

**An Analysis of Humanitarian Intervention in  
Action**

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**A document submitted in partial fulfillment of the requirements of  
London Metropolitan University  
for the degree of  
Doctor of Philosophy by Prior Output**

**October 2016**

## ABSTRACT

This submission examines the doctrine of humanitarian intervention by focusing on the Western involvement in the violent breakup of the Socialist Federal Republic of Yugoslavia during the 1990s and the wars that this ignited. It draws on several publications written over the past decade including “Securing Verdicts: The Misuse of Witness Evidence at The Hague,” in Herman ES (ed), *The Srebrenica Massacre: Evidence, Context, Politics* (Szamuely 2011); Herman ES, Peterson D & Szamuely G, 2007, “Yugoslavia: Human Rights Watch in Service to the War Party” (Szamuely 2007); and *Bombs for Peace: NATO’s Humanitarian War on Yugoslavia* (Szamuely 2014). Academic writers as well as policymakers deem NATO’s bombing of Bosnia in 1994 and 1995 and of Kosovo in 1999 to be exemplars of the successful use of force to secure humanitarian outcomes. This submission examines these claims in light of the standards that the advocates of humanitarian intervention have themselves put forward in order to measure the success or otherwise of any military action undertaken to stop mass atrocities and to save endangered civilians. My findings suggest that, even judged by those standards, NATO’s actions in Bosnia and Kosovo fell well short of success. Far more could have been achieved had diplomatic options been pursued with greater vigor than they actually were.

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## INTRODUCTION

This essay describes the issues I sought to address in several publications over the past decade, issues that other works had neglected or had failed to frame appropriately. The works include “Securing Verdicts: The Misuse of Witness Evidence at The Hague,” in Herman ES (ed), *The Srebrenica Massacre: Evidence, Context, Politics* (Szamuely 2011); Herman ES, Peterson D & Szamuely G, 2007, “Yugoslavia: Human Rights Watch in Service to the War Party” (Szamuely 2007); and *Bombs for Peace: NATO’s Humanitarian War on Yugoslavia* (Szamuely 2014). The essay outlines the doctrine of humanitarian intervention and details how it came to be applied in Yugoslavia during the 1990s, examining the extent to which it met the standards the humanitarian interventionists have themselves set to measure the success of military intervention.

Since the early 1990s, I have been studying the emergence, development and practical application of the doctrine of “humanitarian intervention” or - as it came to be known - the “responsibility to protect (R2P)”. The doctrine holds that the international community may in certain circumstances ignore customary international law’s stricture against violating state sovereignty and use military force to secure humanitarian ends. My book, *Bombs for Peace: NATO’s Humanitarian War on Yugoslavia*, arose out of this study, as did numerous essays and articles.

My research focused on Western humanitarian intervention in Yugoslavia during the 1990s, an intervention that is frequently cited in academic literature as a successful

exemplar of how to use force to achieve humanitarian outcomes. Indeed, contemporary scholars and policymakers seeking to justify Western military action against a Libya or a Syria often bring up the supposedly successful example of Yugoslavia to reassure doubters as to the efficacy, not to mention morality, of using force. Consequently, whether one is an enthusiast or an opponent of the use of force by the North Atlantic Treaty Organization (NATO) and its associated powers, one must reckon with the case of Yugoslavia. If NATO's intervention in Yugoslavia is to be deemed a success, then humanitarian intervention is a worthwhile - if risky - undertaking. If, on the other hand, NATO's intervention brought about or exacerbated the very humanitarian disasters it was supposed to address then the case for amelioration through bombs becomes highly dubious. This was the reason why I embarked on a study of the breakup of the Socialist Federal Republic of Yugoslavia (SFRY), from the debt negotiations of the 1980s, to the rushed recognitions of the secessionist republics in the early 1990s, to the outbreak of the wars, to the diplomatic efforts to end those wars and finally to the war crimes trials at The Hague—trials that are ongoing after more than 20 years.

As I looked into the subject, I was surprised to find widespread agreement among many scholars, policymakers and journalists that it was NATO military action against the Serbs that brought peace to the Balkans and saved millions of lives. The Serbs, many studies have claimed, were to blame for the Balkan wars of the 1990s. The Serbs were the ones who had supposedly destroyed the SFRY: The Serbs had attempted to turn a multinational state into a mono-ethnic Greater Serbian state, thereby leaving Yugoslavia's Slovenes, Croats and Muslims no choice but to seek exit from their common state. To this understandable quest

for independence, the Serbs responded by invading, first, Slovenia, then Croatia and then Bosnia. Not only were the Serbs moral reprobates they were better armed than anyone else because they had been able to call on the support of the Serb-dominated Yugoslav National Army (JNA).

As Serb killers went on a rampage, carving out ethnically pure Serb territories out of the newly independent republics in order to annex them to Serbia, a well-meaning but indecisive West stood by helplessly. After the July 1995 Srebrenica massacre, however, Serb crimes could no longer be tolerated and the United States, via NATO, finally stepped in and unleashed a ferocious bombing campaign to bring the Serbs to heel.

NATO's July 1995 bombing campaign, "Operation Deliberate Force," not only stopped the slaughter, perhaps even genocide, of the Bosnia's Muslim population, it facilitated the signing of the 1995 Dayton Accords that brought the wars in Yugoslavia to an end. NATO's bombing, it has been argued (Western & Goldstein 2011, p. 52)

brought Serbia to the negotiating table....Unlike previous interventions, the post-Dayton international peacekeeping presence was unified, vigorous, and sustained, and it has kept a lid on ethnic violence for more than 15 years.

But there was still no lasting peace because the Serbs were not done yet. Frustrated in their plans to create either a Serb-dominated Yugoslavia or a Greater Serbia, the Serbs decided to rid their country, which, other than tiny Montenegro was all that was left of Yugoslavia, of its Albanian population in the Serbian province of Kosovo. Here, too, the Serbs failed

as a newly self-confident West, no longer content to sit on the sidelines, acted in time and, through a vigorous bombing campaign, averted the certain genocide that awaited the Albanians. The Serbs were again brought to heel. Not only had NATO bombs ensured the physical survival of Kosovo's Albanian population, they had helped usher in a new, democratic Kosovo Albanian state. Bombs, therefore, can be an extraordinary force for good, liberating victims, punishing the guilty and bringing peace.

"NATO bombing in Bosnia, when it finally came," Samantha Power (2002, p. 507) has written,

rapidly brought that three-and-a-half-year war to a close. NATO bombing in Kosovo in 1999 liberated 1.7 million Albanians from tyrannical Serb rule. And a handful of NATO arrests in the former Yugoslavia has caused dozens of suspected war criminals to turn themselves in.

Happily averted also was the nightmare that had haunted liberals throughout the 1990s, namely, that Serb leaders would walk away from their crimes unpunished. Thanks to the passion for justice of the United States, the U.N. created the International Criminal Tribunal for the Former Yugoslavia (ICTY) in order to ensure that political leaders, even heads of state, would no longer be able to claim that sovereign immunity shielded them from answering for their crimes.

Scholars and policymakers have been eager to generalize from the Yugoslav experience, to enunciate universal principles that could be applied elsewhere. They came up with the contemporary doctrine of humanitarian intervention. However, as I show in my book, every detail of the story of the wars in Balkans is false. In fact, the familiar account outlined

above was cobbled together in order to justify policies that had actually served to trigger and then to fuel wars that unnecessarily went on for years. My research showed that, measured by the standards the champions of humanitarian intervention have themselves put forward to evaluate the success of an armed intervention, NATO's diplomacy and military campaigns cannot but be deemed to have spectacularly failed in achieving their ostensible goals.

By bombing Bosnia in 1994 and 1995 and Yugoslavia in 1999, NATO, a supposedly defensive military organization, had used force for the first time in its history, and had done so in explicit violation of the North Atlantic Treaty of 1949. (Article 1 of the treaty repeated almost word-for-word articles 2(3) and 2(4) of the U.N. Charter: "The Parties undertake...to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.") Not only that: NATO had used force outside of its area of operations and had attacked a power that had not threatened any other state, let alone a NATO member-state. For the first time since Hitler, bombs were raining down on major European cities.

NATO was going to war. NATO, an organization that, only a few years earlier following the end of the Cold War and the dissolution of its supposed chief adversary, the Warsaw Pact, had seemed moribund, had now found an exciting new role for itself. NATO would

be a global armed force acting on behalf of humanity, an enforcer of international humanitarian law, a rescuer and saver of the oppressed and persecuted.

## **ORIGINS OF MY STUDIES**

I first started writing about Yugoslavia during the 1990s. At the time, I was writing a weekly newspaper column in New York. Although I had worked at the Hoover Institution, Freedom House and the Hudson Institute, I certainly could not be described as an expert on Yugoslavia. In fact, I had never been much interested in Yugoslavia. During the Cold War, I had written a great deal on U.S. foreign policy, focusing chiefly on what the United States was doing in the name of fighting Communism. Since Yugoslavia was neither a U.S. ally nor a U.S. foe, since its political and economic system could be described as neither capitalist nor socialist, I had paid little attention to what went on during the Tito era.

All this changed with the violent dissolution of the Socialist Federal Republic of Yugoslavia. This was the first international crisis of the post-Cold War world and it was taking place in Europe, which had been - mercifully - at peace since 1945.

What struck me most forcefully when the crisis broke was the widespread preference of many in the media and in the policymaking elite to address the problems of Yugoslavia solely on the basis of emotion. Also noteworthy was a remarkable eagerness to take sides in a conflict that pitted nations about whom most commentators knew next to nothing. As they were presented, the wars in the Balkans were a morality tale, pitting unconditional

good against unmitigated evil, angelic victims—Bosnian Muslims, Kosovo Albanians and, to a lesser extent, Croats—against villainous Serbs. On one side were the Serbs, led by Serbian President Slobodan Milošević, the latest—but by no means last—incarnation of Hitler. On the other side were their victims, the non-Serbs of Yugoslavia, desperately seeking to be free of Serbian rule in general, and of Milošević’s rule in particular.

The only solution to the conflicts taking place in Croatia, Bosnia and Kosovo was to sanction, and then to bomb, the Serbs. Political pundits, policymakers, retired politicians and denizens of the think tanks jumped into the fray, denouncing United Nations peacekeepers as cowards and appeasers of the Serbs and pleading for bombs (Muravchik, 1994). The rhetorical, economic and, eventually, military onslaughts on Yugoslavia seemed to me to be bizarre. How could bystanders urge violence rather than peace? How could outsiders get to determine the appropriate political-constitutional arrangement for other nations?

The anguished stories and one-sided accounts that appeared in the media were worlds removed from the measured, nuanced reports of United Nations officials who were actually seeking to bring peace on the ground. It was striking also that U.N. peacekeeping forces regularly opposed the military missions that NATO urged and eventually undertook. While NATO officialdom resorted to propaganda and overwrought, one-sided depictions of the conflicts in Yugoslavia, U.N. observers assigned responsibility for the conflict and its attendant atrocities to all sides. The reports, speeches and books of U.N. commanders such as generals Philippe Morillon, Satish Nambiar, Michael Rose and Lewis MacKenzie

repeatedly expressed exasperation with the Western media and the U.S.-NATO insistence on demonizing Serbs and sanctifying everyone else.

The generals assigned to the U.N. understood something that seemed to be beyond the grasp of the humanitarian interventionists. Humanitarian crises are the consequence of war, not the cause of it. In Bosnia, there was no ethnic cleansing before the war broke out, there were no war crimes before war broke out and there were no refugees before war broke out. Consequently, it was the war that had to be ended first. Once that goal was accomplished, then there would be time to address humanitarian crises. That would be the appropriate time to reverse ethnic cleansing, to ensure that refugees return home. Fueling a war, shipping arms, encouraging military offensives - "leveling the playing field," to use the Clinton administration's catchphrase - could not possibly help solve humanitarian crises. Bosnia's most important requirement was political compromise. Yet the humanitarian interventionists rejected any compromise because that would allegedly reward ethnic cleaning.

The event that made the greatest impression on me was the final collapse in July 1992 of the Cutileiro plan to end the war in Bosnia. The plan involved independence plus cantonization for Bosnia. Pundits and policymakers in the West were however determined to keep Bosnia together as a unitary state, whether its citizens wanted it or not. The downfall of the Cutileiro plan was greeted with widespread rejoicing. *The Economist* (1992) spoke for many when it explained happily that:

Such a settlement, if foisted on Bosnia's Muslims, might silence the guns for a time. But it would, in effect, give Europe's blessing to the violent expulsion from their homes of more than 1m people. It would reward Serb ethnic killers as well as Croats who profited from their work by taking land or property left by fleeing Muslims. It would create an aggrieved, dispossessed Muslim nation on the edge of Europe.

The magazine's editorial expressed perfectly the peculiar morality that underpins the humanitarian interventionist doctrine: Continued war, more killings, more destruction of towns and villages, more displacement of populations, more detention camps, more refugees, were preferable to an agreement that, perish the thought, "might silence the guns for a time."

There was something eerily familiar about the claims of NATO and its champions that that the Western powers had a moral duty to right the wrongs of the world, to back with arms one faction and to bomb another. It was reminiscent of the Brezhnev Doctrine invoked by the Warsaw Pact to justify invasion of Czechoslovakia in 1968. It sounded not unlike Hitler's claims that he needed to intervene in Czechoslovakia and Poland in order to protect German minorities from persecution. It sounded an awful lot like the "white man's burden" claims of the 19<sup>th</sup> century, asserted to justify imperial rule over "savages." Invocation of high moral purpose and selflessness is the norm for Great Powers, not the exception. The last thing Great Powers would want to admit is that they were picking on weaker opponents for sordid material gain or because they were, well, weaker.

The humanitarian interventionist doctrine reminded me of ideas I had studied during my time at the London School of Economics. I was doing postgraduate work in the History of Political Thought and focusing on the political philosophy of G.W.F. Hegel. Hegel was an intriguing, if difficult, philosopher. On the one hand, no thinker before or since has come close to Hegel in expressing as succinctly the philosophical assumptions that underpin the imperial mindset. Hegel asserted that more civilized states have the right, even the duty, to conquer and subjugate less civilized ones. More civilized states were the carriers of a higher idea. All peoples have to undergo the laborious historical process from lowly, primitive forms of civilization and self-understanding to ever-higher forms of civilization and self-understanding, finally ending up with the modern understanding of human freedom, the rule of law and constitutional government. Not to conquer barbarians was an immoral act since it prevents them from realizing their full potential.

“Civilized nations,” Hegel (1991, paragraph 351) argued, are entitled “to regard and treat as barbarians other nations which are less advanced than they are...in the consciousness that the rights of these other nations are not equal to theirs and that their independence is merely formal.” In exactly the same way, latter-day - albeit unconscious - followers of Hegel would argue that the right to national sovereignty of non-Western powers, whether they are to be found in the Balkans or in Central Asia or in Africa, stands in the way of their enjoying the economic, political and constitutional riches that is the fortunate lot of the West. State sovereignty only allows barbarism to flourish. As Hegel explained, so-called civilized states could not in good conscience allow this to happen.

There is of course a huge difference between the beliefs of Hegel and those of today's humanitarian interventionists and this was the issue I had sought to address in my studies at the LSE. Hegel was an exponent of what has come to be known as the "Whig interpretation of history." This school of thought, roughly speaking, argues that history is a story that presents the past as the progressive realization of liberty, culminating in the modern constitutional state. This is the end-point of history for all human societies.

While such notions may have been tenable in the 19<sup>th</sup> century, it is difficult to adhere to them today. It is not only that during the 20<sup>th</sup> century all of the supposedly most advanced countries took part in two the most horrific wars ever to have been fought. More important, even today, 70 years after World War II, there is simply no evidence to show that the supposedly advanced societies of the West are anymore able to forgo violent conflict than less advanced ones. Since World War II, the United States has fought more wars against more countries than any other state. It spends more on armaments and sells more arms than the rest of the world combined. To be sure, Western countries are by and large economically and scientifically far more advanced than other countries and they do daily play host to millions of migrants coming in from the non-Western world. However, there is no evidence that citizens of the non-Western world - not even the incoming migrants— are particularly enamored of Western civilization. There is no desire to get on board the supposedly unstoppable historical locomotive.

In some ways, therefore, Hegel's philosophy is a museum piece, an artifact of the 19<sup>th</sup> century, the product of a more optimistic age. But there was more to Hegel than that.

Hegel's dismissal of abstract morality and his disdain for sentimentality continue to have salience. He repeatedly averred that *Das Herzklopf für das Wohl der Menschheit* (the heartthrob for the welfare of mankind) was a useless guide to resolving political conflicts. The bleeding-heart do-gooder imposes his will on others without any serious attempt to understand why others are doing what they are doing. He acts out of emotion; his sole goal for acting is to feel good about himself. His heartthrob leads to the

the rage of frantic self-conceit, into the fury of consciousness to preserve itself from destruction; and to do so by casting out of its life the perversion which it really is, and by straining to regard and to express that perversion as something else. The universal ordinance and law it, therefore, now speaks of as an utter distortion of the law of its heart and of its happiness, a perversion invented by fanatical priests, by riotous, reveling despots and their minions, who seek to indemnify themselves for their own degradation by degrading and oppressing in their turn—a distortion practiced to the nameless misery of deluded mankind. (Hegel, 2001, p. 132).

Hegel (2001) was warning against the type of political engagement the purpose of which is to play out a personal drama. Seeking to do good without a clear idea of what a conflict is about and what needs to be done to ameliorate a situation and without an assurance that the proposed course of action would do more good than harm, results in bloodshed and chaos. As Hegel scholar J.N. Findlay (1962, p. 109) pointed out

The pretendedly universal and impersonal dictates of a man's heart, are in fact distressingly personal and particular, and being so, they will always come into conflict with the similarly heart-felt dictates of other persons, to whom *his* dictates will seem senseless. Each man's heart will in fact be the utter heartlessness of the other person....The following of the heart will lead

therefore...to a savage, ruthless war of all against all, in which the conqueror will in his due turn be defeated.

Philosopher Karl Popper (1947) had famously attacked Hegel in *The Open Society and Its Enemies* as the foremost enemy of political freedom and honest intellectual inquiry. Hegel was nothing of the sort. It was clear even during the Cold War that Hegel's critique of political fanaticism and the application of an abstract morality to the world seemed highly pertinent to Marxist-Leninism.

However, as Soviet-style Communism crumbled, it seemed as if it were liberal, anti-Communist United States and Western Europe that were now in the grip of an ideology. It was liberals who now espoused the notion that history had a purpose and a final goal, namely, the universal triumph of the kind of liberal-democratic state that was to be found chiefly in Western Europe and the United States. This was the theme of Francis Fukuyama's celebrated essay (1989). It was obvious where such an arrogant grand theory would lead: Since the culminating point was already known, it was inevitable that the states grouped around NATO and the European Union would decide to push the process along. The whole world needed to embrace a certain economic and political model. Those who resisted would soon find themselves subject to vitriol, sanctions, subversion and, eventually, bombs.

And there were then, just as there are now, states that are not enamored of the Western neo-liberal political and economic order. Even before the USSR dissolved itself, the West's teleological arrogance was coming into conflict with the intractable reality of the Balkans.

## METHODOLOGY

Writing contemporary history, particularly one pertaining to events in the relatively recent past, is fraught with methodological problems. There is an abundance of available material. However, much of it is of questionable reliability. Many of the documents have been generated by highly partisan sources. Sifting through this material and assessing which document, indeed which part of which document, is trustworthy and which is not is a task as challenging as it is frustrating. The work becomes particularly problematic when, as is often the case, one comes across a document that may be deemed unreliable as a whole even if some parts of it would appear to be important and usable evidence.

