiance to the Kosovo Liberation Army (KLA), a group seeking secession by violent means.

By 1998 the scale of violent incidents instigated by the KLA had brought heavy-handed reprisals by the Yugoslav security forces. The Security Council imposed an arms embargo on the area (UNSCR 1160) in March but during the summer the scale of violence increased. In September the Security Council called formally for a ceasefire (UNSCR 1199) and followed this in the next month by insisting on international supervision of the territory. The organisation for Security and Cooperation in Europe (OSCE) sent in a Verification Mission some 2000 strong (KVM) and NATO decided to set up an Extraction Force in Macedonia to stand by it. In January 1999 Yugoslav security forces killed some 45 Albanians at Racak causing fresh international outrage. A peace conference was convened at Rambouillet, under the joint chairmanship of Britain and France, which held sessions on 16-23 February and 15-19 March. The aim was to forge a compromise whereby the Albanians were promised enough freedom to persuade them to stop fighting while the Serbs were reassured that the province would remain part of Yugoslavia. The Americans (Madeleine Albright) made most of the running and the Russians also played a prominent part. A condition insisted upon by the western participants (but never agreed to by the Russians) was that NATO troops be admitted into Yugoslavia to supervise the settlement. This force was to operate under the direction and political control of the North Atlantic Council (NAC) through the NATO chain of command. By 19 March the Albanian representatives had accepted the Rambouillet proposals but the Serbs never did so. By this time it was plain that a large-scale Serbian offensive was under way and the UN High Commissioner for Refugees (UNHCR) reported the presence of some 250,000 internally displaced persons in Kosovo. On 22 March the American diplomatic envoy Richard Holbrook delivered an ultimatum to Milosevic which was rejected. The OSCE Verification Mission and the UNHCR withdrew their members and on the following day NATO air strikes began. The ensuing campaign was code named *Allied Force*.

In the ensuing 79 days NATO flew some 38,000 sorties against Yugoslavia of which around 10,000 were strike missions. Some 23,600 munitions were discharged and 300

cruise missiles. According to their own account some 600 of the Yugoslav military were killed. Serb and Albanian civilian deaths due to the bombing are put at 500 according to Human Rights Watch (*IHT*, 8 February 2000). Meanwhile, according to NATO accounts, more than 1.5 million Albanians had been forced from their homes, of which nearly one third left the country. The number of Albanians reported missing during the expulsion campaign and believed dead has been given as 11,334 by the International Criminal Tribunal for the Former Yugoslavia(*IHT*, 11 November 1999). On 3 June Milosevic rather unexpectedly accepted terms for a ceasefire. On 10 June Serb forces began to withdraw from Kosovo, bombing ceased and the Security Council adopted a resolution whereby NATO forces were to enter Kosovo as an 'international security presence' (UNSCR 1224). Key principles of this resolution included not only substantial self-government for Kosovo but also the territorial integrity of Yugoslavia(including Kosovo) and demilitarisation of the KLA. Separatism was thus duly 'repelled'.

Just War Principles

A useful basis for an ethical critique of NATO's actions is to be found in the Just War tradition. No apology is made for adopting a self-consciously theological formulation since authors of Just War theory such as Augustine of Hippo and Thomas Aquinas were philosophers of the first rank and took their stance explicitly not on revelation but on the basis of natural law. To the knowledge of this writer no better framework has been proposed. The American bishops, in a 'reflection' adopted in the fall of 1993 entitled *The Harvest of Justice is Sown in Peace*, gave a useful summary of the main components of the tradition, and their version is followed here.

1. Just Cause: Force may be used only to correct a grave, public evil, i.e. aggression or massive violation of the basic rights of whole populations.

If we go back to the roots of Just War doctrine we find Aquinas saying (*Summa Theologiae* 2a2ae. 40,1):

'a just cause is required namely that those who are attacked deserve it for some wrong they have done. So Augustine: "We usually describe a just war as one that avenges wrongs, that is, when a nation or state has to be punished either for refusing to make amends for outrages done by its subjects, or to restore what it has seized injuriously. Those wars are looked on as peacemaking which are waged neither from aggrandisement nor cruelty but with the object of securing peace, of repressing the evil and supporting the good"'.