In writing a history of NATO's involvement in the Yugoslav conflicts of the 1990s, I found neither the primary nor the secondary literature to be satisfactory. The most important source I relied on was, naturally, the material generated by the participants in the conflicts. There were first the memoirs of the diplomats, the politicians and the generals of the NATO powers. There are also the many stories they recounted to reporters as well as their testimony at tribunals of inquiry, parliamentary hearings and the various criminal trials at the ICTY. In addition, there were the memoirs and testimony, in the media and at the ICTY, of the Serb, Croat, Bosnian and Kosovo Albanian politicians and activists who played a key role in the breakup of and subsequent wars in Yugoslavia.

Most of these accounts are unreliable because almost all of these players have axes to grind. Their accounts are colored by partisanship. The architects of NATO's fateful intervention

in the Yugoslav conflicts have naturally sought to present their actions in the most positive light. The memoirs of Bill Clinton (2004), Madeleine Albright (2003), Tony Blair (2010), Wesley Clark (2002), Richard Holbrooke (1998) and Warren Zimmermann (1996), are in agreement on one thing: Blame for the breakup of Yugoslavia and the subsequent wars rests with the Serbs and, in particular, with Serbia's leader, Slobodan Milošević. The contribution of the NATO powers, on the other hand, was minimal. The only blemish on NATO's otherwise stellar record was reluctance to use force earlier. The memoirs are therefore as unreliable as the extensive testimony proffered under oath at the ICTY by officials of the NATO powers. Since ICTY judges and prosecutors have little interest in disputing NATO's version of history and since defense counsel play only a limited role in the proceedings, the Western officials are able to present highly unreliable testimony with little by way of challenge. Del Ponte (2009) described in revealing detail the attitudes prevalent among ICTY judges and prosecutors.

Peter Galbraith (Milošević Trial Transcript, p. 23078), Wesley Clark (MTT, p. 30369), William Walker (MTT, p. 6765) and Paddy Ashdown (MTT, p. 2332) presented the involvement of the NATO powers as motivated by selfless desire to minimize human suffering. As they tell their story, their preference was a peacefully negotiated outcome. Instead, a resort to force was imposed on them because of the obduracy of their adversaries. Historians are of course familiar with self-serving accounts of political actors. Unfortunately, commitment to the doctrine of humanitarian intervention has prevented too many scholars from taking a properly critical attitude to the claims of NATO officialdom. Nonetheless, this first-hand testimony is an invaluable source of information for scholars.

There are other key documents, the most important of which are probably the many journalistic descriptions of the wars. The Western media covered the Balkans zealously, indeed almost obsessively, during the 1990s. For the Western media, the Yugoslav conflict was the most important story of the decade. Day after day, year after year, the newspapers gave over several pages a day to coverage of the wars in Croatia, Bosnia and Kosovo. TV news shows frequently led with stories from the wars. Many of the reporters who established reputations covering the wars of Yugoslavia then went on to write books recounting their experiences. The media reports, and the books based on them, were highly emotional, focused on the horrors of the wars rather than on their origins.

There was often an insatiable hunger for atrocity stories, the more gruesome the better, and many foreign reporters saw the wars in Yugoslavia as opportunities to build careers and win coveted journalistic awards by outdoing one another in relaying tales of war crimes. News pages and airwaves were filled with unsubstantiated, often absurd, stories of rape camps, concentration camps, mass graves and mass executions. However, the media's approach to atrocity stories was extraordinarily credulous. Reporters seemed to be oblivious to the fact that in many wars, the fight for favorable international public opinion is as intense as anything that takes place on the battlefield. This was particularly true in the Balkans given that a number of the protagonists were devoting considerable resources to persuading outside powers to intervene on their behalf. In such circumstances, local sources should have been treated with caution. Atrocity claims are weapons of war. Some claims are true, some are not. They cannot automatically be assumed to be true out of fear

that an expression of skepticism might be taken to be a sign of moral delinquency. Journalists accepted uncritically what they were told by sources that had every incentive to exaggerate the victimhood of their side and the wickedness of their adversaries.

There was a fateful confluence of factors that led to the extraordinary proliferation of one-sided atrocity stories. There were the NATO governments seeking a pretext to intervene in order to demonstrate the necessity of the military alliance's continuing existence. There were the policymakers, columnists and editorial writers urging NATO intervention. There were the corporate media owners who saw in gruesome atrocity stories as a way to boost circulation and viewership figures.

Furthermore, Western journalists, as is often the case, took their lead from their governments, and flagrantly took sides in the conflict. In Croatia, in Bosnia and in Kosovo, reporters did little to hide their allegiances. Like the governments of the NATO powers, reporters decided that the Serbs were to blame for the wars and that any atrocities that they were allegedly responsible for were much worse than the alleged atrocities of others. This affected the reliability of many media reports. Not only were reporters often willfully blind to possible war crimes of non-Serbs, attributing atrocities to Serbs that were in fact perpetrated by others. Frequently, even atrocities perpetrated against Serbs were attributed to the Serbs. General Sir Michael Rose (1999, p. 78) recounted CNN correspondent Peter Arnett's reporting in 1994 that "Sarajevo was under heavy attack by the Serbs." However, it was clear from the footage that "the rounds were outgoing and had been fired by the

Muslims, not by the Serbs. Someone commented that he appeared to be confusing Sarajevo with Baghdad.”

More troublingly, journalists deliberately filed misleading stories or sat on facts that might have called into question the virtuousness of the side they supported. For example, during the siege of Sarajevo, journalists would report that Serbs were shelling the city airport and preventing the arrival of humanitarian relief. The fact that the Muslim authorities were using the airport to bring in military supplies was absent from their accounts. There was no mention of the tunnel under the airport, used by Muslims to bring in weaponry and to transfer troops. There was a reason why this information did not appear in their reports. Journalists vowed not to report it. Writer Neal Ascherson (2012) disclosed that, “[I]n the 1990s, foreign reporters in Sarajevo during the siege (pro-Bosnian almost to a man and woman) found out how weapons and ammunition were still getting into the city. They agreed among themselves not to use the story.”

In Kosovo, also, reporters often accepted uncritically the unverified claims of active participants in the conflict. Such sources were doubly unreliable as they were also often recipients of funds from the U.S. government. One regular recipient of subventions from the U.S. government-funded National Endowment for Democracy was the Kosovo-based Council for the Defense of Human Rights and Freedoms. Following the end of NATO’s bombing campaign, Pearl & Block (1999) reported that this organization was crucial in providing uncorroborated, often false, accounts of bloody Serb rampages. Its “activists

were often the first to interview refugees arriving in Macedonia. Journalists later cited the council's missing-persons list to support theories about how many people died in Kosovo.”

The shortcomings of some of the best-known and most influential journalism of the Yugoslav wars are today only too readily apparent. Some reporters (Silber and Little 1995) sought to explain the conflicts in Yugoslavia as consequence of the infinitely malevolent mind of Slobodan Milošević. Other reporters (Vuillamy 1994) and (Gutman 1993) adopted an emotional, one-sided approach, wholly embracing the cause of the Bosnian Muslims, presenting them as hapless victims of their villainous adversaries. Others (Rohde 1997) focused on isolated events such as Srebrenica as emblematic of the Bosnian war as a whole.

The secondary literature (Judah 1997), (Magas 1993) and (Cohen 2002) was also very one-sided and partisan. Even serious scholars (Vickers 1998) embraced the cause of particular national groups.

Other important sources of information included the official documents of the SFRY, particularly the minutes of the meetings of the presidency and the supreme defense council. There are the minutes of the legislative assemblies of the successor republics of the SFRY. There are also the presidential and military meetings that were surreptitiously recorded and subsequently transcribed. There are the millions of pages of transcripts of the many criminal trials that have taken place and continue to take place at the ICTY. There are the many exhibits at the trials and the many expert reports. The ICTY Legal Library is an invaluable archive of material.

The books that focused on the work of the ICTY were largely uncritical in their approach and offered little by way of insight. Stephen (2004) and Armatta (2010) accepted the ICTY narrative that sought to assign blame for almost all of the war crimes to the Serbs. Their accounts of the ICTY's trials and of its dubious jurisprudence were fulsome and read as if they were drafted by the ICTY's press office.

There is also the record generated by the United Nations. This is probably the most useful source of all. There are the very detailed reports of the U.N. secretary-general, which are based on the reports of the U.N. observers on the ground. These reports go out of their way to be balanced and fair to all sides. There are also the direct accounts and testimony of the U.N. observers. The memoirs and the direct testimony of the generals assigned to the United Nations are extraordinarily valuable. Also useful, though to a lesser extent, are the reports of the observers of the OSCE and the testimony of members of its verification mission in Kosovo.

In conclusion, the documentation that I found to be the most reliable and useful was the material generated by the international observers on the ground, chiefly those of the United Nations and, to a lesser extent, those of the OSCE. Illuminating also were the minutes of the meetings of the governmental bodies of the SFRY and its successor republics, as well as the voluminous transcripts of the war crimes trials of the ICTY. The material that I used with the greatest caution included the memoirs of the Western political actors. Of

questionable usefulness also were the writings of many of the journalists who reported from - and often made their reputations in - the Balkans during the 1990s.

## **HISTORY OF THE DOCTRINE**

There is nothing new about the doctrine of humanitarian intervention. Philosopher of international law Hugo Grotius had addressed the issue in the 17<sup>th</sup> century. In his classic text, *On the Laws of War and Peace*, Grotius (2001, p. 247) argued that it may be legitimate for outside powers to take up arms against tyrannical rulers on behalf of those rulers' oppressed subjects.

Though it is a rule established by the laws of nature and of social order, and a rule confirmed by all the records of history, that every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere. Yet where a Busiris, a Phalaris or a Thracian Diomedes provoke their people to despair and resistance by unheard of cruelties, having themselves abandoned all the laws of nature, they lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations.

However, Grotius' suggestion went together with two very significant caveats. First, rebellion by the oppressed subjects against their sovereign was impermissible. It was precisely because it was illegal for subjects to free themselves from their rulers that others sometimes had to take up the fight on their behalf:

Admitting that it would be fraught with the greatest dangers if subjects were allowed to redress grievances by force of arms, it does not necessarily follow that other powers are prohibited from

giving them assistance when labouring under grievous oppressions. For whenever the impediment to any action is of a personal nature, and not inherent in the action itself, one person may perform for another, what he cannot do for himself.... Thus a guardian or any other friend may undertake an action for a ward, which he is incapacitated from doing for himself. (Grotius, 2001, p. 248).

Even under such circumstances it was impermissible for oppressed subjects to transfer allegiance to their foreign champions. For that would constitute an act of treason. Second, the motives of the interveners had to be kept under close scrutiny. “Pretexts of that kind cannot always be allowed, they may often be used as the cover of ambitious designs.” Nonetheless, a “right does not necessarily lose its nature from being in the hands of wicked men. The sea still continues a channel of lawful intercourse, though sometimes navigated by pirates, and swords are still instruments of defense, though sometimes wielded by robbers or assassins” (Grotius 1901, pp. 288-289).

In his classic textbook, *International Law*, Oppenheim also addressed the question of whether humanitarian intervention was a principle recognized in international law. “If a State in time of peace or war violates such rules of the Law of Nations as are universally recognised by custom or are laid down in law-making treaties, other States have a right to intervene and to make the delinquent submit to the rules concerned” (Oppenheim 2012, paragraph 137). If, for example, a “State which is a party to the Hague Regulations concerning Land Warfare were to violate one of these Regulations, all the other signatory Powers would have a right to intervene.”

However, Oppenheim expressed doubt as to “whether there is really a rule of the Law of Nations which admits such interventions.” To be sure, international law could evolve and perhaps sometime in the future humanitarian intervention could become permissible. However, such military actions would have to take “the form of a collective intervention of the Powers.

During the 19<sup>th</sup> century, states regularly invoked the doctrine of humanitarian intervention to justify their military actions. In 1829, France, Britain, and Russia militarily enforced the 1827 Treaty of London in order to prevent massive bloodshed in Greece, then under Ottoman occupation. In 1860, France intervened militarily in Syria to protect the Christian population from slaughter at the hands of the rulers of the Ottoman Empire. Russia also invoked the principle of humanitarian intervention, claiming it had a right to fight on behalf of European Christians to save them from the marauding Turks.

There were contemporary skeptics. John Stuart Mill (1859, p. 6) for one doubted whether humanitarian intervention was ever justifiable. In part, he argued there was no guarantee that meddling by outsiders would not make matters worse. More important, unless people liberated themselves from the rule of tyrants they would never be able to acquire proper appreciation of the benefits of liberty:

When the contest is only with native rulers, and with such native strength as those rulers can enlist in their defense, the answer I should give to the question of the legitimacy of intervention is, as a general rule, No. The reason is, that there can seldom be anything approaching to assurance that intervention, even if successful, would be for the good of the people themselves.

The only test possessing any real value, of a people's having become fit for popular institutions, is that they, or a sufficient portion of them to prevail in the contest, are willing to brave labour and danger for their liberation. ...But the evil is, that if they have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own, will have nothing real, nothing permanent.

The doctrine of humanitarian intervention very much went out of favor following the establishment of the United Nations and the universal adoption of the U.N. Charter. This wasn't surprising. The United Nations is based on the sovereign equality of states. All member-states have to commit themselves to non-interference in the domestic affairs of other states. Article 2 (1) states clearly that the U.N. "is based on the principle of the sovereign equality of all its Members." Article 2 (4) declares that, "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." According to Article 2(7), "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."

There was, to be sure, the Universal Declaration of Human Rights, signed on to by all member-states. However, the declaration granted no on the right to use force to enforce its provisions. As Eleanor Roosevelt had argued (U.N. General Assembly 1948), the declaration "was not a treaty or international agreement and did not impose legal

obligations; it was rather a statement of basic principles of inalienable human rights, setting up a common standard of achievement for all peoples and all nations.”

While human rights in the post-1945 world may have become everybody’s business, the legal consensus was that no one had the right to use force against anyone else in the name of human rights. This is what the International Court of Justice determined in 1986 when it came to address the humanitarian intervention issue in the *Nicaragua* case. The United States had sought to justify its resort to force against Nicaragua by pointing to the supposedly abysmal state of human rights in Nicaragua. The ICJ firmly rejected the U.S. argument. The noble cause of human rights can never serve as justification for violence and destruction:

[W]hile the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the *contras*. The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States (International Court of Justice, *Nicaragua v. United States of America*, paragraph 268).

The British Foreign and Commonwealth Office arrived at the same conclusion, also in 1986. The “overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention, for three main reasons,” the office planning staff determined:

first, the UN Charter and the corpus of modern international law do not seem specifically to incorporate such a right; secondly, state practice in the past two centuries, and especially since 1945, provides only a handful of genuine cases on humanitarian intervention, and, on most assessments, none at all; and finally, on prudential grounds, that the scope for abusing such a right argues strongly against its creation.... In essence, therefore, the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by its costs in terms of respect for international law (Simma 1999, p. 5).

The doctrine of humanitarian intervention as it came to be enunciated in the early 1990s emerged as a particular kind of response to the crises that attended the breakup of, and subsequent wars in, Yugoslavia. The doctrine, as articulated by such leading champions as former French Foreign Minister Bernard Kouchner, former British Prime Minister Tony Blair, former U.N. Secretary-General Kofi Annan, U.S. Permanent Representative to the U.N. Samantha Power, former U.N. High Commissioner for Human Rights Louise Arbour, former Canadian Foreign Minister Lloyd Axworthy, former Australian Foreign Minister Gareth Evans, former U.S. Ambassador-at-Large for War Crimes Issues David Scheffer and writers Michael Ignatieff, Anne-Marie Slaughter and Geoffrey Robertson took it as a given that NATO's bombing campaigns in Bosnia and Yugoslavia had been a huge success. Whatever the shortcomings of NATO's actions, they had come about either because the alliance had waited too long to act or because it had not used force with sufficient vigor. (As an aside, Arbour has recently taken to rethinking her commitment to humanitarian intervention. She no longer takes it as axiomatic that the West is uniquely able to dictate how conflicts should be resolved and what regimes people should live under:

“Having worked in the human-rights field internationally, I now find it incredible how the West seems to be absolutely incapable of hearing what it sounds like to the rest of the world – a total disconnect, in the promotion of what it rightly believes are universal values, while being completely oblivious to the fact that others don’t take this at face value as being a good-faith pursuit of universal goods” [Saunders 2015]).

The term “humanitarian intervention” eventually gave way to the more mellifluous-sounding “responsibility to protect.” According to this doctrine, all states have the responsibility to protect their citizens from mass atrocities such as genocide and crimes against humanity. Should they fail to do so, they waive their right to sovereignty. Responsibility for protecting those citizens then falls on other powers to step in and offer protection to those citizens using whatever means, including military, they deem fit.

## **UBIQUITY OF GENOCIDE**

The humanitarian intervention doctrine has a number of key ingredients. There is, first, the assertion that mass atrocities, especially genocide, are regular occurrences. Every day, everywhere, mass killings are said to be taking place. The perpetrators are ambitious, wicked political leaders. The mass killings moreover are not spontaneous, momentary aberrations. Instead, they invariably come about as a result of carefully thought-out plans to exterminate national groups. The goal all too often is genocide. Unless such leaders are stopped in their tracks by outside powers, tens of thousands, hundreds of thousands,

perhaps millions would be massacred. Western governments, lamented Samantha Power (2002, p. 513),

have generally tried to contain genocide by appeasing its architects. But the sad record of the last century shows that the walls the United States tried to build around genocidal societies almost inevitably shatter. States that murder and torment their own citizens target citizens elsewhere. Their appetites become insatiable. Hitler began by persecuting his own people and then waged war on the rest of Europe and, in time, the United States. Saddam Hussein wiped out rural Kurdish life and then turned on Kuwait, sending his genocidal henchman Ali Hassan al-Majid to govern the newly occupied country. The United States now has reason to fear that the poisonous potions Hussein tried out on the Kurds will be used next on Americans. Milosevic took his wars from Slovenia and Croatia to Bosnia and then Kosovo. The United States and its European allies are continuing to pay for their earlier neglect of the Balkans by having to grapple with mounting violence in Macedonia that threatens the stability of southeastern Europe.

Power's words help explain how it came about that the intervention enthusiasts of the 1990s were so eager to lend their support to the "war on terror" invasions and bombing campaigns of the following decade. To the humanitarians, the invasions of Iraq and Afghanistan were as much a part of the twilight struggle against the instigators of genocide as the bombing of Yugoslavia was.

Genocide is taking place daily, the champions of intervention argued and yet the world, even the United States, looks on with indifference. States need to stop preoccupying themselves with their national self-interests and, instead, to adopt genocide prevention as a key foreign policy priority. As Albright & Cohen (2008, p. xix) asked plaintively:

Why—sixty years after the Convention on the Prevention and Punishment of the Crime of Genocide, and twenty years after its ratification by the United States—are we still lacking the institutions, policies, and strategies to reliably prevent genocide and mass atrocities? Why is our national security bureaucracy too often unable to marshal what is needed to prevent the human suffering and loss of life that accompanies mass violence? How is it that many Americans are rallying against genocide, but our nation seems unable to prevent the large-scale and deliberate attacks that shake our national conscience and threaten our national security?

On the face of it, using force to “prevent” human suffering sounds strange. It diverges from our understanding of best law-enforcement practices. We don’t give the police *carte blanche* to break down doors, shoot suspects or blow up houses in the name of averting a possible crime. The police are required to go through a cumbersome legal procedure before they can use lethal force - an especially important consideration when a crime hasn’t yet been committed.

Nonetheless, the administrations of George W. Bush and Barack Obama both promised that genocide prevention and punishment would play a key role in future U.S. foreign policy. The Bush administration’s 2006 National Security Strategy declared that

The world needs to start honoring a principle that many believe has lost its force in parts of the international community in recent years: genocide must not be tolerated.

It is a moral imperative that states take action to prevent and punish genocide. History teaches that sometimes other states will not act unless America does its part. We must refine United States Government efforts...so that they target those individuals responsible for genocide and

not the innocent citizens they rule. Where perpetrators of mass killing defy all attempts at peaceful intervention, armed intervention may be required, preferably by the forces of several nations working together under appropriate regional or international auspices. (National Security Strategy 2006, p. 17).

The Obama administration in its May 2010 National Security Strategy statement boasted of its commitment to the “Responsibility to Protect” doctrine. Responsibility for prevention of genocide or mass atrocities, the statement said, “passes to the broader international community when sovereign governments themselves commit genocide or mass atrocities, or when they prove unable or unwilling to take necessary action to prevent or respond to such crimes inside their borders” (National Security Strategy 2010, p. 48). The United States, the administration promised, would be “proactively engaged in a strategic effort to prevent mass atrocities and genocide. In the event that prevention fails, the United States will work...to mobilize diplomatic, humanitarian, financial, and—in certain instances—military means to prevent and respond to genocide and mass atrocities.”

The charge of genocide, which had played no part in the Nuremberg war crimes trials, has featured prominently in the trials at the United Nations tribunals. A number of Serb leaders of the 1990s, including Slobodan Milošević, Radovan Karadžić and Ratko Mladić, have been charged with genocide. The International Criminal Tribunal for Rwanda, which came into existence more than a year after the International Criminal Tribunal for the Former Yugoslavia, was first off the mark. On May 1, 1998, a former prime minister of Rwanda, Jean Kambanda, pleaded guilty to genocide and was sentenced to life imprisonment. Later that year, the ICTR became the first court ever to convict

anyone of genocide. On Sept. 2, it convicted a former mayor, Jean-Paul Akayesu, of genocide, finding, among other things, that rape and sexual assault could constitute genocide: The

Chamber is satisfied that the acts of rape and sexual violence...were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public...These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole. The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them. (International Criminal Tribunal for Rwanda, *Prosecutor v. Akayesu*, paragraph 731).

In subsequent years, both tribunals have handed down a number of genocide verdicts.

## **DIMINUTION OF STATE SOVEREIGNTY**

A second key ingredient of the humanitarian intervention doctrine is the insistence that state sovereignty - the “essential building block of the nation-State era and of the United Nations itself,” in the words of current U.N. Secretary-General Ban Ki-moon - needed to be jettisoned. Old-fashioned state sovereignty was out. As the humanitarian interventionists would have it, such sovereignty serves all too often as a shield providing impunity for wicked political leaders who are bent on mass violence, ethnic cleansing and genocide. The prejudice in favor of non-intervention needed to be overcome. Relief of human suffering was a far more important objection than maintenance of sovereignty. In

1998, not long before the launch of NATO's bombing campaign, NATO Secretary-General Javier Solana set out the parameters of the new world deemed to be coming into existence:

[W]here does the sovereignty of a state end and where does the international obligation to defend human rights and to avert a humanitarian disaster start? Humanity means orienting our policies to serve the needs of man. Indeed, one could argue that a security policy which is not constructed around the needs of man and humanity will risk the worst fate—being ineffectual. That is indeed borne out by the narrow-minded nationalistic policies that have led to so many wars in Europe. Most of the conflicts we see today are between or within states that disregard fundamental human needs. It is thus no accident that the last years have seen an increase in the demand for humanitarian actions. Yet despite the obvious need, we have found ourselves restrained by the principle of non-interference (Solana 1998).

Solana was directing his remarks at Yugoslavia. Serb and Yugoslav President Slobodan Milošević had supposedly hid behind the mantle of state sovereignty in order to carry out an ethnic cleansing campaign against Kosovo's Albanian population.

“Traditional international law authorizes tyranny,” a prominent interventionist scholar has written:

It gives carte-blanche to anyone who wishes to bypass popular will and seize and maintain power by sheer political force. This is delicately described by pertinent international materials as a state's right to “choose” its political system. Such a state-centric view suffers from acute moral and conceptual poverty. Both ordinary common sense morality and the structure of international law, by presupposing agency and representation, require that governments should be recognized

and accepted in the international community only if they genuinely represent their people (Tesón 1996, p. 35).

The right to intervene, the humanitarians argue, is already firmly enshrined in international law. There are already innumerable United Nations resolutions on the book demanding universal adherence to human rights norms. States cannot therefore shield themselves from international opprobrium by insisting on their right to do whatever they want within their own sovereign territory. The Preamble to the United Nations Charter states that the peoples of the United Nations are determined “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” Article 1(3) states that the purpose of the U.N. is “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” Thus, according to the interventionists, a state that denies its citizens’ human rights is in breach of the U.N. Charter. Consequently, states are within their rights to step in to make sure that U.N. principles are adhered to. According to one of the most important early champions of humanitarian intervention, the International Commission on Intervention and State Sovereignty (ICISS),

The notion that there is an emerging guiding principle in favour of military intervention for human protection purposes is...supported by a wide variety of legal sources—including sources that exist independently of any duties, responsibilities or authority that may be derived from Chapter VII of the UN Charter. These legal foundations include fundamental natural law principles; the human rights provisions of the UN Charter; the Universal Declaration of Human

Rights together with the Genocide Convention; the Geneva Conventions and Additional Protocols on international humanitarian law; the statute of the International Criminal Court; and a number of other international human rights and human protection agreements and covenants (International Convention on Intervention and State Sovereignty 2001, paragraph 2.26).

“Strictly traditional notions of sovereignty can no longer do justice to the aspirations of peoples everywhere to attain their fundamental freedoms,” former U.N. Secretary-General Kofi Annan told the General Assembly in 1999. State frontiers, he declared in 1998, a few months before NATO’s attack on Yugoslavia, “should no longer be seen as a watertight protection for war criminals or mass murderers.” According to the ICISS’ 2001 manifesto, “Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.” (ICISS, p.1) The U.N. Charter, with its “strong bias against military intervention is not to be regarded as absolute when decisive action is required on human protection grounds.” (ICISS, paragraph 2.27).

Intervention by outsiders wasn’t a violation of a people’s sovereignty. To the contrary, it was the fulfillment of sovereignty. “One modern understanding of sovereignty refers not only to state borders, but also to political sovereignty - that is, to the ability of people within those borders to affect choices regarding how they should be governed and by whom,” an interventionist scholar has written. “Those who threaten that ability, be they internal or external in origin, violate the sovereignty of the people. Accordingly, when another state

intervenes to protect human rights in such circumstances, it is not violating a principle of sovereignty. Rather, it is liberating a principle of sovereignty” (Mertus 2000, p. 1764).

Such a reading of international law involves a good deal of cherry picking among the documents. One can easily point to innumerable international agreements that unambiguously prohibit intervention in other countries’ internal affairs. International law is quite explicit on the issue of aggressive war, for example, particularly on the invocation of human rights abuses as justification for attacking another country. Apart from Article 2 of the U.N. Charter, there is also the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). Part I, Article (3) of Protocol II states, “Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.” Furthermore, “Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.”

Humanitarians ignore such prohibitions. “We will remember 1999 as the year in which sovereignty gave way in places where crimes against humanity were being committed,” exulted Kenneth Roth, Human Rights Watch’s executive director (Human Rights Watch 1999). By “crimes against humanity,” Roth wasn’t referring to anything NATO might have

perpetrated. He meant of course what Serbs were alleged to have done to Albanians. By celebrating NATO's bombing of Yugoslavia, Roth was of course endorsing Western aggression. For

it is the U.S. and British leadership which determines when "crimes against humanity" are committed, but Roth has faith that these leaders are the proper deciders and that the sacrifice of a basic principle of international law is thus justified. This is an only slightly veiled defense of recent U.S. aggressions, and so the alleged refusal by HRW to make judgments about decisions to go to war is in fact a form of apologetics for aggressive war (Szamuely 2007).

The purported beneficiaries of humanitarian intervention have remained distinctly unenthusiastic about the doctrine. They remain convinced that international law has undergone the sudden, drastic change the interventionists insist it has. In April 2000, the Group of 77, meeting at the South Summit in Havana, issued a declaration that drew a clear distinction between military intervention and humanitarian assistance:

We stress the need to maintain a clear distinction between humanitarian assistance and other activities of the United Nations. We reject the so-called "right" of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law...Furthermore, we stress that humanitarian assistance should be conducted in full respect of the sovereignty, territorial integrity, and political independence of host countries, and should be initiated in response to a request or with the approval of these States (Group 77 2000, paragraph 54).

To be sure, the 2005 World Summit Outcome declared, "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (United Nations 2005, paragraph 138). But the right to interfere

in the in the internal affairs of other states was to be circumscribed. The international community would only be permitted to help states exercise their responsibility and “support the United Nations in establishing an early warning capability.” The responsibility to protect, U.N. Secretary-General Ban explained, is primarily “a matter of State responsibility, because prevention begins at home and the protection of populations is a defining attribute of sovereignty and statehood in the twenty-first century....[T]he international community can at best play a supplemental role” (United Nations Secretary-General Report 2009, paragraph 14).

The importance of non-interference was reiterated in May 2006 in Putrajaya, Malaysia, at the ministerial meeting of the coordinating bureau of the Non-Aligned Movement. The ministers insisted that the responsibility to protect populations had to bear in mind the “principles of the U.N. Charter and international law, including respect for the sovereignty and territorial integrity of States and non-interference in their internal affairs.” Any peacekeeping operation, therefore, had to be based on “the consent of the parties, the non-use of force except in self-defense and impartiality.” And the ministers firmly rejected a “so-called ‘right’ of humanitarian intervention, which has no basis either in the U.N. Charter or in international law” (Non-Aligned Movement 2006, paragraph 249).

## **GETTING AROUND THE U.N. SECURITY COUNCIL**

A third key ingredient of the humanitarian intervention doctrine is the claim that extreme humanitarian emergencies obviate the need for U.N. Security Council authorization for the

use of force. The U.N. Charter prohibits military action by a state against another state unless it is carried out in self-defense. There is one exception. Military action may be legal if it is undertaken by the international community and authorized by the U.N. Security Council. Consequently, the Security Council could serve as a way of getting around the restrictions of Article 2. Unfortunately for the interventionists, the Security Council cannot sign off on a military action if any of its five permanent members vetoes it.

In the case of Yugoslavia, neither Russia nor China, both permanent members of the Security Council, would ever have agreed to authorize military action. Realizing this, the Clinton administration in 1998 and 1999 forbade any of its NATO partners even to raise the subject of asking the U.N. Security Council to sanction the proposed bombing of Yugoslavia. It was out of the question because Russia would not hesitate to exercise its veto. "The President should call Prime Minister Blair to urge the U.K. to change its strategy of seeking U.N. Security Council Resolution to authorize a NATO action despite Russian opposition," an October 1998 National Security Council Deputies Committee meeting concluded. (As early as June 1998, the Clinton National Security Council was determined to prevent any NATO power from seeking Security Council authorization for military action in Kosovo. According to the 30 June, 1998, "Summary of Conclusions for Meeting of the NSC Principals Committee," "Principals agreed to make a major effort to elicit British, French and German assurance that they would, if necessary, participate in NATO action without United Nations authorization.... Principals agreed that under current circumstances, efforts to achieve a United Nations Security Council Resolution under Chapter VII would be counterproductive." By Aug. 6, the NSC had resolved that

“Principals agreed on need to build allies support for the threat of or use of NATO force in Kosovo without the need for a UN Security Council Resolution” [National Security Council Declassified Document]).

Since 1945, the Security Council has consistently stood in the way of unilateral military action. Even the 2005 World Summit Outcome summit concluded that while collective action might be possible “should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity,” such action would have to be authorized by the U.N. Security Council, as prescribed by Chapter VII of the U.N. Charter. (United Nations 2005, paragraph 139.)

The Security Council is a source of considerable annoyance for interventionists claiming to speak on behalf of humanity. “The moral imperative must be stop crimes against humanity whenever they occur, not merely when the five permanent members of the Security Council have unanimously resolved to act,” wrote Robertson (2000, p. 436). In 1999, U.N. secretary-general spoke for many humanitarians when he explained that if the Security Council continues to hesitate signing off on military action, other states will simply take matters into their own hands:

Unless it [the Security Council] is able to assert itself collectively when the cause is just and when the means are available its credibility in the eyes of the world may well suffer. If States bent on criminal behaviour know that frontiers are not the absolute defense and if they know that the Security Council will take action to halt crimes against humanity, they will not embark on

such a course of action in expectation of sovereign impunity (United Nations General Assembly 1999, p. 3).

The ICISS report insisted that absence of U.N. Security Council authorization for the use of force should not be the end of the matter. If the U.N. Security Council fails to take action, then the General Assembly could step in and authorize something under the “Uniting for Peace” procedure. (That is how the 1950 U.S.-led action in Korea came to be authorized.) If the U.N. General Assembly too fails to act, according to the ICISS, there would be no alternative but “action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.” “Subsequent authorization” is what happened in Yugoslavia and Iraq: The Security Council was presented with a *fait accompli* and had no choice but to give its assent.

Ever since the Yugoslavia intervention, the interventionists have tried several tacks to get around the difficulty of Security Council reluctance to authorize the use of force. First, they launched a campaign seeking to shame the permanent members into giving up their use of the veto—at least in circumstances of humanitarian disaster. Use of the veto was immoral. Security Council vetoes, wrote Ignatieff (2013), “enable a ruler to continue butchering his own people and driving millions into exile. If a veto has these ghastly consequences, who would call it legitimate? Who would dare believe that such a veto strengthens the rule of law?”

The ICISS (2001, p. xiii) urged the five permanent members to “agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.” U.N. Secretary-General Ban Ki-moon took up this theme in his 2009 report on the implementation of the responsibility to protect,

[T]he five permanent members bear particular responsibility because of the privileges of tenure and...the veto power they have been granted under the Charter. I would urge them to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect (United Nations Secretary-General Report 2009, paragraph 61).

French President François Hollande echoed Ban. When mass atrocities were taking place, he told the U.N. General Assembly in September 2013, Security Council permanent members must give up their veto powers:

The U.N. has a responsibility to take action. And whenever our organization proves to be powerless, it's peace that pays the price. That's why I am proposing that a code of good conduct be defined by the permanent members of the Security Council, and that in the event of a mass crime they can decide to collectively renounce their veto powers (Hollande 2013, p. 5).

The interventionists failed to explain why it was necessary for the permanent members to give up the veto if the right course of action was so self-evident. The assumption that any reluctance to sanction the use of force must be motivated by moral failings such as greed, selfishness, political ambition or lack of compassion is of course self-serving. Robertson

(2000) has dismissed Russia and China's concerns about violations of national sovereignty as "puerile" and "irrational."

The interventionists' second tack was to threaten the Security Council. If the Security Council continues to refuse to sanction a military undertaking to stop crimes against humanity, then it would be up to some ad hoc group of nations or other to take on the responsibility for doing the right thing. As Kofi Annan warned,

If the collective conscience of humanity—a conscience which abhors cruelty, renounces injustice and seeks peace for all peoples—cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice. If it does not hear in our voices, and see in our actions, reflections of its own aspirations, its needs and its fears, it may soon lose faith in our ability to make a difference (United Nations General Assembly 1999, p. 4).

The ICISS (2001) also admonished the Security Council. If the council fails to heed the conscience of mankind it will more than likely collapse into irrelevance:

The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation—and that the stature and credibility of the United Nations may suffer thereby (International Commission on Intervention and State Sovereignty 2001, p. xiii).

In recent years, interventionists have become openly disdainful of the U.N. Security Council. Urging military action in Syria in 2012, Slaughter (2012) saw no point to the

United States' seeking authorization from the council if such authorization was not likely to be forthcoming:

If Russia and China were willing to abstain rather than exercise another massacre-enabling veto, then the Arab League could go back to the United Nations Security Council for approval. If not, then Turkey and the Arab League should act, on their own authority and that of the other 13 members of the Security Council and 137 members of the General Assembly who voted...to condemn Mr. Assad's brutality.

The third tack of the interventionists has been to urge states to dispense with legality altogether when contemplating military action. Legality was one thing; legitimacy was something else altogether and something far more important. The international community needed to take a leaf out of NATO's book. NATO's 1999 attack on Yugoslavia may have been "illegal." It was nonetheless "legitimate." So argued the Independent International Commission on Kosovo (2000). Though there was no prior Security Council authorization, NATO's action was legitimate because "all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule" (Independent International Commission on Kosovo 2000, p. 4).

Unilateral military action was thus the only alternative. This claim was made with some frequency during the run-up to the 2003 attack on Iraq. Voting in favor of S.J. 45, the resolution to authorize the use of U.S. armed forces against Iraq, Hillary Clinton and interventionist stalwarts such as senators John McCain, R-Ariz., and Joseph Lieberman,

D-Conn., brought up the case of Kosovo. The Bush administration was urged not to waste time on seeking U.N. Security Council approval. Clinton cited the glowing example of her husband's military action against Yugoslavia. The Security Council cannot act if countries such as Russia use the veto "for reasons of narrow-minded interest":

In Kosovo, the Russians did not approve NATO military action because of political, ethnic, and religious ties to the Serbs. The United States therefore could not obtain a Security Council resolution in favor of the action necessary to stop the dislocation and ethnic cleansing of more than a million Kosovar Albanians. However, most of the world was with us because there was a genuine emergency with thousands dead and a million driven from their homes (U.S. Senate transcript 2002).

Humanitarians obey a higher law than the U.N. Charter. Defense of civilians, even if undertaken without Security Council approval, is in accord with the true international law, according to Ignatieff (2013). What law forbids, conscience may still command:

Those who argue that international legality is the sine qua non for legitimate action in the international arena ignore the fact that there are situations of extreme necessity in both domestic and international law where obeying the strict letter of the law may allow a greater harm to occur.

Anytime Security Council authorization is unlikely to be forthcoming, as it hasn't been in the case of Syria since 2011, the international community should dispense with seeking it and just act. Thus Slaughter (2013), contemplating military action against Syria:

Working with both NATO and the Arab League under Article 54 of the U.N. Charter, whereby regional organizations must notify the Security Council of their actions but not necessarily seek

approval, the U.S. has the power to decimate Assad's air force and heavy weapons and establish no kill zones on the Turkish and Jordanian borders that will provide millions of Syrians safe haven within their own country.

Complaints about the obduracy, not to say uselessness, of the U.N. Security Council are by now a staple of Washington. In 1999, Clinton and Blair got around the United Nations by citing the supposed selfishness of other Security Council members. George W. Bush did the same in 2003 when it came to Iraq. Clinton and Blair complained about Russia and China; Bush complained about Germany, Russia and France. In 2011, 2012 and 2013, Obama complained about Russia and China as he contemplated action against Syria.

## **SELECTIVITY OF INTERVENTIONS**

A fourth key ingredient of the humanitarian intervention doctrine is extreme selectivity. Military interventions are to take place in some countries, but not in others: Intervention on the side of the rebels in Libya; support for the government of Bahrain that is crushing the rebels. Bombs for Yugoslavia (a non-NATO member); weapons shipments for Israel (a NATO ally) in Gaza and for Saudi Arabia (another NATO ally) in Yemen. Anguished cries for intervention in Syria; silence on intervention in Gaza. Demands for military intervention to address the refugee flow triggered by the wars in the Balkans; indifference about the refugee flow triggered by the U.S. and U.K. invasion of Iraq. Western officials choke back tears one day as they describe Syrian war atrocities, all supposedly perpetrated by the government President Bashar al-Assad. Next day the same Western officials offer

full-throated support for the Kiev government as it lobs missiles and artillery on civilians in Donetsk and Luhansk.

Such a dizzying array of contradictory policies did not prevented President Obama from announcing that the U.S. government would make prevention of mass atrocities—by others, of course—a foreign policy priority. To give institutional expression to this aspiration President Obama created an Atrocities Prevention Board, the task of which would be to ensure that the U.S. government “has the structures, the mechanisms” in place “to better prevent and respond to mass atrocities.” U.S. intelligence agencies would prepare National Intelligence Estimate on the risk of mass atrocities and genocide. The Treasury would staunch “the flow of money to abusive regimes.” And the U.S. military would “take additional steps to incorporate the prevention of atrocities into its doctrine and its planning” (Obama 2012). To no one’s surprise, Obama appointed his special adviser, Samantha Power, to chair the Atrocities Prevention Board.