Augustine is here thinking primarily in terms of wars of conquest; one can hear the distant echo of Vandals hammering on the gates of Hippo. But his definition fits modern circumstances. If wickedness is being committed -- people killed, populations

uprooted -- the use of force can be justified to restore what has been seized injuriously. The moral case seems indisputable. Moreover there is considerable support for Augustine's view in contemporary international law.

'There is general agreement that, by virtue of its personal and territorial supremacy, a State can treat its own nationals according to discretion. But there is a substantial body of opinion and practice in support of the view that there are limits to that discretion; when a state renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental rights and to shock the conscience of mankind, intervention in the interests of humanity is legally permissible'. (L. Oppenheim in *International Law*, Vol 1, Longman, 1948, p. 279)

In a judgement in the House of Lords in March 1999 (on the Pinochet case) Lord Millet gave as his view: 'the doctrine of state immunity is the product of classical theory... It is a cliché of modern international law that the classical theory no longer prevails in its unadulterated form... the way in which a state treats its own citizens within its own borders (has now) become a legitimate concern to the international community' (*The Times*, 29 March 1999). In a remarkably prescient lecture given in 1998, the secretary-general of the UN Kofi Annan said:

'The (UN) charter protects the sovereignty of peoples. It was never meant as a license for governments to trample on human rights and human dignity. The fact that a conflict is 'internal' does not give parties any right to disregard the most basic rules of human conduct.... All our professions of regret, all our expressions of determination never again to permit another Bosnia or another Rwanda, all our claims to have learned something from the recent past will be cruelly mocked if we now let Kosovo become another killing field'. (*IHT*, 27-28 June 1998)

The British Government, commenting on this issue early in 1999, contented itself with observing: 'There may also be cases of overwhelming humanitarian necessity where, in the light of all the circumstances, a limited use of force is justifiable as the only way to avert a humanitarian catastrophe'. (FCO Memorandum to the Select Committee for Foreign Affairs, 22 January 1999).

Hence they considered the action of NATO in Kosovo to be lawful under international law. Authorities differ on this point. There can be little doubt however of the moral justification. Where a country is inflicting gross, flagrant and continuing abuses of human rights on its own people, other countries in a position to do so have a right to intervene. Some would say they have a duty to do so -- though Augustine does not go so far. But in other respects he goes further. While some punitive element may well be necessary his emphasis on peacemaking (*pacis studio*) and supporting the good (*boni subleventur*) opens up much wider perspectives. In practical terms these motives can cash out into the form of specific political objectives, such as:

- stopping the fighting or enforcing a cease-fire

- preventing the forcible movement of populations, as in 'ethnic cleansing'
- enforcing the delivery of humanitarian aid and safe extraction of the sick and wounded
- restoring pre-existing boundaries or enforcing those newly agreed
- setting up democratic institutions, or most ambitiously
- establishing an international protectorate under UN control

All of these 'causes' and no doubt many others could properly qualify as 'just' under Augustine's rubric. As we shall see they figured among NATO's objectives in Kosovo.

2. Legitimate authority: Only duly constituted public authorities may use deadly force or wage war.

By this Aquinas meant that it is only the sovereign who has the right to go to war, not barons or private warlords. Augustine goes wider when (as quoted by Aquinas) he says "The natural order conducive to human peace demands that the power to counsel and declare war belongs to those who hold the supreme authority". Arguably, if one is intervening for the sake of international peace and good order, then only an international authority has the right to 'counsel and declare'. This could be a regional grouping, such as the Organization for Security and Co-operation in Europe (OSCE) or even an *ad hoc* alliance as in the Gulf War. But all of these come ultimately under the jurisdiction of the United Nations, both in principle and as a matter of practical politics. It is clear that the United Nations is the supreme source of legitimacy where action in support of international peace and security is concerned, and it is emerging in that capacity in the case of internal disputes. No one would dispute, indeed the British government explicitly recognised (in the FCO memorandum quoted above) that interventions as in Kosovo would preferably be based on an authorisation given by the Security Council under Chapter VII of the UN Charter. As we have seen the air campaign against Serbia in 1995 which led to the Dayton settlement had indeed been authorised in this way, if somewhat obliquely. The question is whether the absence of such authorisation in March 1999 rendered NATO's operation *Allied Force* illegitimate.