During the 1990s, as I show in *Bombs for Peace*, selectivity in expressions of outrage was the defining feature of the Western response to the conflicts in Yugoslavia. As long as violence was directed at Serbs or served to frustrate Serb interests it could either be ignored or excused. For example, ethnic cleansing was carried out by all sides, something U.N. observers on the ground such as General Lewis MacKenzie, chief of staff with the United Nations Protection Force (UNPROFOR), repeatedly pointed out. However, policymakers and journalists attributed the practice exclusively to the Serbs (MacKenzie 1993). In May 1993, U.N. Secretary-General Boutros Boutros-Ghali reported that in Croatia, as of March

19, “the number of Serb refugees and displaced persons who have fled from Croatia to Serbia and the UNPAs (approximately 251,000) now exceeds the number of Croats who were displaced from the UNPAs to Croatia” (United Nations Secretary-General Report 1993, paragraph 10). Yet one would be hard pressed to find a single reference to ethnic cleansing of Serbs in the emotional exhortations of U.S. policymakers.

To the question why the United States and its allies target some countries but not others, the humanitarian interventionists respond by explaining that every intervention is *sui generis*. Just because we can’t intervene everywhere it doesn’t mean we can’t intervene anywhere. At the same time though, strangely enough, every intervention is supposedly universal for it sends a message to tyrants everywhere: Stop your atrocities or you will face the full wrath of the international community.

In 2000, U.N. Secretary-General Kofi Annan issued his Millennium Report in which he dismissed concerns that humanitarian intervention might “become a cover for gratuitous interference in the internal affairs of sovereign states” or that secessionists might deliberately “provoke governments into committing gross violations of human rights in order to trigger external interventions that would aid their cause.” There was no need to be too exercised over such matters. They paled into insignificance next to the unspeakable horrors that were the daily lot of millions. “The fact that we cannot protect people everywhere is no reason for doing nothing when we can. Armed intervention must always remain the option of last resort, but in the face of mass murder it is an option that cannot be relinquished” (United Nations 2000, pp. 47-48).

Defending NATO's 2011 bombing of Libya and dismissing the quibbling of humanitarian interventionism's critics, Lord Ashdown, a former High Representative of the international community in Bosnia and an ardent advocate of humanitarian intervention, declared:

We did it in Iraq and Afghanistan because we could, but not in Chechnya or Zimbabwe, because we couldn't. In the untidy age ahead, one of our mantras is likely to be: "Just because you can't do everything does not mean you shouldn't do anything." In this way, international law is no different from most other bodies of jurisprudence. International law does not spring from a single pen or a single piece of paper; it evolves over time confusingly, inelegantly and often in contradictory fashion (Ashdown 2011).

Another, less flattering word to describe such humanitarianism is opportunism. Though the alleged crimes demanding military intervention may not be the worst, though the alleged perpetrators invariably appear to be too feeble to fight back effectively, though the alleged atrocities may have come in response to Western-instigated armed insurrection, who cares? If the policy is successful, its inconsistency with other policies will matter very little. To quote Ashdown, "Will this be comfortable to watch? No. But it's probably as good as we'll get. Better get used to it."

## **REGIME CHANGE**

A fifth key ingredient of humanitarian intervention is the easy transition from the supposedly laudable goal of saving lives to the far more questionable one of regime change. To the interventionists, such a transition is entirely logical. There is no guarantee that the

atrocities that had triggered the forceful response in the first place would cease unless the offending government is removed. There is thus a seamless transition from condemnation of human rights abuses to economic sanctions to the establishment of “safe zones” to the arming of favored clients to direct military involvement.

The establishment of “safe zones” is a key part of humanitarian intervention. Such zones are established for the commendable purpose of saving lives and ensuring that refugees could enjoy a measure of security. In reality, such safe zones become military bases for an armed opposition. The intervening powers then establish no-fly-zones, ostensibly to protect civilians from the air forces of the tyrannical government, in reality to provide air cover for military operations launched from the safe zones. Ann-Marie Slaughter urged the establishment of such safe zones in Syria, as has Michael O’Hanlon of the Brookings Institution. In 2012, Slaughter called for military action to establish “no-kill zones,” within which the so-called Free Syrian Army would operate. NATO would provide assistance to this army but only as long as its protégés did not go on the offensive. The moment they did so, this assistance would be withdrawn. The key condition for NATO aid is that

it be used defensively—only to stop attacks by the Syrian military or to clear out government forces that dare to attack the no-kill zones. Although keeping intervention limited is always hard, international assistance could be curtailed if the Free Syrian Army took the offensive. The absolute priority within no-kill zones would be public safety and humanitarian aid; revenge attacks would not be tolerated (Slaughter 2012).

More recently, O'Hanlon (2015, p. 3) has called for the establishment of "safe zones" in Syria. Zones

would...be used to accelerate recruiting and training of...opposition fighters who could live in, and help protect, their communities while going through basic training. They would, in addition, be locations where humanitarian relief could be provided to needy populations, and local governance structures developed.... American, as well as Saudi and Turkish and British and Jordanian and other Arab forces would act in support, not only from the air but eventually on the ground via the presence of special forces as well.

The prototype of the safe zones that were more staging grounds for armed attacks than centers for humanitarian relief were the safe areas in Bosnia. The safe areas were established precisely in order to change the military situation on the ground in favor of one of the combatants, the Bosnian Muslims. The safe areas served as military bases from which the Izetbegović government would seek to assert its authority over the country.

The safe areas soon became something other than gatherings of civilians fleeing the fighting. The safe areas were supposed to be demilitarized, but in fact were not. The Bosnian government, Boutros-Ghali wrote, "used the safe areas as locations in which its troops can rest, train and equip themselves as well as fire at Serb positions, thereby provoking Serb retaliation" (United Nations Secretary-General Report 1994b, paragraph 17). While Muslims could attack from a safe area, Serb retaliation would have the appearance of an attack on civilians, an action requiring swift retribution from NATO. In effect, by defending the safe areas NATO had become the Bosnian Muslims' air force.

In vain did Boutros-Ghali point out that the safe areas were not established in order to facilitate the Muslim war effort. The “party defending a safe area,” he wrote, “must comply with certain obligations if it is to achieve the primary objective of the safe area regime, that is, the protection of the civilian population. Unprovoked attacks launched from safe areas are inconsistent with the whole concept” (United Nations Secretary-General Report 1995a, paragraph 36). The primary purpose of the safe areas was protection of civilians; mounting attacks from safe areas could only endanger civilians.

However, public opinion is much more likely to accept a military intervention the intent of which is establishment and protection of “safe areas” for civilians than an intervention the intent of which is to support one side of a conflict or to bring about regime change. Throughout the 2011 bombing of Libya, NATO continued to insist that it was not seeking the ouster of Qaddafi even as key NATO powers were busily recognizing the Benghazi rebels as the legitimate rulers of the country. While the Qaddafi government in Tripoli and the rebels in Benghazi were locked in a military stalemate, NATO served as the rebels’ air force, striking government targets on a daily basis. Long after any conceivable threat to the residents of Benghazi had disappeared, NATO governments justified their refusal to call a halt to the bombing by invoking the continuing threat Qaddafi supposedly posed to Libya’s civilians.

Similarly, despite protestations to the contrary, NATO’s ultimate objective during its 1999 Kosovo campaign was the overthrow of the Milošević government in Belgrade. In 2005, John Norris, former communications director to Strobe Talbott, deputy secretary of state during the Clinton administration, disclosed the real reason for the long-standing U.S.

hostility toward Milošević. What stuck in Washington's craw, Norris (2005, pp. xxii-xxiii) wrote, was that

As nations throughout the region strove to reform their economies, mitigate ethnic tensions, and broaden civil society, Belgrade seemed to delight in continually moving in the opposite direction. It is small wonder NATO and Yugoslavia ended up on a collision course. It was Yugoslavia's resistance to the broader trends of political and economic reform—not the plight of Kosovar Albanians—that best explains NATO's war. Milošević had been a burr in the side of the transatlantic community for so long that the United States felt that he would only respond to military pressure. Slobodan Milošević's repeated transgressions ran directly counter to the vision of a Europe "whole and free," and challenged the very value of NATO's continued existence.... It was precisely because Milošević had been so adroit at outmaneuvering the West that NATO came to view the ever-escalating use of force as its only option....NATO went to war in Kosovo because its political and diplomatic leaders had enough of Milošević and saw his actions disrupting plans to bring a wider stable of nations into the transatlantic community.

## **JUSTICE FOR SOME**

A sixth key ingredient of the humanitarian intervention doctrine is the demand for judicial reckoning. Military interventions must be followed by public war crimes trials. Indeed, war crimes indictments often accompany military interventions. According to the interventionists, political leaders, including heads of state, would no longer be able to bask in sovereign impunity. They would be made to answer for their crimes—at permanent courts, such as the International Criminal Court (ICC), or at ad hoc tribunals such as the

ICTY or the ICTR. “As Serbian president Slobodan Milošević learned,” gloated Samantha Power (2002, p. 503), “state sovereignty no longer necessarily shields a perpetrator of genocide from either military intervention or courtroom punishment.”

However, the justice proffered at these international courts is hardly evenhanded. Political leaders whom the West does not favor can expect swift retribution. The ICTY indicted Slobodan Milošević, secured his arrest through the helpful offices of NATO, imprisoned and then tried him. The U.N.-created Special Court for Sierra Leone convicted former Liberian President Charles Taylor for crimes against humanity and sentenced him to 30 years. In May 2011, even as NATO aircraft were bombing Libya, the ICC announced that it intended to prosecute Qaddafi himself; his son, Saif al-Islam; and his brother-in-law, Libya’s intelligence chief, Abdualh al-Senussi. The three had committed crimes against humanity, the prosecutor said. Qaddafi

personally, ordered attacks on unarmed Libyan civilians. His forces attacked Libyan civilians in their homes and in the public space, repressed demonstrations with live ammunition, used heavy artillery against participants in funeral processions, and placed snipers to kill those leaving mosques after the prayers (International Criminal Court Prosecutor 2011).

The human rights lobby rejoiced. The arrest warrants were critical to achieving justice, Human Rights Watch said. They were “a warning bell to others that serious crimes will not go unpunished,” said Richard Dicker, international justice director at Human Rights Watch. “It’s a message to those responsible for grave abuses that they will be held to account for their actions....Seeking an arrest warrant for Muammar Gaddafi for crimes in

Libya shows that no one is above the law. It is the prosecutor's job to follow the evidence wherever it leads, even to a head of state" (Human Rights Watch 2011).

Yet the same ICC has shown scant interest in prosecuting Qaddafi's armed opponents, let alone NATO. Extraordinarily, the ICC has even expressed confidence in the fairness of the judicial system in post-Qaddafi Libya, a country ravaged by civil war and the absence of government. When the post-Qaddafi authorities announced that they would ignore the ICC's extradition request and would themselves prosecute Qaddafi's son, Saif al-Islam Qaddafi, and Libya's former intelligence chief, Abdullah al-Senussi, the ICC and the United States rushed to reassure new rulers that they would be under no pressure to hand anyone over (United Nations Security Council 2012). In 2014, the ICC has professed itself to be satisfied with Libya's judicial process against al-Senussi, though it has insisted, to no particular effect, that Saif al-Islam be handed over to The Hague—a request yet to be complied with.

War crimes trial enthusiasts invariably argue that international courts can be trusted to dispense justice without fear or favor. The impartiality of a tribunal could be taken for granted because it had not been set up by any of the parties to the conflict, claimed the committee of French jurists that had presented Boutros-Ghali with a detailed proposal for an ad hoc tribunal. "Internationalization of the prosecutions and the judgment would, for both the victims and the accused, be a guarantee of impartial justice rendered without any intervention of the parties concerned," the French argued (United Nations Document 1993, paragraph 21 (b)). However, according to Richard Goldstone, the South African

jurist appointed as the ICTY's first prosecutor, the ICTY's most important task was to nail the political leaders. "For history's sake, it is important to get the leaders," Goldstone said. "The higher up you go to prosecute crimes, the more that sense of justice radiates out into the general population" (Marquand 1995). No peace without justice and no justice without prosecution and imprisonment of political leaders. This was also the position of the French jurists. The tribunal had to target the "policy makers, those who turned the violation of basic human rights and the laws of war into a permanent system for attaining political objectives" (United Nations Document 1993, paragraph 84).

Writing in *Foreign Affairs* in 1993, Theodor Meron, a future president of the ICTY, explained that for the tribunal it would be

important to try individuals responsible for crimes if there is to be any real hope of defusing ethnic tensions in this region. Blame should not rest on an entire nation but should be assigned to individual perpetrators of crimes and the responsible leaders. Confirmation of the principle of accountability might also discourage those in the former Yugoslavia and elsewhere who envisage "final solutions" to resolve conflicts within their countries, and would serve to promote justice and the effectiveness of international law (Meron 1993, p. 134).

However, the "individuals" that Meron had in mind were the ones Goldstone and the French jurists had in mind: not the individuals who actually committed war crimes but the "policy makers." The ICTY has indicted no less than seven presidents, every one of whom happened to be a Serb. These were the *individual* perpetrators that Goldstone, Meron and the French jurists had in mind. The ICTY has not convicted a leader of any seniority of any other nation in Yugoslavia.

In its very first case, the ICTY determined that the crimes it was seeking to punish were crimes that “do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality: the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design...[I]nternational criminal responsibility embraces actions perpetrated by a collectivity of persons in furtherance of a common criminal design” (International Criminal Tribunal for the Former Yugoslavia 1999, Tadić Appeals Judgment, paragraphs 191 and 193). In other words, it is not individual criminal intent that matters but “collective criminality.”

Throughout the 1990s, the human rights lobby was in a perpetual state of indignation about the supposed expediency of diplomats such as David Owen and Thorvald Stoltenberg who appeared to be ready to jettison the promise of war crimes trials in the unseemly scramble to get everyone to sign a peace agreement. “A substantial contingent of the international community looks at war crimes prosecutions as making a quick fix more difficult,” warned Kenneth Roth, executive director of New York-based Human Rights Watch. “But a quick fix won’t last. If the guy who killed your brother moves into the house next to you without some type of justice, peace won’t come to the neighborhood.” (Pomfret 1993).

Any peace agreement that does not provide for the prosecution of war criminals is worthless, argued M. Cherif Bassiouni, head of the Commission of Experts and author of the war crimes report that inspired the establishment of the ICTY. There could be no reconciliation without prior retribution. Time and again, he would point to the

“incongruence between the pursuit of a political settlement at any cost on the one hand, and the attempt by some to establish a system of justice.... because ultimately in this area or in any other area of the world, you cannot have peace without justice.” As time passes, he lamented, the public’s zest for justice diminishes:

That is when a certain pragmatic realism devoid of moral-ethical values overtakes the goal of pursuing justice. In the end, political leaders who prefer political settlements to the pursuit of justice can profess support for international justice without incurring its political liabilities. This well-known scenario has been in the making in connection with the pursuit of justice in the former Yugoslavia, undaunted by the criticism of those who believe that international justice should not be compromised by political objectives. Regrettably, this scenario has happened so frequently in connection with different conflicts that it has become a practice by political leaders and diplomats who consider justice as a trade-off for peace (Bassiouni 1995, pp. 1209-1210).

The United States enthusiastically took up the cry of the human rights activists. Both the George H.W. Bush and the Clinton administrations insisted that they would deem unacceptable any Yugoslav peace agreement that did not entail war crimes prosecutions. In a 1993 speech to the International Rescue Committee in New York Madeleine Albright promised that Washington would “not recognize...any deal or effort to grant immunity to those accused of war crimes” (Lewis 1993). Already in December 1992, U.S. Secretary of State Lawrence Eagleburger promised “a second Nuremberg” for “the practitioners of ethnic cleansing.” The “judgment, and opprobrium, of history awaits the people in whose name their crimes were committed” (Sciolino 1992.)

Neither the human rights lobby nor NATO officialdom had any doubts in 1992 or since as to the identity of the war criminals. Eagleburger named them: Slobodan Milošević, Radovan Karadžić and Ratko Mladić, the three best-known Serb leaders at the time. War crimes trials meant trials of Serb leaders. Michael P. Scharf (2004), a former State Department official who was one of the creators of the ICTY, freely admitted this:

In creating the Yugoslavia tribunal statute, the U.N. Security Council set three objectives: first, to educate the Serbian people, who were long misled by Milošević's propaganda, about the acts of aggression, war crimes and crimes against humanity committed by his regime; second, to facilitate national reconciliation by pinning prime responsibility on Milošević and other top leaders and disclosing the ways in which the Milošević regime had induced ordinary Serbs to commit atrocities; and third, to promote political catharsis while enabling Serbia's newly elected leaders to distance themselves from the repressive policies of the past.

The goal was to turn people against their political leaders and thereby to effect regime change. As the ICTY (2000) explained:

It is the Prosecutor's firm belief that the conflict in the territory of the former Yugoslavia was sparked and fueled by greedy and power-hungry politicians who used propaganda and nationalistic sentiments to create an atmosphere of fear and terror, which was then used to motivate ordinary citizens to commit atrocious crimes against their neighbors. If ordinary citizens can accept that this was the root cause of the conflict, and that they were led into this terrible conflict by deceit and fear, they may be more likely to accept a meaningful reconciliation with their neighbors....By prosecuting the leaders, even down to the municipal level, the Tribunal can lay this foundation for reconciliation (ICTY 2000, paragraph 195).

Trials would serve as post facto justifications for military interventions. International courts would rule that crimes against humanity, perhaps genocide, had indeed taken place and at the behest of evil political leaders. Intervention by outsiders to stop such flagrant violations of international law would thereby be rendered legal or at the very least legitimate. The intervening powers may have committed a minor crime - violation of a state's sovereignty - but they only did so in order to stop or prevent a much greater crime - violation of human rights. The activities of the ICTY were therefore from the beginning an adjunct to the activities of NATO. No sooner was the ICTY up and running than the U.S. government was aggressively selecting ICTY prosecutors, staff and judges. (Richard Goldstone recounted that on his first day on the job he found that of the 40 people working in the prosecutor's office no fewer than 23 were Americans. They included "lawyers, computer technicians, and police investigators, all of whom had been assigned to the tribunal by the U.S. government....The United States had taken that action in an attempt to jump-start the Office of the Prosecutor" [Goldstone 2000, p. 82]). Indictments and criminal proceedings have become part and parcel of an international political campaign against a targeted state. As Scharf (1999), one of the architects of the ICTY, disclosed, ICTY indictments played a key role in Washington's strategy:

Indictments... would serve to isolate offending leaders diplomatically, strengthen the hand of their domestic rivals and fortify the international political will to employ economic sanctions or use force. Indeed, while the United States and Britain initially thought an indictment of Milošević might interfere with the prospects of peace, it later became a useful tool in their efforts to demonize the Serbian leader and maintain public support for NATO's bombing campaign against Serbia, which was still underway when the indictment was handed down.

By blaming the wars and the attendant atrocities on the Serbs, the tribunal served to generate public support for NATO intervention on behalf, first, of Bosnia's Muslims, and then, of the Kosovo Albanians. The genocide indictments against Bosnian Serb leader and Radovan Karadžić and his commander General Ratko Mladić were announced on July 27, 1995, barely two weeks after the Serb capture of Srebrenica, before an investigation had taken place, and while refugees from Srebrenica were still arriving at Muslim held territory near Tuzla. Subsequently, ICTY President Antonio Cassese (1999) exultantly explained that the court's objective had been the political one of preventing Bosnian Serb leaders Mladić and Karadžić from taking part in the upcoming peace negotiations:

[W]e immediately sent arrest warrants from The Hague to Washington, D.C., to Paris, to Geneva, to Bern, and to London. The message we sent was very clear to all the authorities concerned: if two members of the delegation, Karadžić and Mladić, set foot on your territory they must be arrested. So the first important achievement was the exclusion of those two indictees, Karadžić and Mladić, from the negotiating process. I would call this an extrajudicial effect of our activity. They were not arrested but at least they were excluded from any involvement in the negotiations in Dayton (Cassese 1999, p.67).

The indictments served to ensure that Croatia's Operation Storm, scheduled to begin within a few days, would enjoy relatively positive media coverage. It also cleared the way for NATO's long-planned heavy bombing of Bosnian Serb targets, known as Operation Deliberate Force.

It is not surprising therefore that the trials the ICTY proffers are scarcely models of judicial probity. Defendants often sit in prison for years at The Hague awaiting trial. Judges and prosecutors play on the same team, with judges throwing softball questions at prosecution witnesses while berating defense witnesses and indeed defense counsel. Lacking direct evidence that Serb leaders had issued orders that were criminal or that they had willfully overlooked or refused to punish war crimes, ICTY prosecutors and judges impute to Serb leaders vast, implausible conspiracies to create a Greater Serbia and convict them on the basis of all-encompassing theories of criminal liability such as “joint criminal enterprise.”

I wrote about the ICTY’s dubious jurisprudence and its misuse of legal procedure and, in particular, of witness testimony in order to secure desired verdicts (Szamuely 2011). When the ICTY deals with the Serbs, the existence of a conspiracy reaching the very highest levels of government is assumed. Any criminal act had to have come about through a Serb leader’s intentional act. However, when it came to non-Serbs, the ICTY suddenly adopts a scrupulously judicious and fastidious tone:

When it comes to non-Serbs, chaos and uncertainty prevail. It’s impossible to draw any conclusions about anything. The evidence is always insufficient: Witnesses are unreliable, the circumstances of a crime are ambiguous, the forensics are contaminated or lost. Suddenly, hearsay is suspect....Gone are the certitude and categorical assertions that feature so prominently in most ICTY judgments (Szamuely 2011, p. 163).

A Serb defendant’s best chance of lenient treatment is to confess to all manner of war crimes, particularly if he is able to implicate higher-ups in the chain of command. This was the case with one of the ICTY’s most notable witnesses, Bosnian Croat Dražen Erdemović,

who claimed to have personally taken part in a massacre of 1200 unarmed men and to have personally murdered some 100 of them at Branjevo farm near Srebrenica. Erdemović, who has been a lynchpin of the ICTY's Srebrenica case, received a sentence of only five years, which, in any case, he didn't serve. (Szamuely, 2011, p. 185). Subsequently, Erdemović testified in numerous ICTY trials. For a court that prizes witness testimony more highly than forensic evidence, the ICTY seems remarkably unperturbed that after so many years it has yet to produce a single witness to corroborate Erdemović's account of what took place at Branjevo farm. The reason is not hard to fathom. The ICTY has never been terribly interested in establishing the truth of Erdemović's claims. Instead, it sought to make him the "vehicle for the...key claim that the Republika Srpska high command had ordered the massacre of Muslim civilians." (Szamuely 2011, p. 191).

During NATO's 1999 bombing campaign, the ICTY continued to issue heated denunciations, leaving no doubt as to whom it deemed responsible for the carnage. On March 26, two days after NATO launched its bombing, Louise Arbour, chief prosecutor at the ICTY, wrote to Milošević to inform him that

I am gravely concerned that serious violations of international humanitarian law continue to be committed. It is my intention to investigate all serious violations of international humanitarian law that merit prosecution in the international forum, particularly those involving attacks on the civilian population. Meanwhile I believe that everything must be done to deter the commission of future crimes. I therefore look to you to exercise your authority over your subordinates; to exercise your leadership in order to prevent the commission of further crimes; and to take all necessary steps to punish any of your subordinates who commit serious violations of international humanitarian law in Kosovo (Arbour 1999a).

On March 31, Judge Gabrielle Kirk McDonald (1999), the president of the ICTY, warned Milošević that the fate that befell a former prime minister of Rwanda could befall him. Eight months earlier, the ICTR had convicted Jean Kambanda of genocide. In so doing, she declared, “the court affirmed that governments have a responsibility to ensure that their citizens live in peace and security. The resulting trust and authority that governments enjoy applies equally, if not more so, to heads of State.”

Finally, on May 27, Arbour announced her indictments. The indictees, as expected, included most of Yugoslavia’s top leaders: Milošević; Milan Milutinović, president of Serbia; Nikola Šainović, deputy prime minister of Yugoslavia; Dragoljub Ojdanić, chief of staff of Yugoslavia’s armed forces; and Vljako Stojković, Serbia’s internal affairs minister. Arbour charged them with crimes against humanity and violations of the laws or customs of war.

The ICTY saw no point to investigating possible NATO war crimes. Arbour confidently announced that she accepted without question the “assurances” of NATO leaders that they intended “to conduct their operations in the Federal Republic of Yugoslavia in full compliance with international humanitarian law.” There was no reason therefore for the ICTY to investigate anything. On May 13, Arbour explained that what set NATO apart morally from Belgrade was its acceptance of international jurisdiction over its actions. As reward, it would be permitted to investigate itself:

On 24 March 1999, 19 European and North American countries have said with their deeds what some of them were reluctant to say with words. They have voluntarily submitted themselves to the jurisdiction of a pre-existing International Tribunal, whose mandate applies to the theatre of their chosen military operations, whose reach is unqualified by nationality, whose investigations are triggered at the sole discretion of the Prosecutor and who has primacy over national courts.

I am obviously not commenting on any allegations of violations of international humanitarian law supposedly perpetrated by nationals of NATO countries. I accept the assurances given by NATO leaders that they intend to conduct their operations in the Federal Republic of Yugoslavia in full compliance with international humanitarian law. I have reminded many of them, when the occasion presented itself, of their obligation to conduct fair and open-minded investigations of any possible deviance from that policy, and of the obligation of commanders to prevent and punish, if required (Arbour 1999b).

NATO could be trusted to investigate itself even though key NATO powers invariably absolve themselves of any and all crimes. Whatever the war, the United States and NATO, according to their spokesmen, go to extraordinary lengths to avoid civilian casualties. “Despite conducting the most discriminate air campaign in history, including extraordinary measures by Coalition aircrews to minimize collateral civilian casualties, the Coalition could not avoid causing some collateral damage and injury,” was the Pentagon’s verdict on its performance during the 1991 Gulf War (U.S. Department of Defense 1992, p. 611). The United States did even better in 1999. During the Yugoslavia campaign, the Pentagon boasted, the U.S. military had “prosecut[ed] the most precise and lowest-collateral-damage air campaign in history - with no U.S. or allied combat casualties in 78 days of around-the-clock operations and over 38,000 combat sorties” (U.S. Department of Defense 1999).

The 2011 Libya campaign was allegedly even more fastidious. At the end of its bombing campaign, NATO announced that because it hadn't intentionally targeted civilians it couldn't have committed any war crimes. NATO explained in May 2012 that it had

conducted the campaign for Libya with unprecedented care and precision and to a standard exceeding that required by international humanitarian law. The mission was fully consistent with the United Nations mandate and saved countless lives. NATO did everything possible to minimise risks to civilians, but in a complex military campaign, that risk can never be zero. We deeply regret any instance of civilian casualties for which NATO may have been responsible (NATO Press Release 2012).

According to Anders Fogh Rasmussen, secretary general of NATO, "We have carried out this operation very carefully, without confirmed civilian casualties" (Chivers & Schmitt 2011). However, as the *New York Times* disclosed, NATO "had created its own definition for 'confirmed': only a death that NATO itself investigated and corroborated could be called confirmed. But because the alliance declined to investigate allegations, its casualty tally by definition could not budge - from zero" (Chivers & Schmitt 2011).

Indeed, NATO obfuscation has become legion. "NATO's response to allegations of mistaken attacks"

had long been carefully worded denials and insistence that its operations were devised and supervised with exceptional care. Faced with credible allegations that it killed civilians, the alliance said it had neither the capacity for nor intention of investigating and often repeated that disputed strikes were sound" (Chivers & Schmitt 2011).

Fortunately, the International Criminal Court also seems to think that key NATO powers scrupulously adhere to a rigid moral code. In February 2006, for example, Luis Moreno-Ocampo, ICC chief prosecutor, announced that there was no basis for opening an investigation into possible war crimes committed during the U.S.-led attack on Iraq. “The available information,” he reported, “did not indicate intentional attacks on a civilian population.” And what was this “available information”? The U.K. Ministry of Defense had told him that “nearly 85% of weapons released by UK aircraft were precision-guided, a figure which would tend to corroborate effort to minimize casualties” (International Criminal Court 2006).

In one case then, civilian deaths were willed; in the other case they were inadvertent. Rich Western states, armed as they are with expensive, sophisticated military hardware, have it in their power to reduce civilian casualties. They are thus able to argue, however implausibly, that they go out of their way to avoid civilian casualties. Lowly, sanctions-hit states such as Serbia or Libya lack deep pockets and must settle for low-cost, low-tech, crude weapons that are quite likely to inflict civilian casualties. That does not mean however that they are any more eager than NATO is to harm civilians.

Such specious rationalizations have become a staple of NATO propaganda and, more troublingly, of a number of the most influential human rights organizations. Human Rights Watch, for example, takes it as given that the NATO powers do their best to avoid civilian casualties. The targets of NATO’s campaigns, on the other hand, do not enjoy the benefit

of the doubt. Their atrocities are invariably taken to be intended. The double standards that guide Human Rights Watch was the subject of an essay I co-wrote in 2007 (Herman, Peterson & Szamuely 2007). Even though every NATO bombing campaign results in thousands of civilian casualties—casualties that often greatly exceed in number the civilian casualties that NATO had ostensibly sought to address—NATO atrocities are always unintended and hence do not rise to the level of war crimes. The possession of sophisticated weaponry gives you a pass in the international courts. Human Rights Watch

accepts the NATO-friendly view that civilian deaths from high-tech warfare such as in aerial bombings and missile strikes are not *prima facie* “deliberate” as are face-to-face and low-tech killings of civilians. HRW holds that while the former may involve war crimes if not carried out carefully, the latter are war crimes *per se*. But this distinction is invalid, as bombs dropped from on high on or near civilian facilities are extremely likely to kill and injure civilians, even if the individuals killed were not specifically targeted; and this known high probability makes those killings deliberate for all intents and purposes. Suicide bombers also sometimes target military personnel and do not always just attack civilians. Given that the actual civilian casualty totals of hi-tech bombings and other weaponry are usually far greater than those of suicide bombers and other face-to-face killings, this HRW bias places the protection of U.S. and NATO methods of warfare ahead of human rights (Herman, Peterson & Szamuely).

The ICTY used identical logic to that of the ICC and the human rights lobby when it gave NATO a pass. On June 2, 2000, one year after the end of NATO’s Yugoslavia campaign, ICTY chief prosecutor Carla del Ponte went before the U.N. Security Council to announce that she was “very satisfied there was no deliberate targeting of civilians or of unlawful military targets by NATO during the bombing campaign.” There was therefore “no basis

for opening an investigation into any of those allegations or into other incidents related to the NATO bombing” (NATO Press Release 2000). Not only had NATO’s actions not risen to the level of criminality, they hadn’t even risen to the level of suspicion of possible criminality. Any loss of civilian life was either accidental, collateral damage or the fault of the bombing victims for locating military targets near civilians. Interestingly, the ICTY-appointed committee that had advised del Ponte not to investigate NATO had accepted Human Rights Watch’s very conservative estimate of 500 civilians killed during the bombing. The committee didn’t find it at all incongruous that a year earlier the ICTY had indicted Milošević for crimes against humanity, charging him with responsibility for the death of 340 Kosovo Albanians.

Del Ponte’s announcement was revealing. Even if she were right that there had been “no deliberate targeting of civilians,” it did not prove that NATO had complied with international humanitarian law. The Geneva Conventions prohibit any targeting that recklessly endangers civilian lives. Bombing a marketplace or a bridge in broad daylight can be expected to result in civilian deaths. Bombing a TV headquarters and studio will also, as likely as not, result in many deaths. They don’t cease to be war crimes, just because the killings were incidental to the purpose of the attacks. The ICTY has regularly convicted Serbs without clear proof that there had been “deliberate targeting of civilians.” If Serbs are found to have taken insufficient care to distinguish military from civilian targets the ICTY is able to infer that deliberate targeting of civilians was intended. Only NATO gets to make the “collateral damage” defense.

Within days of del Ponte's June 2000 announcement, Amnesty International came out with a report alleging NATO war crimes. Amnesty International (2000) concluded that NATO's bombing campaign was characterized by wanton recklessness regarding possible civilian casualties. (Ten years later, in April 2009, Amnesty International said that NATO's bombing was characterized by "indiscriminate and disproportionate attacks and a failure to take necessary precautions to protect civilians" [Amnesty International 2009].)

## **HUMANITARIAN INTERVENTION AND YUGOSLAVIA**

The humanitarian intervention doctrine presents the issues in very stark terms. A wicked political leader for some inexplicable reason unleashes a reign of terror targeting a minority. A great evil is about to be committed. It is self-evident that the only way to stop this great evil is military intervention. What is missing however is the will to do it.

This is how the issues are set out by the Mass Atrocity Response Operations (MARO) Project, an institutional partnership between the Harvard Kennedy School's Carr Center for Human Rights Policy and the Peacekeeping and Stability Operations Institute at the U.S. Army War College. Created in 2007, the project seeks "to enable the U.S. and other governments to prevent and halt genocide and mass atrocity through the effective use of military assets and force as part of a broader integrated strategy" (Mass Atrocity and Response Operations Project 2007).

Naturally, the project takes it as axiomatic that if “U.S. and other governments” claim that their military intervention was triggered by mass atrocities they are telling the truth.

In 2010, the MARO Project published *A Military Planning Handbook*. In their foreword, the authors pointed with delight to the growing partnership between human rights groups and the military. In a mass-atrocity intervention,

unlike in many other types of military operations, there is the opportunity to harness true unity of purpose between the humanitarian community and military actors. Many humanitarian organizations, which normally would refrain from being connected in any way with the military, have in the past called for military intervention in the face of mass atrocity and killing of civilians (Mass Atrocity Response Operations 2010, p. 13).

For the humanitarians ensconced at the Carr Center for Human Rights Policy and at the U.S. Army War College, interventions are straightforward affairs. A benign, selfless U.S.-led coalition confronts a malevolent foe bent on harming civilians. The moral lines couldn't be more clearly drawn: “In a MARO scenario,” MARO (2010, p. 22) explains, “an armed party - the perpetrator - is focused first and foremost on killing, wounding, or otherwise harming civilian actors, while the intervener's goal is to halt or prevent those actions.” The attack on civilians appears to be without motive or at least any motive more complicated than that of seizing and holding on to power. “Perpetrators will use violence against civilians as a means to an end - killing or attacking civilians as a means of gaining political power, access to resources, or other objectives”(MARO 2010, p. 22).

The MARO scenario resembles and clearly takes its inspiration from the standard narrative account of the origins and trajectory of the wars in Yugoslavia. Terrible atrocities are taking place. The international community is hamstrung, unable to take action to help the victims. “The road to genocide prevention may be paved with the best intentions, but our leaders have not always been bold enough in confronting congressional skeptics or reluctant policymakers,” lament Albright & Cohen (2008, p. xxi). Article 2(4) of the United Nations Charter prevents intervention in the domestic affairs of member-states. The U.N. Security Council, which might have been able to act under Article VII, is also hampered. A veto-wielding permanent member is refusing to sanction military intervention. Nothing is done and innocents are slaughtered. In such circumstances, the virtuous, humanitarian powers have no choice but to pay heed to their humanity and take unilateral military action. This is a hypothetical scenario but it takes its inspiration from what was widely believed to have taken place in Yugoslavia during the previous decade.

This then is the justification for unilateral, unauthorized humanitarian intervention. The debate as to what would make an armed intervention justifiable has been going on for some time. Back in 1974, the International Law Association established a number of criteria that could make an ostensibly illegal intervention legitimate (Hilpold 2001, pp. 455-456):

1. There must be an imminent or ongoing gross human rights violation.
2. All non-intervention remedies available must be exhausted before a humanitarian intervention can be commenced.
3. A potential intervenor before the commencement of any such intervention must submit to the Security Council, if time permits, its views as to the specific limited purpose the proposed intervention would achieve.

4. The intervenor's primary goal must be to remedy a gross human rights violation and not to achieve some other goal pertaining to the intervenor's own self-interest.
5. The intent of the intervenor must be to have as limited an effect on the authority structure of the concerned State as possible, while at the same time achieving its specific limited purpose.
6. The intent of the intervenor must be to intervene from as short a time as possible, with the intervenor disengaging as soon as the specific limited purpose is accomplished.
7. The intent of the intervenor must be to use the least amount of coercive measures necessary to achieve its specific limited purpose.
8. Where at all possible the intervenor must try to obtain an invitation to intervene from the recognized government and thereafter cooperate with the recognized government.
9. The intervenor, before its intended intervention, must request a meeting of the Security Council in order to inform it that the humanitarian intervention will take place only if the Security Council does not act first.
10. An intervention by the United Nations is preferred to one by a regional organization, and an intervention by a regional organization is preferred to one by a group of States or an individual State.
11. Before intervening, the intervenor must deliver a clear ultimatum or peremptory demand to the concerned State insisting that positive actions be taken to terminate or ameliorate the gross human rights violations.
12. Any intervenor who does not follow the above criteria shall be deemed to have breached the peace, thus invoking Chapter VII of the Charter of the United Nations.

This list, though more comprehensive, resembles the criteria set out in the ICISS's report (2001). To be justifiable, the ICISS said, a humanitarian intervention must meet stringent requirements:

First, the intervention has to be a response to large-scale loss of life, “the product either of deliberate state action, or state neglect or inability to act, or a failed state situation” (ICISS 2001, p. xii).

Second, the intervention has to be undertaken with the right intention. Only one objective is acceptable: Halting or averting human suffering.

Third, the military action has to be an act of last resort. It can “only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded” (ICISS 2001, p. xii).

Fourth, the military means used have to be proportionate. Excessive force is out. “The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective” (ICISS 2001, p. xii).

Fifth, there has to be a reasonable expectation that the military intervention would not exacerbate the humanitarian crisis it was purportedly addressing. Military intervention could not be justified if it worsened conditions for its purported beneficiaries:

Military action can only be justified if it stands a reasonable chance of success, that is, halting or averting the atrocities or suffering that triggered the intervention in the first place. Military intervention is not justified if actual protection cannot be achieved, or if the consequences of embarking upon the intervention are likely to

be worse than if there is no action at all. In particular, a military action for limited human protection purposes cannot be justified if in the process it triggers a larger conflict. It will be the case that some human beings simply cannot be rescued except at unacceptable cost—perhaps of a larger regional conflagration, involving major military powers. In such cases, however painful the reality, coercive military action is no longer justified (ICISS 2001, paragraph 4.41).

My research showed that not one of the criteria set out by the ICISS and the International Law Association to legitimate an ostensibly illegal armed intervention had been met by NATO during its bombing campaigns in Yugoslavia. Consequently, the U.S./NATO interventions must be deemed to be not only illegal but illegitimate.

The U.S./NATO interventions served only to prolong and intensify conflicts and to heighten mutual enmity. Neither in Bosnia nor in Kosovo was the humanitarian crisis so dire that military intervention by foreign powers was warranted. To be sure, wars were taking place and where there are wars there are atrocities. However, I found no evidence that atrocities in Bosnia and Kosovo were committed as a matter of state policy. I found no evidence that members of ethnic groups were under attack simply for being who they are. There was no evidence that diplomatic options had been fully explored before the intervening powers launched their attacks. In fact, there was no evidence that diplomacy had ever been seriously tried. There was no evidence that the intervening powers made any serious effort to persuade the U.N. Security Council of the rightness of its course of action. There was no evidence that the NATO powers gave serious thought to what might happen should their military intervention not achieve its aims. There was no evidence that NATO

went out of its way to minimize civilian casualties and that the means it used were proportionate.