The following considerations are relevant. First NATO's actions were in no sense arbitrary or ill considered but the product of unanimous agreement among nineteen democratic nations. Secondly NATO's actions responded directly to the flagrant disregard by Milosevic of UNSCR 1199 (passed the previous autumn) calling for all parties to cease hostilities. Thirdly the Security Council had made a singularly ill judged move at the end of February 1999 by failing to renew the mandate of the UN Preventive Deployment Force (UNPreDep) in Macedonia. This force, some 1000 strong, had been in place since 1995 and had been much praised as a trail-blazing and successful exercise in pre-emptive deployment. China vetoed its continuance for no

better reason than Macedonia's unexpected decision to establish diplomatic relations with Taiwan -- an issue totally unrelated to the Balkans crisis. This arbitrary act on the part of China put in question her motives for not endorsing forceful action against Serbia. Sensitivity to her own human rights record in Tibet might well be relevant, as might the issue of Chechnya in the case of Russia. However, on 26 March, two days after the bombing had begun, a resolution in the Security Council sponsored by Russia, calling for an immediate cessation of violence, was defeated by twelve votes to three -- only China, India and Namibia voting in favour. The representative of Slovenia made the robust point that, in his view, the Security Council has the 'primary but not exclusive' responsibility for maintaining international peace and security. This is arguably an accurate reflection of what Article 24 of the UN charter says. Finally the Security Council, by UNSCR 1224 of 10 June 1999, indisputably conferred *post facto* recognition of what had been done, endorsing the 'Petersberg Principles' (see below) and authorising NATO to establish an 'international security presence' in Kosovo.

This episode raises a deeper question. It is clearly too much to hope that the power of veto in the Security Council will never be used for self-serving reasons. Does it then make sense to vest the conscience of mankind, on matters relating to humanitarian intervention, in countries such as Russia or China whose human rights record calls even trade relationships into question? In this writer's opinion endorsement by the Security Council is a sufficient but not always a necessary condition of legitimate intervention. A more pragmatic argument concerns the effect of NATO's action upon those who choose to see it as unilateral and high-handed. Might this not encourage other parties to act *ultra vires*? The Russians in Chechnya have arguably taken a leaf out of NATO's book, though in fact the circumstances are quite different. It has even been suggested that third parties, fearing similar NATO domineering, might conclude that their best safeguard would be to acquire weapons of mass destruction. This argument is highly speculative.

3. Right Intention: Force may be used only in a truly just cause and only for that purpose.

At first sight this looks like tautology: a simple restatement of the Just Cause criterion. In fact it goes much further. Augustine says (again as quoted by Aquinas): 'The craving to hurt people, the cruel thirst for revenge, the unappeased and unrelenting spirit, savageness of fighting on, the lust to dominate and suchlike -- all these are rightly condemned in wars'. This should warn us against several misleading motives. It should lead us to be wary of the surge of righteous anger when a city like Dubrovnik is shelled just because it is old and beautiful -- and within range of guns: when a family is burned alive for belonging to the wrong religion. It should lead us to be cautious in applying Augustine's earlier remarks about avenging wrongs and

punishing. The Allies in the Gulf War set as their aim to evict Iraqi forces from Kuwait. They did not aim to break the power of the Republican Guards, still less topple Saddam Hussein. When they had succeeded in their limited aim they stopped: quite correctly in the opinion of this writer. The 'savageness of fighting on' was rightly eschewed.

It is a difficult question to what extent self-interest is a necessary ingredient in Right Intention. If not, then how are politicians in a democracy to justify sending young men and women to suffer and (possibly) die where no national interest is involved? How likely is it that, as the price of success mounts, the political constituency, nurtured on television, will lose patience and enforce a humiliating withdrawal, leaving things worse than if force had never been used? Somalia was a vivid object lesson. It is a common criticism of western motives in the Gulf war that the price of oil was the underlying stake, but there was nothing ignoble in that. In Kosovo humanitarian concern for the sufferings of the Albanian inhabitants was clearly the main motive but the 'credibility' of NATO (represented in some quarters as American hegemonism) was also at issue. Another consideration was that if Milosevic was allowed to have his way in Kosovo it would be the turn of Macedonia next, leading to a wider Balkan war; or at least the encouragement of other villains in other places, from which NATO nations themselves would be bound in the end to suffer. This used to be a popular way of thinking known as 'domino theory', but it is now largely discredited. Or one can contend, following Donne, that no man is an island. Henry Kissinger wrote: 'Humanitarian intervention asserts that moral and humane concerns are so much a part of American life that not only treasure but lives must be risked to vindicate them: in their absence American life would have lost some meaning' (*IHT*, 16 December 1992). He added that no other nation had ever put forward such a proposition. Remembering the Romans that is not so certain. George Robertson, when British defence minister, insisted that he wanted the British military to be a 'force for good'. So do we all. The problem is that this argument proves too much. If Kosovo, why not Tajikistan or Nagorno Karabakh (both members of the Euro-Atlantic Partnership Council): why not Sudan or Sri Lanka (both of historic concern to Britain) or any other of the 22 conflicts mentioned at the outset? Will it do to say that these countries are not on our doorstep or, more to the point, on our television screens? Joe Nye may have come closer to the mark in saying: 'a foreign policy of armed multilateral intervention to right all such wrongs would be another source of enormous disorder' (*IHT*, 16 December 1992). It would be going too far to say that self interest is a necessary ingredient but it is certainly a legitimate one.

4. Probability of success: Arms must not be used in a futile cause or in a case where disproportionate measures are required to achieve success

Leaving on one side the question of proportion, since this rates as a separate criterion in its own right, this clause introduces a crucial point: that the practicability of what is proposed is a key element in formulating the ethical judgement. It is not a moral act to set the military off on a given course if they are likely to fail, however just the cause. To say this is not to set pragmatism over against morality but to recognise an essential ingredient in the moral judgement itself. If what is proposed will not work then, however lofty the motive, the proposal must be rejected. One can not, of course, claim that military forecasts of the likely outcome are necessarily infallible, quite the reverse. The military are often wrong, even on strictly military matters; how else can one account for the fact that, in all the wars of history, roughly 50% of the generals have been losers? One is saying only that they must be asked and their answers heeded.

In Kosovo the initial aim of Operation *Allied Force* was to force Milosevic to accept the substance of the Rambouillet proposals. It was widely expected that a few days bombing would suffice. Failing this, the military aim was baldly defined by General Wesley Clark:

'We are going to systematically and progressively attack, disrupt, degrade, devastate and ultimately destroy these (Yugoslav) forces and their facilities and support. This is not an attack on the Serb people' (NATO Press Briefing, 25 March 1995).

These aims turned out to have no immediate prospect of success. So far from moving towards the Rambouillet proposals Milosevic proceeded to vandalise and/or expel the majority of Kosovar Albanians. So far from crumbling in a few days he stuck it out for 78. So far from being devastated the Yugoslav forces in Kosovo survived largely intact. Certainly their freedom of manoeuvre on the ground was seriously curtailed. And NATO quickly achieved air supremacy, at least in the sense of being able to operate without pilot casualties above 5000m. But the stated objectives were not attainable and something new was urgently needed. The answer was found in the principles adopted by foreign ministers of the G8 (i.e. including Russia) on 6 May 1999, often referred to as the Petersberg Principles. These demanded

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations;
- Establishment of an interim administration for Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organisations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full

account of the... principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia,... and the demilitarisation of the KLA.

These aims proved eminently attainable. Milosevic accepted on 3 June. On 10 June the Security Council underwrote the measures, bombing ceased and withdrawal of Yugoslav forces began, being completed in good order by 20 June. By September the KLA had been effectively disarmed and were being reorganised into the Kosovo Protection Corps; a UN civil presence had been installed and the Albanian population had returned (reportedly some 720,000 of them) much faster than had been expected or indeed desired. Many intractable problems remain. But as an exercise in ethical pragmatism at a very difficult juncture the Petersberg Principles rate highly. They met in full the criterion of reasonable prospect of 'success' on their own terms. Success in any larger sense is much more problematical.