Above all, there was no evidence that the state of affairs after the interventions was an improvement on what was there before. Moreover, given the starting point in 1990 - a single, civilized, multinational Yugoslavia - and the endpoint - seven small, weak, ethnically pure or ethnically separated states, locked in mutual suspicion and recrimination, trading accusations of genocide and filing lawsuits against one another in the International Court of Justice, humanitarian intervention has been nothing short of disastrous for those vaunted Western values.

## **RIGHT INTENT**

First, there is the issue of right intent. Did the intervening powers have the right humanitarian intent when they resorted to force? The answer has to be no, for they were scarcely disinterested parties. They had been heavily involved in the dissolution of Yugoslavia and had a vested interest in ensuring that their handiwork - a multinational state broken up into six tiny, weak statelets—should prevail.

The wars in Yugoslavia, as I try to show in my publications, were triggered by the insistence of first, Croatia and Slovenia, then Bosnia, then Kosovo to seek independence without bothering to go through the formality of negotiating the terms of their exit. Since there was no way that six-nation, six-republic Yugoslavia could break up without war, and

therefore without the atrocities that are inseparable from war, responsibility for the subsequent humanitarian crises rested with those who insisted on secession at all costs, and those who, willfully and recklessly, served as the secessionists' enablers. War was inevitable once the European Union and the United States accepted, or more accurately, encouraged, the dissolution of Yugoslavia in the face of the fierce opposition from at least 40% of its population - the Serbs - and probably from a substantial majority of Yugoslavs

Weighed down by a crushing financial debt run up during the 1970s, the SFRY turned to the IMF for help. Among the "reforms" urged by the IMF was removal of independent economic decision-making away from Yugoslavia's republics and reduction of autonomy for Serbia's two autonomous provinces, Kosovo-Metohija and Vojvodina. The constitutions of Serbia and Yugoslavia were duly changed. In changing its constitution in 1989, Serbia acted in accordance with the federal constitution of Yugoslavia. The other five republics all duly approved Serbia's move. Serbia's constitutional amendments were in line with amendments to the Yugoslav federal constitution that were enacted in 1988.

Croats, Slovenes and the Kosovo Albanians reacted furiously to these proposals. Kosovo's Albanians responded to the amendments by boycotting not only all republican and federal political institutions, but also all social and economic institutions. On July 2, 1990, the Kosovo assembly declared that Kosovo was an independent and equal unit of the Yugoslav federation and that Albanians were henceforth to a nation, not a national minority in Yugoslavia. This assertion was bound to infuriate the Serbs. The Serbs considered themselves to be one of the constituent nations of Yugoslavia. Albanians, like Hungarians

or Turks, were a national minority since their nationhood had already found expression in an existing nation-state that was not Yugoslavia.

Nationalist parties came to power in Croatia and Slovenia and, following referendums, the two republics seceded from Yugoslavia in June 1991. The Serbs in Croatia, in turn, voted to remain in Yugoslavia and duly seceded from the seceding state of Croatia. Germany strongly supported Croatia and Slovenia and, almost immediately, threatened to recognize their independence. The Western European powers established an arbitration commission, presided over by Robert Badinter, chairman of the French constitutional council. The commission ruled that any republic could secede from Yugoslavia if it wished to do so. All it needed to do was to hold a referendum. Furthermore, the internal, administrative boundaries that separated the republics of Yugoslavia would serve as the international frontiers of the new states. There could be no change to these boundaries to take into account where Yugoslavia's nations actually lived. Nations that overnight found themselves to be minorities in someone else's state would just have to live with it. The Serbs were the largest nation in Yugoslavia. As a result of the E.U.-sanctioned partition of the SFRY, a third of the Serbs now found themselves living outside of Serbia proper.

Once Badinter was done, there really was no need for any negotiations among the republics. The nationalists who had insisted on unilateral and immediate secession got everything they wanted. Therefore, they had no incentive to talk about something that had already been settled. Those who lost out from Badinter were left with two alternatives. They could accept what European power-brokers had ordained for them and grumble

ineffectually about the injustice of it all. Or they could take matters into their own hands, just as the secessionists in Croatia and Slovenia had done. Doubtless, Badinter believed that by presenting the Yugoslavs with a *fait accompli*, his commission would avert war. In fact, the commission's rulings made war a certainty. When one tries to ram through a massive constitutional change in the teeth of fierce opposition from at least half of the population, one can hardly then turn around and express astonishment that people resorted to guns to settle matters.

The secessionists had used force to get what they wanted. If Croatia and Slovenia could seize their republican borders and transform them into international frontiers, then why shouldn't any seizure of land today turn out to be a state frontier tomorrow? Badinter's bland acceptance of Croatia and Slovenia's unilateral acts as a *fait accompli* was bound to lead others to conclude that what counts for the so-called international community is use of force to change the facts on the ground. Thus the Balkans wars' distinctive feature: ethnic cleansing, the purpose of which was to forge new territorial arrangements in anticipation of the next round of international arbitration.

Badinter's recommendations were to be particularly disastrous for Bosnia. Bosnia held a referendum on independence. The Serbs, who comprised roughly a third of Bosnia's population, boycotted the referendum. The United States and the European Union nonetheless went ahead and recognized Bosnia as an independent state even though it had been forged through two of its constituent nations ganging up on the third, something that was prohibited by the republic's constitution.

Bosnia, the unitary nature and territorial integrity of which was to become so important to the West during the 1990s, had never existed as an independent state. It had been passed from the Ottomans to the Habsburgs to the Karadjordjeviches to the Fascist Independent State of Croatia to Tito's Yugoslavia. In 1992 it was not a state at all, merely a collection of armed groups ready to wage war against one another; a territory presided over by a government with no resources and no authority beyond downtown Sarajevo. Yet this non-existent state was nonetheless deemed worthy of membership of all the august international institutions.

The Western powers that subsequently intervened in the wars triggered by this arbitrary division of Yugoslavia thus had a vested interest and it wasn't necessarily the wellbeing of the peoples of Yugoslavia. They were defending their handiwork.

Then there was Kosovo. The Kosovo conflict involved rival national claims to a piece of real estate. Serbia was intent on keeping Kosovo. Kosovo's Albanians were determined to secede from Serbia. The Serbs see in Kosovo the origins of their state—it is sacred land. The Albanian claim is based on demography. Throughout the 1990s, Kosovo Albanian leaders never bothered to conceal the fact that their goal was independence, not autonomy. Already in 1981, Albanians had protested violently against Kosovo's status as an autonomous province, demanding recognition as a fully-fledged Yugoslav republic with the right to secession. Now, with four of Yugoslavia's six republics recognized as independent states, Albanian nationalists were hardly likely to accept autonomy as

envisaged under the 1974 constitution or to settle for becoming a third republic within the diminished Yugoslavia. (Interestingly, the West's line on Kosovo was to be exactly the opposite of its line on the other, better known, Jerusalem, the one in the Middle East. In Kosovo, the Serbs were taken to be occupiers of land that, due to demographic preponderance, rightfully belonged to others. In denying the national aspirations of the territory's majority population, the Serbs were denying their fundamental rights. Why the West would approach the Serb-Albanian dispute so differently from the Israeli-Palestinian dispute could certainly not, to put it mildly, be explained by the greater degree of suffering endured by the Kosovo Albanians. There was no comparison between the conditions under which Kosovo Albanians lived and the conditions under which Palestinians live.)

According to the determination of the Badinter Arbitration Commission the internal borders of the SFRY's republics had to the international frontiers of the succeeding states. Change of borders without consent was impermissible. It was the Serbs' reluctance to accept SFRY administrative boundaries, which had never coincided with national lines, as international frontiers that had unleashed the West's fury. Yet, when it came to Kosovo, the NATO powers took the opposite position. Internal borders were no longer sacrosanct. Kosovo could be detached from Serbia in the name of national self-determination of its Albanian population.

Throughout 1998, the independence-seeking Kosovo Liberation Army was waging a war of terror against the government in Belgrade. The KLA would mount an attack; the Serbian authorities would respond with force; the United States would come out with a statement

condemning the excessive use of force and calling for the withdrawal of Serbian security forces; NATO would follow up with an announcement that it was getting ready to launch air strikes against Serbia. The upshot was that the KLA every incentive to continue and indeed extend its terror campaign. The greater the terror, the more vigorously the Serbs would respond and the greater the likelihood of NATO intervention in support of the KLA.

## **DIPLOMACY**

Did NATO exhaust all diplomatic options prior to launching its attacks?

On March 10, 1992, the E.C. and the United States declared their intent to recognize Bosnia and expressed strong opposition to “any effort to undermine the stability and territorial integrity” of Bosnia. In the meantime, talks to avoid war in Bosnia, sponsored by Lord Carrington, chairman of the E.C. peace Conference on Yugoslavia and Jose Cutileiro, Portugal’s foreign minister, were taking place in Lisbon. The plan involved independence for a Bosnia that would function as a confederation of its three constituent nations. U.S. Secretary of State James Baker however urged Europe’s foreign ministers “to recognize Mr. Izetbegovic’s Government immediately.” In return, Washington would recognize Croatia and Slovenia. U.S. policymakers told the Europeans to “stop pushing ethnic cantonization of Bosnia” (Binder 1993).

On March 18, Cutileiro made a breakthrough. There appeared to be an agreement on the table. The Americans were unhappy. “Izetbegovic’s acceptance of partition, which would

have denied him and his Muslim party a dominant role in the republic, shocked not only his supporters at home, but also United States policymakers.” Through the intervention of Zimmermann, the United States moved, as it was to do many times during the next few years, to sabotage the agreement. Zimmermann called on Izetbegovic in Sarajevo. “The Bosnian leader complained bitterly that the European Community and Bosnian Serbs and Croats had pressured him to accept partition. ‘He said he didn’t like it,’ Mr. Zimmermann recalled. ‘I told him, if he didn’t like it, why sign it?’ ” (It is amusing to note that, though Zimmermann himself had never concealed that it was at his urging that Izetbegovic withdrew his signature from the agreement, apologists for U.S. policy to this day continue to insist that, contrary to the extensive public record, Zimmermann had “denied repeatedly” intervening to scuttle the Cutileiro plan. So testified career diplomat Herbert Okun in 2003 during the Milosevic trial. “Ambassador Zimmerman [sic] has denied that repeatedly, and I believe Ambassador Zimmerman” [Milošević Trial Transcript, p. 17158] ).

With U.S. support under his belt and with the international community apparently ready to accept an independent Bosnia with or without cantonization, Izetbegovic withdrew his signature from the Lisbon agreement. Division of Bosnia was out of the question, he announced. He had agreed to the Cutileiro plan, he explained, only because he had been subjected to so much pressure. “The European mediators forced us to accept this document...because if we had said no, Bosnia-Herzegovina’s international legal recognition - our main objective at present—would have been jeopardized” (BBC 1992).

A last-minute deal that might have averted war had been successfully thwarted. In a final plea to Western leaders, Karadzic warned that, in the event of recognition, Bosnia's Serbs would organize their own state within Bosnia.

The U.S. government congratulated itself for having intervened to sabotage any prospect of a peace agreement. The Bush administration, Eagleburger explained, wanted "to ensure that the conference did not become a forum for endorsing partition or cantonization. The conference has sent a clear political signal that the international community will not reward aggression; that Bosnia's sovereignty, independence, and integrity will be upheld" (U.S. Department of State Dispatch Supplement 1992).

From 1992 to 1995, various peace plans were put forward to end the fighting in Bosnia. They all failed, not so much because the three warring parties could not come to an agreement, but because the Western powers freighted the plans with objectives that were at once incompatible and impossible to achieve.

Though the Bosnian unitary state of 1991-1992 had been a spectacular failure, the Muslims' goal and that of the West was its restoration, even though, as everyone knew, this would be unacceptable to the Serbs. The only feasible settlement was one that led to the creation of a state that no national group could dominate either by itself or jointly with another group. That left two options: cantonization or confederation. With Washington fiercely opposed to cantonization, the only remaining option was confederation. The peace

plans of the next few years envisaged a confederal Bosnia. However, it is hard to believe that the Western powers were seriously committed to these plans.

There was first the Vance-Owen plan. Former U.S. Secretary of State Cyrus Vance and Lord David Owen, the two co-chairmen of the International Conference on the Former Yugoslavia, cobbled together a plan that, though ensuring separation along national lines, could be presented to the world as something other than de facto partition. The plan allocated to different national groups different regions of Bosnia but made sure that these regions would not be contiguous. That way no one could accuse the ICFY co-chairmen of sanctioning the dissolution of Bosnia. Bosnia's Croats and Muslims accepted the plan - the former enthusiastically, the latter much less so - but Bosnia's Serbs rejected it despite the entreaties of Milošević and the reluctant support of Karadžić.

However, the plan was a non-starter since the Clinton administration regarded it, in its words, as rewarding Serb aggression, and refused to back it. The administration's preferred option was "lift and strike," which would supposedly change the balance of forces in favor of the Muslims. In fact, on May 2, 1993, the day on which Karadžić signed the Vance-Owen plan, Secretary of State Warren Christopher flew to Europe in order to rustle up support for the policy of bombing the Serbs and lifting the arms embargo on the Muslims. The Clinton administration, reported Williams (1993), had "decided...to use military force against the Serbs in the war in Bosnia-Herzegovina." There was no reason for Christopher to make this trip to Europe at such a critical time other than to try to sabotage the Vance-Owen plan.

The next peace plan was the so-called Owen-Stoltenberg plan, which envisaged Bosnia as a de facto confederation among its three constituent nations, each of whom would have its own republic and its own constitution, executive, legislature and judiciary. On June 29, 1993, even as negotiations over the peace plan were ongoing, the United States voted in favor of a U.N. Security Council resolution that would have lifted the arms embargo on Bosnia—a policy strongly opposed by the nations contributing troops to UNPROFOR. The Security Council must not “deny the Bosnian Government the wherewithal to defend itself in the face of brutal aggression conducted by the Bosnian Serbs and their backers in Belgrade,” Madeleine Albright cried (Meisler 1993). The resolution failed to win enough votes, and would in any case have been vetoed by Britain. Equally helpfully, the United States announced that even if a Bosnian settlement were reached, sanctions against Yugoslavia would remain in place. In a regular briefing on Aug. 9, 1993, State Department spokesman Mike McCurry told a press conference that “it’s very hard to imagine there’d be any lifting of sanctions against Serbia any time soon” (McCurry 1993).

Meanwhile, the Clinton administration again applied pressure on NATO to begin bombing the Serbs. On July 31, 1993, U.S. Secretary of State Warren Christopher wrote to Boutros-Ghali informing him that, on Aug. 2, the United States intended to ask its NATO allies to get ready to bomb Bosnian Serb targets “at times and places of NATO’s own choosing” (Boutros-Ghali 1999, p. 88).

U.S. bombing threats had the inevitable effect of undermining the ongoing negotiations over the Owen-Stoltenberg plan, much as Warren Christopher's trip through Europe's capitals served to sabotage the Vance-Owen plan. Once again the United States had let it be known that it was ready to enter the war on behalf of the Muslims and that therefore there was no need for them to accept a plan they didn't like.

In May 1995, Boutros-Ghali noted with surprise the curious absence of pressure from the West to secure peace in Bosnia. "International efforts to mediate a negotiated solution seem to have come close to a standstill," he wrote. "It is, for instance, more than 16 months since there was a round of negotiations at which all the Bosnian parties were present" (United Nations Secretary-General Report 1995a, paragraph 67). Owen noted that most of his peace-making efforts from 1993 on were to no avail: "All through 1994 and until I stepped down in June 1995 Stoltenberg and I urged resuming direct talks but they were vetoed by the Americans and the Germans" (Balkan Odyssey Digital Archive). This was in line with the U.S. and German strategy of refusing to engage in peace talks until the Serbs had suffered defeat. The NATO powers had taken a gamble on the supposedly brightening prospects for the Muslims. It turned out to be a miscalculation of staggering ineptitude.

The West's diplomatic effort to end the conflict in Kosovo again appeared to be crafted with a view to ensuring failure. As in Bosnia, the West gambled that its proxy force, the Kosovo Liberation Army, would succeed in inflicting devastating blows against the Serbs. Fighting began in early 1998, but by the summer of 1998, Serb forces had the upper hand and the KLA was facing rout. In response, NATO dramatically stepped up its bombing

threats against Yugoslavia. Kosovo was on the brink of a “humanitarian catastrophe,” NATO claimed (Albright 1998).

On Sept. 23, 1998, the U.N. Security Council adopted Resolution 1199. The resolution was relatively evenhanded: Expressions of concern over “excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which have resulted in numerous civilian casualties” went together with condemnation of “terrorism in pursuit of political goals by any group or individual, and all external support for such activities in Kosovo, including the supply of arms and training for terrorist activities in Kosovo.” A demand that Yugoslavia “cease all action by the security forces affecting the civilian population and order the withdrawal of security units used for civilian repression” was balanced by insistence that “the Kosovo Albanian leadership condemn all terrorist action, and...that all elements in the Kosovo Albanian community should pursue their goals by peaceful means only.” The resolution did not authorize anyone, least of all NATO, to use force to implement it (United Nations Security Council Resolution 1199 1998).

No sooner did the Security Council pass this reasonably balanced resolution than the United States announced that it would urge NATO to begin preparing for a military campaign. NATO obliged and, a day after the adoption of the resolution, announced the issuance of an activation warning for “a limited air option and a phased air campaign in Kosovo” (NATO 1998).

NATO claimed that its objective was enforcement of Resolution 1199. A U.N. secretary-general's report issued in early October suggested that Yugoslavia was complying with 1199.

Military activity seemed to wind down in the last days of September. There was evidence of heavily armoured formations returning to their barracks. On 29 September, Federal Minister for Foreign Affairs Živadin Jovanović assured me that troops were returning to the places of their permanent location. According to the most recent reports, military forces withdrew from the Drenica and Prizren areas on 1 October and observers indicated a decrease in activities of the security forces (United Nations Secretary-General's Report 1998, paragraph 6).

So Yugoslavia's security forces were in compliance, or at least seeking to be in compliance, with Resolution 1199. Yet NATO continued to threaten to bomb.

In October 1998, Milošević and Holbrooke signed an agreement, stipulating a withdrawal of Serb security forces from the province and the introduction of an unarmed OSCE observer mission to verify compliance. The agreement was strange in that it didn't bind anyone other than the Serbs to anything. The KLA vaguely promised a ceasefire but, since it was not a party to the agreement, it was free to do whatever it liked. NATO agreed not to bomb Yugoslavia for the time being. For the KLA, the withdrawal of Serb forces from the province was a godsend: It could take advantage of the vacuum created by the withdrawal of Yugoslav security forces to seize control of Kosovo. Alternatively, the KLA could provoke Belgrade into taking military action and wait for the attendant flow of refugees to trigger yet another round of calls in Western capitals for NATO bombing. As Agim Çeku, a KLA leader and a future Kosovo prime minister, subsequently recounted,

“The cease-fire was very useful for us, it helped us to get organised, to consolidate and grow....We aimed to spread our units over as much territory as possible, we wanted KLA units and cells across the whole of Kosovo” (BBC, 2000).

From October on, NATO leaders went on denouncing Milošević, even as they continued to receive briefings that unambiguously attributed responsibility for most of the violence in Kosovo to the KLA. On Dec. 4, 1998, for example, the North Atlantic Council in Brussels was informed that “the majority of violations was caused by the KLA.” In fact, the confidential minutes of the NAC “talk of the KLA as ‘the main initiator of the violence’ and state ‘It has launched what appears to be a deliberate campaign of provocation’ ” (BBC 2000). The goal was to push NATO to bomb and secure the detachment of Kosovo from Serbia. Knowing this, NATO continued to egg the KLA on by threatening to bomb Yugoslavia in the event of further bloodshed in Kosovo.