5. Last resort: Force may be used only after all peaceful alternatives have been seriously tried and exhausted.

In other words if measures short of armed force would suffice then armed force should not be used. Articles 33 to 42 of the UN Charter describe a wide spectrum of measures available to the international community, starting with enquiry, mediation, conciliation and so forth, *via* diplomatic and economic measures up to demonstrations, blockade and 'other operations' by land, sea and air forces. Before the Gulf War both Houses of Congress authorised the President to use US armed forces only after he had certified that 'all appropriate diplomatic and other peaceful means had failed'. In many cases it may be appropriate to use these various measures in chronological sequence, only moving up the ladder as and when softer approaches have been tried and failed. But in other instances it may be that to go in early and hard, albeit on a limited scale, might avert much bloodshed. For example it is widely argued that had the UN, led by the United States, committed ground troops with air support in former Yugoslavia at a much earlier stage (e.g. to prevent the destruction of Vukovar by the Serbs in 1992) it could have nipped this war in the bud. It implies a judgement at the outset that gentler methods are bound to fail and that recourse to the methods of last resort (albeit under the general rubric of minimum force) were better taken earlier than later. The term 'last resort' need not, on this reading, be understood chronologically. In Kosovo perhaps NATO's action would have been better taken in the autumn of 1998, when it was first authorised in principle. Milosevic's token agreement with terms brought by Ambassador Holbrooke sufficed to let him off the hook.

The two last criteria will be considered together.

6. Proportionality: The overall destruction expected from the use of force must be outweighed by the good to be achieved.

This is the crucial consideration which in effect subsumes all others. It is also arguably the most difficult because it involves weighing in the balance things which, even in theory, are incommensurable. How many Dutch lives was it worth to protect Srebrenica? Can one put a price on a principle? Yes, one does it every day so there is no dodging, and certainly there are no easy answers. One of the most notable features of recent years has been the way in which the issue of proportion has dominated at least the vocabulary of debate. Only very rarely have disproportionate interventions been explicitly threatened: for example by the Americans against Serbian Bosnians in summer 1995 and against Saddam Hussein a year later. After the event it is always claimed that targets have been hit precisely, and the actions proportionate.

7. Noncombatant immunity: Civilians may not be the object of direct attack, and military personnel must take due care to avoid and minimise indirect harm to civilians.

It is again notable the way in which everyone pays at least lip-service to this consideration. More to the point is the way in which it was taken with all seriousness by the Allies in the Gulf War and the NATO bombings in Bosnia. It is, of course, obvious that in internal conflicts of this kind the contestants totally and systematically ignore this criterion as they do all other laws of war, but that does not absolve the international community, quite the reverse.

It was a crucial feature of Operation *Allied Force* that not only were military targets struck but, as Wesley Clark had promised, their 'facilities and support'. According to the International Institute of Strategic Studies all oil refining capacity in Serbia was shut down, 50% of military fuel stocks were destroyed and 25% of all fuel stocks. 14 power stations were knocked out and 63 bridges destroyed as well as many important industrial sites (*Strategic Comments, Vol 5 Issue 7, September 1999*). Michael Binyon, accurately prefiguring the end of Milosevic's resistance, wrote: 'Day after day the vital foundations of daily life are being blown away: blackouts, fuel shortages, blank television screens, broken bridges and regular interruptions to water, gas and sewage systems leave a population increasingly bewildered. The slow build up has only made it worse' (*The Times*, 22 May 1999). An independent group of Serb economists has estimated that 44% of industrial production has been destroyed leaving Serbia the poorest country in Europe (*The Guardian*, 15 October 1999). Two questions remain. First could NATO have brought Milosevic to accept the Petersberg Principles without attacking Serbia's infrastructure (oil, water, power, telecommunications)? Secondly could the attacks have been more discriminate?

The answer to the first question is almost certainly no. The pressures on Milosevic can be enumerated as follows, in growing order of importance as one goes down the list:

1. Terms on offer more favourable to Serbia than those at Rambouillet. (These explicitly recognised the involvement of the UN on the ground, involved no automatic referendum on the future of Kosovo and gave NATO no running rights over Serbia other than in Kosovo.)
2. Growing strength of the KLA and effectiveness in forcing Serbs into the open, thus creating targets for B52s with cluster bombs. (Mount Patrik 7 June)
3. Disaffection in the Serb military and reluctance of young soldiers to continue.
4. Success of NATO attacks on infrastructure (as above).
5. Withdrawal of Russian support prior to G8 summit at Petersburg, 6 May.
6. Milosevic's indictment as a war criminal, which seems to have thrown him off balance.
7. The serious prospect (however politically fraught) of a NATO land offensive.

Whilst the ordering of this list is certainly open to question it seems clear that the last four, at least, were of predominant importance. In the opinion of this writer the attack on infrastructure was a necessary, though certainly not sufficient, condition of 'success'. It is plausible to argue that more emphasis on this aspect, at an earlier stage, might well have brought the bombing to an end sooner and with less loss of life.

NATO apologists maintain, following General Wesley Clark, that Operation *Allied Force* was not a war against the people. The fact remains, however, that leaving aside genuinely accidental damage (and this was serious enough) targets were struck which went beyond any reasonable definition of dual-use. In the opinion of this writer such impermissible targets included: a tobacco factory (Nis), food processing plant (Valjevo), bulldozer factory and heating plant (Krusevac), fertilizer factory and petrochemical plant (Pancevo), Zavasta motor plant (Kragujevac), interior ministry, socialist party HQ with TV tower and state TV and radio building (Belgrade). Against this it will be said that some of these, at least, were believed to be dual-use e.g. car factories were also used to make armoured vehicles. The media facilities were used for war propaganda and incitement to racial hatred. The most inexcusable targets were the Danube Bridges at Novi Sad, far to the north of the country, whose use can have had little impact on operations but whose demolition is continuing to cause huge loss and inconvenience to all riparian states. (Normally 10 million tons a year of grain, coal and ores are carried.) It will be said that every target was approved, at least in principle, by all the participating countries; but doubtless great pressure was brought to bear (for example by General Wesley Clark on the French) to agree to dubious cases. It is claimed, probably correctly, that a number of targets were owned or controlled by Milosevic's 'cronies'. Dragan Tomic, speaker of the Federal Parliament is director of Yugo Petrol; Milan Beko, minister for privatisation, is director of the

Zavasta motor plant; Milosevic's son Marko has extensive tobacco interests (*IHT*, 20 April 1999). General Short, the NATO air commander, made no secret of his ambition: 'to go hard after Belgrade and the leadership targets and everything that Milosevic held dear, and make it very clear to him that was exactly what we were doing' (*IHT*, 16-17 October 1999). But this objective pushes beyond the limits of proportion and discrimination. Finally it is claimed that all target dossiers were submitted to legal scrutiny; in which case one has to ask who was paying the lawyers' fees?

In short the strongest case against NATO's actions, in the light of Just War criteria, lies in the area of proportion and discrimination. Three further points bear on this issue. First the fact of bombing (in most cases) from 5000 metres made discrimination much more difficult and doubtless led to some of the much-publicised cases of admitted accidental damage. The aim was laudable -- to save the lives of NATO's pilots and so incidentally prevent the erosion of political support. Many people, not least airmen, have argued that the price in needless damage to civilians was too high. Secondly the use of precision guided munitions, particularly against fixed targets whose location and use was precisely known, was a great bonus for proportion and discrimination. It can be argued that only precision weapons should be used against such targets in the future. Thirdly the use of cluster bombs seems morally dubious. NATO officials say that about 1,100 cluster bombs were dropped, containing more than 200,000 bomblets, with a failure rate of 5%. It follows that 10,000 or more unexploded cluster bomblets remain. The post war casualty rate in Kosovo (170 up to mid-July, 1999) is reportedly comparable to Afghanistan and worse than Mozambique. Nearly half of these have been due to cluster bomblets, the remainder being due to anti-personnel mines (*IHT*, 20 July 1999). These figures suggest that cluster bombs deserve to join anti-personnel mines in the category of inhumane weapons.

Assessment

Many commentators were completely wrong-footed by Operation *Allied Force*. Those who argued that air power alone could never suffice and that only a land invasion would produce decisive results were proved wrong. It is almost certainly true, as argued above, that the *prospect* of a land invasion was one of the decisive factors in bringing Milosevic to capitulate. And it is fair to say that initial declarations by NATO that such an invasion would never take place were dumb. It makes no sense, in a war, to give away important intentions in advance. But it is also true that getting unanimous political approval for such operations (from the German government, with a 'green' foreign minister; from the Greeks, whose population were 90% opposed to the war, even from the US Congress) would have been all but impossible. It is also

clear that, given the terrain and the capabilities of the Serbian army, an opposed land invasion would have been far more costly in military casualties on both sides. It would almost certainly have cost more in civilian lives and property than the actual air campaign, and might well have taken longer to produce results.