On Jan. 15, 1999, the Yugoslav authorities launched a counter-insurgency operation against the KLA in the village of Račak, which was a KLA base (Kosovo Verification Mission 1999). From camouflaged positions near Račak, the KLA had been launching well-prepared hit-and-run strikes against Serb patrols. On the day after the operation, OSCE observers discovered 45 bodies in different locations in the village. All of the bodies had gunshot wounds. NATO immediately accused the Belgrade authorities of the cold-blooded murder of unarmed civilians. Yugoslav authorities insisted that the scene at Račak had been staged and that the dead bodies were those of KLA fighters who had been killed

in action the day before. The KLA had gathered up their dead and arranged the bodies so as to make Račak look like the scene of a massacre.

NATO responded, as usual, with bombing threats. However, even if NATO were right and enraged Serb security forces had gone on a rampage and shot innocent bystanders, NATO would still have had to accept some responsibility for the outrage. NATO had known from the beginning that the KLA's strategy had been to provoke the Serbs into overreaction in the hope that this would trigger NATO bombs. The KLA was daily ambushing, kidnapping and killing Serb policemen. For NATO, there was one simple expedient that could have prevented humanitarian catastrophes such as Račak: It could have stopped threatening to enter the conflict in Kosovo on behalf of the instigators of the violence, the KLA.

The resurgence of enthusiasm for bombing Yugoslavia had come at exactly the right time for NATO. As Drozdiak (1999) admitted, "Until Friday's massacre, some NATO governments were inclined to blame the Kosovo Liberation Army for stirring up trouble by ambushing Serbian forces. NATO has withdrawn from the Balkan region most of the 300 planes mobilized by allied nations last October for possible bombing raids" KLA provocations had been noted in the U.N. secretary-general's reports, by British Foreign Secretary Robin Cook and even in NAC meetings. Now, the focus was again back on the Serbs, precisely where the United States wanted it, and the talk once more was of NATO bombs.

By January 1999, the Clinton administration had come to realize that bombing of Yugoslavia was impossible as long as debate focused on who was responsible for the violence. What NATO needed to do was to wrong-foot Belgrade, to show the world that while the Kosovo Albanians wanted peace Yugoslavia didn't. The obvious solution - ask the KLA to declare a ceasefire and then see how Belgrade responds - was unacceptable since an end to the KLA campaign would mean an end to Western pressure for regime change in Belgrade. What NATO needed to do was to continue to apply military pressure but combine this with a peace process that was rigged in such a way that the Serbs would be seen as the recalcitrant party. That way NATO could bomb, and justify its action by citing an ostensible peace process that it was selflessly seeking to facilitate.

The Clinton administration had to think up a deal that the Kosovo Albanians would be sure to accept and the Serbs would be sure to reject. One possibility was to promise independence to the Albanians. Belgrade was bound to say no. Unfortunately for the Clinton administration, the prospect of an independent Kosovo was a non-starter. Most of the world, including almost all of Washington's NATO partners, opposed the idea of unilateral secession; Serbia's case would therefore prevail. If negotiations between the Yugoslav government and the Kosovo Albanians collapsed over the issue of independence, the Albanians would be blamed for demanding the unacceptable. Bombing would then be out of the question.

Negotiations had to be manipulated in such a way that the Serbs, and the Serbs alone, would be held responsible for their failure. The State Department's Jamie Rubin has admitted that this was the U.S. strategy. The Americans, he explained, sought

clarity where previously there had been ambiguity. And clarity as to which side was the cause of the problem and clarity as to which side NATO should defend and which side NATO should oppose and that meant the Kosovar Albanians agreeing to the package and the Serbs not agreeing to the package....Obviously, publicly, we had to make clear we were seeking an agreement, but privately we knew the chances of the Serbs agreeing were quite small (BBC 2000).

On Jan. 29, following its meeting in London, the Contact Group of nations issued a statement "unreservedly condemn[ing] the massacre of Kosovo Albanians at Račak." The most important part of the statement was a summons to the Serbs and the Kosovo Albanians to attend negotiations at Rambouillet on Feb. 6, under the co-chairmanship of Hubert Vedrine [the French foreign minister] and Robin Cook.

The Serbs had to be seen to the rejectionist party. They would have to reject the package and the Albanians would have to accept it. This wouldn't be easy: The Albanians weren't prepared to accept anything less than independence. The Americans solved this dilemma ingeniously. They proposed a peace plan that avoided discussion of independence. However, secretly, U.S. officials promised the Albanians that Kosovo would be independent in the very near future. Within three years, they assured the Kosovo leaders, there would be a referendum on independence. Thanks to this adroit maneuver, the Europeans, reassured that NATO wasn't seeking to detach Kosovo from Yugoslavia, could

for the time being at least avoid giving the appearance that they had signed off on unilateral secession.

With the issue of independence fudged and the Kosovo Albanians and the Europeans on board, it only remained to craft a plan that the Serbs would be sure to find unacceptable. That wasn't difficult. All the United States needed to do was insist on a NATO presence in Kosovo. While the Serbs would accept the Contact Group, the OSCE or the United Nations as implementer of a peace plan, they would not accept NATO, particularly not after the bombing threats of the previous months. Therefore, the United States declared at the outset that any peace plan that wasn't implemented exclusively by NATO was out of the question. These U.S. machinations were kept secret. The Contact Group was also kept in the dark. Even Washington's NATO partners didn't fully grasp what was really going on at Rambouillet.

Procedurally too, Rambouillet was a thoroughgoing deception. The United States treated the Contact Group's Rambouillet summons as an ultimatum: Either sign by a certain date or else! However, the Contact Group's Jan. 29 summons had said that "participants should work to conclude negotiations within seven days. The negotiators should then report to Contact Group Ministers, who will assess whether the progress made justifies a further period of less than one week to bring the negotiations to a successful conclusion" (Office of the High Representative 1999). There was a suggestion here of a deadline, but no threats were attached. The United States untruthfully insisted that the Contact Group was

demanding signature to an agreement within two weeks. Otherwise, NATO would begin bombing.

Threatened with NATO bombing and subjected to a sustained campaign of vilification in the media, the Serbs raised few objections to the civilian parts of the U.S.-sponsored plan. The key to securing Serb rejection was insistence on NATO deployment in Kosovo. The Americans held back the provisions about NATO deployment until the last possible moment because they wanted to cut off any debate on the issue. That way, the Serbs could be blamed for the failure of the talks. If there was an impasse at Rambouillet, “it would be followed by NATO bombing” (Albright 1999a). The problem for NATO was that the Kosovo Albanians were not prepared to settle for anything short of independence. The Rambouillet talks were on the brink of collapse because of the obduracy of both parties.

However, NATO could only bomb if the Serbs rejected the deal and the Albanians accepted. Journalist Veton Surroi, member of the Kosovo Albanian delegation, described Secretary of State Madeleine Albright’s relentlessness: “She was saying you sign, the Serbs don’t sign, we bomb. You sign, the Serbs sign, you have NATO in. So it’s up to you to say. You don’t sign, the Serbs don’t sign, we forget about the subject. It was very explicit” (BBC 2000). If the Kosovo Albanians wanted NATO to bomb Serbia, Albright warned, they had better get on board now

If the talks crater because the Serbs do not say yes, we will have bombing. If the talks crater because the Albanians have not said yes, we will not be able to support them and in fact will have to cut off whatever help they are getting from the outside. If it fails because both parties

say no, there will not be bombing of Serbia and we will try to figure out ways to continue trying to deal with both sides” (Albright 1999c).

The Albanians had to stop bringing up independence - at least for now. They had to understand that autonomy was just an interim measure. They would get their referendum, but there was no way in the world the Contact Group would agree to the insertion of a referendum in any settlement plan.

Albright went as far as she could go to reassure the Albanians. Though the “word referendum is not in the agreement,” Albright said, “we recognize that it is important after the three-year period to consider the voice of the people among other considerations” (Albright 1999c). While publicly the U.S. government continued to insist that Yugoslavia’s territorial integrity had to be respected, privately it assured the Kosovo Albanians that such avowals weren’t to be taken seriously. This emerged even from the House of Commons report on Kosovo, which disclosed that “the U.S. sent a letter to the Kosovo Albanian delegation, noting that the U.S. regarded the agreement as confirming the right of the people of Kosovo to hold a referendum, consistent with the provisions of the Rambouillet agreement, on Kosovo’s final status” (House of Commons 1999, paragraph 60).

According to the House of Commons report,

it appears that [Albright] was offering U.S. support for a referendum regardless of what was agreed at Rambouillet, rather than “consistent with the provisions of...Rambouillet.” It is difficult to envisage a situation where a referendum would be held and then disregarded by the international community. Thus even if the words of the agreement did not specifically provide

for a binding referendum on independence, there was a ground for suspicion for the Serb side on this point. Certainly, the Albanian side continue[s] to believe that the Albright letter represents a commitment by the USA to a binding referendum (House of Commons 1999, paragraph 60).

In other words, the Americans were deceiving everyone. They were deceiving the Serbs by suggesting to them that in return for acceptance of self-government in Kosovo, their sovereignty over Kosovo would be recognized. And the Americans were deceiving their junior NATO partners by assuring them that no referendum in Kosovo was envisaged.

The Albanians, understandably skeptical about U.S. machinations, remained reluctant to sign the accord. Albright had no choice but to extend the deadline. On Feb. 20, she told a news conference at Rambouillet that the deadline was now Feb. 23. The Serbs had to sign on that date or face bombs. Yet it was not until the evening of Feb. 22 that the Serbs were finally shown the NATO implementation plan. The Contact Group had taken no part in its drafting and saw it for the first time when the Serbs did. In fact, the three mediators had not even discussed the military annexes. According to the ICTY's own narrative, it was only on Feb. 23, at 9:30 a.m., that "both delegations received the final text of the agreement....The delegations were asked to submit their responses to all these documents by no later than 1:00 p.m. that day" (International Criminal Tribunal for the Former Yugoslavia 2009, paragraph 383).

The Serbs, as expected, accepted the political blueprint but rejected the military annexes. Alarmed at the prospect of the Serbs eventually accepting the Rambouillet plan, even with

those NATO military annexes and thus denying NATO the opportunity to execute the long-planned bombing campaign, Washington decided to raise the stakes. The blueprint had to be made so outrageous that the Serbs would be sure to reject it. The administration duly inserted into the plan the notorious Appendix B. This provision granted NATO unrestricted freedom of movement throughout the territory of Yugoslavia as well as total immunity for any and all violations of Yugoslav law. NATO, Appendix B stipulated,

shall be immune from all legal process, whether civil, administrative, or criminal.... NATO personnel, under all circumstances and at all times, shall be immune from the Parties' jurisdiction in respect of any civil, administrative, criminal, or disciplinary offenses which may be committed by them in the FRY.... NATO personnel shall be immune from any form of arrest, investigation, or detention by the authorities in the FRY. NATO personnel erroneously arrested or detained shall immediately be turned over to NATO authorities (Rambouillet Accords 1999, p. 81).

Appendix B, like the rest of the Rambouillet plan, was not made public. (The wording of Appendix B was stark: "NATO shall be immune from all legal process, whether civil, administrative, or criminal. NATO personnel, under all circumstances and at all times, shall be immune from the Parties' jurisdiction in respect of any civil, administrative, criminal, or disciplinary offenses which may be committed by them in the FRY.... NATO personnel shall be immune from any form of arrest, investigation, or detention by the authorities in the FRY.") Stories about it began to emerge only in April, by which time it was too late to change public opinion on the honorableness of NATO's intentions. The bombing was in full spate and, inevitably, "NATO credibility" was on the line.

Upon presenting these details, the Rambouillet organizers demanded that the parties sign the agreement in its entirety by 1 p.m. on Feb. 23, since this supposedly was the deadline imposed by the Contact Group. The Serbs insisted that the two sides first sign a constitutional framework agreement and then negotiate the implementation. Albright flatly ruled that out. There was only one deal on the table, not two, she declared. A “political agreement without the military annex is just a piece of paper....a table top with no legs” (Albright 1999b). The political and military terms couldn’t be split. They had to be accepted in their entirety and immediately. Otherwise NATO would bomb - the Serbs only of course. “The Serbian side believes it can have half the deal,” Albright fumed. “There are not two documents. There is one document with two parts to it” (Albright1999c). It was time for Milošević to “wake up and smell the coffee,” she warned. “It would be a grave mistake for Milošević to miscalculate our intentions.” Unless the Serbs accepted all of the provisions “preparations for NATO military action will continue” (Albright 1999b).

Of course, if there was only one deal on the table, then it should have been presented in its entirety at the beginning of the conference, if not before. Instead, the mediators gave out the plan in bits and pieces, leaving the most contentious part, the part that would require the most scrutiny, to last. Submitting the implementation details just hours before the supposed expiration of the deadline was without question a maneuver to force Serb rejection and ensure collapse of the talks.

The Americans were obviously very confident that the Europeans were ready to sign on to an immediate start to the bombing campaign. Unfortunately for Albright, while she was

ready to begin bombing right away, her allies were not. It wasn't so much the U.S. demands on the Serbs that troubled them; it was Albright's manifest failure to deliver the KLA. She couldn't conceal from her NATO colleagues the obvious fact that the Kosovo Albanians were no more prepared to sign than the Serbs. Even the British were not prepared to go along with Albright on the bombing (Stojanovic 1999).

The talks broke up. However, they resumed in the middle of March. A great deal of pressure had been applied in the meantime on the Kosovo Albanians. The Kosovo Albanians were now prepared to sign the Rambouillet plan, and they duly did so on March 18. With the Kosovo Albanians finally on board, no impediment stood in the way of NATO bombing. NATO countries began closing their embassies in Belgrade and flying their personnel out of the way of the impending bombs.

On March 19, Clinton announced at a White House news conference that NATO action could begin at any moment. The announcement was full of falsehoods. For example, he asserted that "Today the peace talks were adjourned because the Serbian negotiators refused even to discuss key elements of the peace plan....[I]t was an agreement worked out and negotiated and argued over, with all the parties' concerns being taken into account" (Clinton 1999). This was an outright lie: No discussions had taken place at Rambouillet; the U.S. plan was delivered as a take-it-or-leave-it package. Yugoslavia had not rejected the Rambouillet plan outright. Even the Kosovo Diplomatic Observer Mission (KDOM) Daily Report had admitted on March 12—days before the resumption of the conference—that Milošević had "called the Rambouillet peace plan a good basis for a political

settlement in Kosovo. [Milošević] said, however, that the deployment of NATO troops in Serbia (Kosovo) as a part of the implementation of such a plan remains unacceptable” (U.S. Department of State 1999).

Following Clinton’s announcement of imminent military action, NATO figures embarked on an extraordinary propaganda campaign, constructing a brand-new narrative, according to which Kosovo Albanians needed to be rescued from Milošević’s marauding hordes. The embarrassing history of the past two months—the non-negotiations at Rambouillet, the ultimatums, Albright’s secret referendum promise, the NATO bombing threats, Appendix B—was rewritten. NATO had not issued the ultimatum: Sign the Rambouillet deal or else!

NATO now claimed that it was seeking to halt and reverse ethnic cleansing. This was to be NATO’s justification for a bombing campaign that had been in the works for at least a year, if not longer. The subsequent flight of Kosovo’s population gave the NATO story a superficial plausibility but one would have to be astonishingly credulous to believe that bombing could ever stop civilians from fleeing to safety.

On March 24, Albright explained to a TV interviewer that NATO had to go to war because it was “impossible to go on trying to have peace talks [given] Milošević’s actions, which were basically aggressive against the Kosovar people. He is the one that forced this by taking this action of moving additional forces, both the army and the special police, into Kosovo and was out of compliance with an agreement that he made with Ambassador Holbrooke in October” (Albright 1999d).

Milošević “forced” this action even though U.S. officials had repeatedly threatened NATO bombing of Yugoslavia did not sign the Rambouillet plan. Milošević would have been remiss as a leader had he not moved “additional forces” into Kosovo in response to NATO’s repeated threats, not to mention the impending KLA offensive timed to coincide with the launch of the bombing.

Since October 1998, Kofi Annan’s reports had repeatedly noted that the KLA was seizing positions vacated by the withdrawing Yugoslav forces. Even the OSCE’s reports noted this. Its report of Feb. 20, 1999, stated that “The KLA has continued its attempts to consolidate its military strength in areas left by the FRY army and the Serb police forces. A number of reports of border incidents indicate that the infiltration of personnel and weapons across the Albanian border has continued” (United Nations Security Council Report 1999a, p. 13). One month later, on March 20, the OSCE reported that “Localized clashes between the KLA and Serb security forces continued. Unprovoked attacks by the KLA against the police continued and the number of casualties sustained by the security forces has increased” (United Nations Security Council Report 1999b, p. 4).

## **ALLEGED GRAVITY OF THE CRISIS**

Rarely have the media been as credulous toward tales of atrocities as they were during the years of the war in Bosnia. Atrocities are of course inescapable in any war. However, exaggerations are also often an integral part of war. In conflict, such as those in Croatia,

Bosnia and Kosovo, in which all sides are seeking to win the sympathy and support of outsiders, accusations of war crimes, even of genocide, need to be treated with considerable caution.

In January 1993, for example, *Newsweek* carried a lengthy cover-story charging Serbs with the rape of as many as 50,000 women, mostly Muslim, as part of “deliberate programs to impregnate Muslim women with unwanted Serb babies” (*Newsweek* 1993). For years, lurid stories about rape camps and mass rapes filled newsprint and the airwaves. Systematic research resulted in findings that were insufficiently dramatic to make it into the papers. On Jan. 29, 1994, the U.N. secretary-general issued a report on rapes in the former Yugoslavia based on a study by the U.N. Commission of Experts. The report found “126 victims, 113 incidents, 252 alleged perpetrators, 73 witnesses” (United Nations Secretary-General Report 1994a, paragraph 8). The report also stated “some of the rape cases” were “clearly the result of individual or small-group conduct without evidence of command responsibility. Others may be part of an overall pattern. Because of a variety of factors, such a pattern may lead to a conclusion that a systematic rape policy existed, but this remains to be proved” (United Nations Secretary-General Report 1994a, paragraph 12).

Journalists were also enthusiastic purveyors of wildly exaggerated casualty statistics. For example, Burns (1993) claimed in August 1993 that between 150,000 and 200,000 Muslims had been killed in Bosnia. On Jan. 10, 1994, he upped the ante. Appearing on television, he announced that the Muslims had “lost perhaps a quarter of a million or three hundred thousand killed, perhaps two or three times that many wounded.” The Western

media eventually settled on 250,000 (invariably taken to refer exclusively to Muslims), which they repeated as if it were as firmly established as the laws of gravity.

So how many were killed in Bosnia? Reliable statistics are hard to come by, the process of compiling numbers having become so politicized. In 2007, Mirsad Tokača at the Research and Documentation Center in Sarajevo published a study estimating that 97,207 people were killed during the Bosnian war. According to the center's research, funded by the Norwegian government, of those killed, about 60% were soldiers and 40% civilians. Some 65% of those killed were Muslims, 25% were Serbs and more than 8% were Croats. Of the civilians, 83% were Muslims, 10% were Serbs and more than 5% were Croats (Research and Documentation Center in Sarajevo 2007).

Another study, conducted on behalf of the ICTY by population experts Ewa Tabeau and Jakub Bijak, claimed that 102,622 people were killed in the war in Bosnia. Of those, 55,261 were civilians and 47,360 were soldiers. The researchers estimated that, of the civilians killed, around 38,000 were Muslims and Croats and 16,700 were Serbs. Note that, according to Tabeau's and Bijak's numbers, of the civilians killed the proportion comprised of Serbs was very close to the proportion of the Bosnian population comprised of Serbs. Of the soldiers killed, the two researchers estimated that around 28,000 were Muslims, 14,000 were Serbs and 6,000 were Croats (Tabeau and Bijak 2005).

These numbers are considerable and shocking. Yet they pale in comparison with the number of people killed following the U.S. invasion of Iraq in 2003. They are extremely

modest compared to the number killed as a result of the U.S. military involvement in Southeast Asia.