It has been widely argued, not least with hindsight, that a non-violent resolution could have been obtained. If the terms offered at Rambouillet had been open to negotiation, if they had included the concessions to the Serbs that were ultimately adopted at Petersberg and if Russian influence with Serbia had been more constructively exploited by the West, possibly Milosevic would have been deterred. But to argue in this way is to discount the extraordinary diplomatic efforts of the preceding months and the proven habit of Milosevic to ignore or prevaricate his way out of his own most explicit undertakings. Some have contended that it was the withdrawal of the OSCE Verification Mission (KVM) and the subsequent bombing that triggered and enabled the vandalisation of Kosovo. But in fact the Serb campaign had not only been long planned but also begun at least a fortnight before the withdrawal of the mission and the bombing began. The recent report by Secretary General Kofi Annan by way of *Apologia pro Srebre nicca* is also most revealing. It needs to be read in full (www.un.org/News/oss/srebrenica.htm), but a selective quotation can distil the essential message:

'We (the UN) tried to create -- or imagine -- an environment in which the tenets of peacekeeping -- agreement between the parties, deployment by consent and impartiality -- could be upheld... An arms embargo with humanitarian aid and the deployment of a peacekeeping force... were poor substitutes for more decisive and forceful action.... The cardinal lesson... is that a deliberate and systematic attempt to terrorise, expel or murder an entire people must be met decisively with all necessary means.... In Bosnia and in Kosovo the international community tried to reach a negotiated settlement with an unscrupulous regime. In both instances it required the use of force to bring a halt to the planned and systematic killing and expulsion of civilians.'

It must be conceded that ultimate success is far from assured. In Kosovo there is still little electric power and an inconstant water supply. The streets are full of garbage, there are no traffic lights, few cars have license plates and no one has new identity papers. Serbs and gypsies are harassed and attacked. The UN government cannot pay its employees. Justice is rare and court trials almost non-existent. Crime, some of it organised, takes place with near impunity. The burning of Serb's homes in an organised fashion takes place almost daily. The reality of revenge and intolerance is eroding the UN goal of a multi-ethnic society (*IHT* 23rd November 1999). Whether in time these ills can be overcome remains an open question. Even so it is hard to argue that a Kosovo ethnically cleansed by Milosevic would have been preferable.

The strongest case against NATO's intervention rests upon the wider effects. These include the arousal of strong anti-Western feelings in China and Russia. According to an unnamed Russian official 'Everything in Moscow is now seen through the prism of Chechnya and Kosovo. The public is buying the idea that if we fail in Chechnya outside powers will be able to do whatever they want to in Russia, and the bombing in Kosovo showed what they want to do' (*IHT*, 22nd November 1999). But the actions of the Chinese government *vis-à-vis* the World Trade Organisation and the Russian Government in the OSCE have shown a more reasonable face. More serious in the long run might be erosion of respect for the UN Security Council, and for the rule of law more generally. Much will depend on the way in which International Humanitarian Law evolves in the light of Kosovo and whether better rules of procedure for the UN Security Council can be devised.

Finally we must ask whether the lapses which undoubtedly occurred on the NATO side were such as to invalidate the justice of the coalition operations. Summing up on the rules governing intervention with force the American bishops conclude that the criteria of Just War *taken as a whole* must be satisfied in order to override the strong presumption against the use of force. And they put a useful and much-needed gloss on the whole attempt to apply ethical principles to the messy business of conflict:

'We also recognise that the application of these principles requires the exercise of the virtue of prudence; people of good will may differ on specific conclusions. The just war tradition is not a weapon to be used to justify a political conclusion or a set of mechanical criteria that automatically yields a simple answer, but a way of moral reasoning to discern the ethical limits of action. Policy makers, advocates and opponents of the use of force need to be careful not to apply the tradition selectively to justify their own positions.'

It is hoped that this paper has lived up to the high standard of moral objectivity rightly prescribed by the bishops, but not so successfully as to obscure the author's own prejudices completely. In his view, taken in the round, NATO's actions did more good than harm and were to that extent justified.

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