What about Kosovo? How grave was the “humanitarian catastrophe” in the province in March 1999? The heaviest fighting between Yugoslav forces and the KLA had taken place in the summer of 1998. In October 1998, as U.S. lobbying for NATO bombing was reaching fever-pitch intensity, the *Washington Post*, a consistently pro-bombing outlet, repeatedly cited the figure of 750 dead in Kosovo since the start of the fighting in February 1998: The crackdown “killed at least 750 people, most of them ethnic-Albanian civilians” (Drozdiak 1998); Holbrooke was quoted as referring to the “ ‘unnecessary horror’ of the past several months, during which more than 750 people were killed and tens of thousands of civilians were forced from their homes” (Smith 1998); Yugoslavia’s offensive against ethnic Albanian insurgents has “has left at least 750 civilians dead and tens of thousands homeless” (Finn & Smith 1998). By late January 1999, the 750 number had grown, but not by much. On Jan. 27, the *Washington Post* claimed that the “11-month conflict...has cost more than 1,000 lives” (Lippman 1999).

It was at this moment, just as NATO was gearing up for its Rambouillet ultimatums and final push for bombing, that the media began citing a much higher number. On Jan. 31, The Associated Press reported that “Fighting between ethnic Albanian separatists and Serbian security forces in Kosovo has left at least 2,000 people dead” (Kratovac 1999). The *Guardian* plumped for the 2,000 figure in February: “More than 2,000 people have been killed in a year of clashes between ethnic Albanian separatists and Serbian security

forces” (Black 1999). Reuters also went with the 2,000 number. On March 16, it reported that “The accord aims to end a year of fighting in Kosovo that has killed about 2,000 people and forced hundreds of thousands to flee their homes.” So, in a matter of days, the 1,000 had morphed into 2,000.

On March 24, the day NATO launched its attack, the media consensus had settled on 2,000 killed in 13 months of fighting. Whether the true number was 750, 1000, 2000, perhaps more, perhaps less, there was no basis for any of these estimates. They acquired their authoritative status by dint of repetition.

The U.N. secretary-general’s March 17 report, his last before the NATO onslaught seven days later, described the security situation in Kosovo as characterized by random killings, abductions and explosions:

While clashes between the Serbian security forces and Kosovo Albanian paramilitary units continued at a relatively lower level, civilians in Kosovo are increasingly becoming the main target of violent acts. An increasingly common pattern of individual killings throughout the region accounts for the majority of deaths. Most violent incidents have remained unclaimed (United Nations Secretary-General Report 1999, paragraph 5).

The report said that since Jan. 20, 1999, the Office of the U.N. High Commissioner for Human Rights had registered “65 cases of violent death.” According to the OSCE report of Feb. 20, the level of military engagement between Yugoslav security forces and the KLA had dropped “significantly compared with late December and the month of January” (United Nations Security Council Report 1999a, p. 4). However, there had “been an

alarming increase in urban terrorism with a series of indiscriminate bombing or raking gunfire attacks against civilians in public places in towns throughout Kosovo. Although all of these attacks remained non-attributable, and it was not clear whether they were criminally or politically motivated, these incidents led to disruption and the spread of an atmosphere of fear” (UNSCR 1999a, p.4). The report alluded to one likely motive for these apparently random killings: KLA murder of alleged collaborators. The KLA was “policing” the Albanians “and administering punishments to those charged as collaborators with the Serbs. In the area of Pec several Albanians said to be loyal to the Serbs were murdered in separate incidents. Most of the victims were highly educated males, described by Serbs as ‘loyal citizens of Serbia’ and killed by shots to the head” (UNSCR 1999a, p.5).

Since the 2,000 killed figure - invariably taken as comprised exclusively of Albanians - didn’t sound sufficiently large to suggest a humanitarian catastrophe, the media took to citing the estimated numbers of those displaced by the fighting. This sounded far more impressive. The media followed this up by referring to the displaced population as refugees. Talk of refugees was highly beneficial for NATO. First, the refugee number sounded big. Second, fleeing refugees provided at least some justification, no matter how flimsy, for intervening in other countries’ internal conflicts. The more nervous NATO members might be persuaded to accept the argument that, since fleeing refugees might pose a threat to the stability of others, NATO has the right to intervene in another country’s domestic conflict.

During NATO's 11-week bombing campaign, its spokesmen made many outlandish claims, providing very little in the way of evidence. For example, the Serbs were supposed to have executed 100,000 Kosovo Albanian men. Following the end of the bombing and NATO's march into the province, it soon became clear that there was very little basis for NATO's allegations. NATO changed tack yet again. The absence of corpses, it was now argued, vindicated NATO's bombing campaign. Having spent months claiming that the bombing had not made the slightest dent in Milošević's murderous plans, NATO now reversed itself and boasted that, to the contrary, its bombing had actually foiled Milošević. NATO had saved those 100,000 Albanian men from execution. Thanks to the bombing, 100,000 Albanians who would otherwise have been killed were not killed.

## **EXPECTATIONS OF SUCCESS**

NATO bombing of Bosnia in 1995 and Kosovo in 1999 are invariably cited as examples of the efficacy of force. The 1995 bombing led to the signing of the Dayton Accords; the 1999 bombing led to the liberation of Kosovo.

So what happened in 1995? On Aug. 28, yet another explosion devastated the Sarajevo marketplace. Thirty-four people were killed. Within the hour an UNPROFOR spokesman announced that the Serbs were responsible for the attack. The media were in full cry: Serbs were vicious animals who deserved no mercy from NATO. Less than 39 hours after the explosion, NATO launched its most devastating bombing attack yet on the Bosnian Serbs, known as Operation Deliberate Force. The bombing went on for two weeks and inflicted

heavy losses on the Serbs. “Holbrooke felt that this horrible tragedy created a valuable opportunity to bolster U.S. credibility,” according to the State Department history of the 1995 peace negotiations (U.S. Department of State 1997).

Preliminary investigation of the marketplace incident however once again proved to be inconclusive. This time, U.N. officials even went public with their skepticism. Nonetheless, NATO claimed that it was certain “beyond any reasonable doubt” that the Serbs were responsible. In 2002, the official Dutch government report on Srebrenica expressed concern about the rush to judgment:

American intelligence officers admitted that the [Bosnian Muslims] had taken responsibility for this incident....Even the most important British policy body in the field of intelligence, the Joint Intelligence Committee (JIC), came to the conclusion that the shelling of Sarajevo market was probably not the work of the VRS, but of the Bosnian Muslims (NIOD Appendix II 2002, p. 61).

The objective of the bombing, NATO explained, was

to reduce the threat to the Sarajevo Safe Area and to deter further attacks there or on any other Safe Area. We hope that this operation will also demonstrate to the Bosnian Serbs the futility of further military actions and convince all parties of the determination of the Alliance to implement its decisions (NATO Press Release 1995).

Clinton, who was on vacation at the time, expressed his support. The NATO attack, he said, was “an appropriate response to the shelling of Sarajevo” (Pine & Wilkinson 1995). “In Sweeping Strikes, U.S., Allies Mete Out Punishment to Serbs” 1995). The bombing

was calculated to weaken and demoralize the Serbs and to strengthen and encourage the Muslims. Needless to say, Croatian and Bosnian Muslim forces failed to “exercise restraint” and chose instead to “seek military benefit” from NATO’s action. They launched major offensives against the Serbs. As Boutros-Ghali wrote,

Soon after NATO began air operations...Bosnian government and Croatian forces began to advance in the western part of the country. In the week of 10 September 1995, Bosnian government forces took much of the Ozren salient, while, simultaneously, Croatian forces made sweeping advances in the south-west of the country, including the capture of areas traditionally populated by Bosnian Serbs (United Nations Secretary-General Report 1995b, paragraph 15).

None of this should have come as a surprise. While the bombing continued, the Croat-Muslim forces enjoyed a measure of success. During this time, naturally, the United States went out of its way to thwart all attempts to secure a ceasefire or to hold peace talks.

However, this massive bombing campaign did not lead to Serb defeat. The Dayton accords envisaged a two-state - a far cry from the unitary state that was supposedly the sine qua non of any acceptable settlement for the United States. Peace had come to Bosnia, not because of U.S. bombs or the Croat-Muslim offensive, but because Serbs took matters into their hands. What made a settlement possible was precisely the exchange of territories that Karadžić had proposed, that Owen had proposed, and that the Contact Group had rejected, namely, a swap of the eastern enclaves of Srebrenica and Žepa for territory around Sarajevo.

The key ingredient of Dayton wasn't U.S. pressure on the Serbs; that had been a staple since 1991. What was new was U.S. pressure on the Bosnian Muslims. For the first time, the United States was not unconditionally supporting Muslim aspirations. It was Holbrooke's rejection of Izetbegović's political and territorial ambitions that brought the war to an end.

U.S. policymakers failed to explain why the Dayton accords, which ratified the partition of Bosnia and the creation of a Bosnian Serb entity on 49% the republic's territory, was in any way more helpful to the Muslims than the previous peace plans that Washington had rejected on the ground that they weren't giving the Muslims enough. The 1992 Cutileiro Plan had envisaged an undivided Bosnia. The Vance-Owen and the Owen-Stoltenberg plans envisaged Srebrenica and Žepa remaining under Muslim control. Under Vance-Owen, Srebrenica was to have been a part of the Muslim-run Tuzla province. Under the Owen-Stoltenberg and the E.U. Action plans, Srebrenica and Žepa would have been linked and assigned to the Muslim-majority republic. The Vance-Owen plan, Owen pointed out, would have given the Serbs "only 43 per cent of territory in a unified state." Owen-Stoltenberg would have effectively given the Muslims their own state (Owen 1995, p. 121).

When it came to Kosovo in 1999, the Clinton administration assured the public that it would accomplish its noble ends with relative ease. According to Albright, victory would be swift: "I don't see this as a long-term operation. I think that this is something... achievable within a relatively short period of time" (Albright 1999d). NATO's bombing however didn't exactly go according to plan. The bombs caused people to flee in all

directions. In no time, refugees by the tens of thousands were fleeing across the border into Albania and Macedonia and Montenegro. Everyone was fleeing. Serbs from Kosovo were fleeing to Serbia. Serbs from Serbia were fleeing to Hungary or any other country that would take them. This too was foreseeable. People don't sit still waiting for bombs to land on them. The bombing had brought about the very thing NATO claimed it was designed to avert: a humanitarian catastrophe. Having launched a war on behalf of the Kosovo Albanians, NATO had brought untold misery on them. This too was foreseeable. Whoever heard of bombing serving a humanitarian end?

Confronted by a disaster of its own making, NATO had no option but to go on with more of the same. The disaster caused by the bombing was now invoked to justify more bombing. NATO escalated its attacks as well as its propaganda campaign. It wasn't NATO bombs that had precipitated the flood of refugees; it was the actions of Yugoslavia's security forces. The fleeing Albanians were showing the world what kind of monsters NATO was up against; they were evidence of the need for more - and more intense - bombing.

Through tortured logic, NATO explained the fiasco by arguing that its actions had had no effect on anything. Everything that took place after March 24 would have taken place in exactly the same way even if NATO had not bombed. Nothing could have stopped Milošević from implementing his plan to expel Kosovo's Albanian population. NATO made the same argument when the issue of Appendix B came up. Milošević would have rejected any agreement at Rambouillet - with or without Appendix B.

The Serbs, the NATO story had it, had been driving the Albanians out before the first bomb landed. NATO had launched its bombing in response to Milošević's aggression against the "Kosovars." It wasn't NATO's bombs people were fleeing but Yugoslavia's security forces. "In the two days before the NATO campaign, Serb forces had driven 20,000 Kosovars from their homes," wrote George Robertson, Britain's defense minister (Robertson 1999). During the past two months, Milošević had "built up a security force presence in Kosovo of up to 40,000 troops and 300 tanks." These 20,000 couldn't possibly have been fleeing in anticipation of the impending NATO attack, which everyone in the world knew was only hours away; no, they were fleeing Yugoslavia's forces. Of course if NATO were right, then its rationale for bombing had been proven to be absurd. The bombing was supposed to diminish the Serbs' capability to conduct crackdowns and make war. But the humanitarian catastrophe in Kosovo and in neighboring states followed, not preceded, the bombing.

Milošević, according to NATO, had been carefully planning his campaign of terror months before the start of the bombing. Even as he was pretending to negotiate at Rambouillet, Milošević was putting into effect his diabolical project to drive the Albanians out of Kosovo. To justify what it had done, NATO needed to show that Belgrade had always intended to expel Kosovo's Albanians and that it would have done so whether NATO bombed or not. However, the OSCE verification mission had made no mention of "ethnic cleansing" operations in its February 1999 and March 1999 reports. Increased KLA activity was noted as well as "unprovoked attacks by the KLA against the police," but there were

no indications of deliberate targeting of civilians by Yugoslav forces. “Indiscriminate urban terrorist attacks targeting civilians” was mentioned, but not attributed to anyone.

While the OSCE report of March 20 did note that “The overall number of Yugoslav army units deployed outside their Kosovo barracks was greater” than allowed by the Oct. 25 agreement, it also pointed out that the VJ had “strengthened their positions in border areas and upgraded their *defensive* capabilities both in terms of weapon types and number of troops and equipment deployed. Increased KLA activity was noted in certain areas of Kosovo” [United Nations Security Council Report 1999b, p. 4 (my italics)]. In fact, almost all of the violent incidents mentioned in the report as having taken place from mid-February to mid-March involved KLA attacks on police patrols. There were many kidnappings and abductions, which often culminated in the murder of kidnap victims. The perpetrators were invariably armed KLA members. There were no accounts of security forces targeting civilians.

Knowledgeable observers had predicted that the KLA would launch an offensive in the spring of 1999. On Feb. 2, 1999, CIA Director George Tenet told the Senate Armed Services Committee:

Both sides are now preparing for much heavier fighting in the spring. The KLA has used the cease-fire to improve its training and command and control, as well as to acquire more and better weapons. As a result the KLA is a more formidable force than the Serbs faced last summer. We estimate that there are several thousand KLA regulars augmented by thousands more irregulars, or home guards. Moreover, funds pouring into KLA coffers from the Albanian Diaspora have increased sharply following the massacre at Račak....We assess that if fighting escalates in the

spring—as we expect—it will be bloodier than last year's. Belgrade will seek to crush the KLA once and for all, while the insurgents will have the capability to inflict heavier casualties on Serb forces. Both sides likely will step up attacks on civilians (Tenet 1999).

The CIA's analysis was the same as that of the U.N. secretary-general and of the OSCE verifiers in Kosovo: The withdrawal of Yugoslav forces, at NATO's behest, had given KLA the chance to rearm, re-take lost territory, replenish coffers and seize control of large parts of Kosovo. The Belgrade authorities could hardly be expected to sit still and allow the KLA to take over the province. Moving forces into Kosovo in anticipation of the offensive was clearly a prudent strategy. With the KLA stronger than it had been a year earlier, courtesy of NATO's helpful intervention, the fighting was likely to be heavier. Tenet had made no mention of ethnic cleansing; in his testimony he referred only to Belgrade's "counter-insurgency operation."

Following the conclusion of the bombing campaign, NATO and the admiring media were quick to trumpet a famous victory. However, there was less to NATO's victory than met the eye. NATO had had to jettison the Rambouillet accords, the referendum on independence, Appendix B and the demand for unrestricted movement throughout Yugoslavia. In addition, the NATO viceroy of Kosovo would be answerable to the U.N. and the military presence would have to be authorized by the U.N. Security Council. When one takes into account the terrible carnage wrought by the NATO bombing, the misery it brought to its ostensible beneficiaries, the subsequent horrors that it inflicted on the unfortunate people who have to live in Kosovo under the NATO-KLA regime, NATO's achievement in its first-ever war was rather meager.

## **PROPORTIONATE MEANS**

Contrary to NATO's claims of taking extraordinary care to avoid civilian casualties, its bombing campaign involved innumerable civilian casualties; destruction of vital facilities and infrastructure; environmental damage following the bombing of pharmaceutical and fertilizer plants and oil refineries; and a panicked flight of refugees. A brief list of NATO atrocities would include: the attack on a residential housing estate in Aleksinac, killing five; the daytime attack on a passenger train crossing the railway bridge over the Južna Morava river at Grdelica gorge, killing 14; the attack on the column of displaced civilians over a 12-mile stretch of road between Djakoviča and Decani in western Kosovo, killing 73; the attack on the Belgrade headquarters of Radio Television of Serbia, killing 16; the attack on a residential area in the southern town of Surdulica in southeastern Serbia, killing 16; the destruction of a passenger bus on Lužane bridge in Kosovo, killing at least 23; the daytime cluster bombing of the market in Niš, killing 15; the bombing of the Kosovo Albanian village of Koriša, killing 87; the attack on the Dragiša Mišović hospital in Belgrade, killing three; the attack on the bridge in Varvarin in south-central Serbia, killing three; the bombing of a sanatorium and a nearby old people's home in Surdulica, killing 17; the attack on an apartment building in Novi Pazar in southwest Serbia, killing 10. The total number of civilian casualties is not known. Human Right Watch claims it had verified 500 civilian deaths. The government of Serbia claims there were 2,500 civilian casualties. There was also the flight of some 800,000 refugees that came after the start of NATO's bombing.

Then there was the political transformation of Kosovo that NATO ushered in. Within days of NATO's entry into Kosovo, the KLA was in control of Kosovo. This was of course expected and welcomed. NATO made sure to dismantle all official government structures in Kosovo and ousted the law enforcement authorities. Chaos and violence ensued and criminal gangs took over the running of the province. While the humanitarians were congratulating themselves on having "defeated" the Serbs, the purported beneficiaries of this selfless military intervention were abandoned to the tender mercies of men notorious throughout the world for being among the most ruthless drug traffickers and murderers. Into this vacuum stepped the only organized armed force on the ground. In his widely-publicized December 2010 report, Dick Marty, the rapporteur entrusted by the European Parliament to investigate allegations of KLA criminality, said that, thanks to NATO, the KLA had

effectively unfettered control of an expanded territorial area in which to carry out various forms of smuggling and trafficking....KLA factions and splinter groups that had control of distinct areas of Kosovo (villages, stretches of road, sometimes even individual buildings) were able to run organised criminal enterprises almost at will, including in disposing of the trophies of their perceived victory over the Serbs (Marty 2010).

The KLA consolidated its power through assassination, abduction and torture. Its targets were not only Serbs. Targets

included anybody suspected...of having "collaborated with" or served Serb officialdom. In a door-to-door campaign of intimidation, KLA foot soldiers were ordered to collect names of persons who had worked for the ousted FRY authorities (in however trivial an administrative

function), or whose relatives or associates had done so. Into this category of putative “collaborators” fell large numbers of ethnic Albanians, as well as Roma and other minorities (Marty 2010).

The report described Kosovo as a hotbed of criminality in which heads of criminal gangs serve as political leaders. More alarmingly, these criminals had enjoyed virtual impunity thanks to the sympathetic attitude of the international authorities that had supplanted the hated Serbs as rulers of Kosovo. From 1999 on, Marty wrote,

The international organisations in place in Kosovo favoured a pragmatic political approach, taking the view that they needed to promote short-term stability at any price, thereby sacrificing some important principles of justice. For a long time little was done to follow-up evidence implicating KLA members in crimes against the Serbian population and against certain Albanian Kosovars. Immediately after the conflict ended, in effect, when the KLA had virtually exclusive control on the ground, many scores were settled between different factions and against those considered, without any kind of trial, to be traitors because they were suspected of having collaborated with the Serbian authorities previously in place (Marty 2010, p. 2).

But there was more to this than simple pragmatism. There was ongoing, active collusion with criminals. “International forces co-operated with the KLA as the local authority in military operations and the restoration of order. It was as a result of this situation that certain crimes committed by members of the KLA, including some top KLA leaders, were effectively concealed and have remained unpunished” (Marty 2010, p. 7). What triumphed in Kosovo was “a form of justice that can only be defined as selective, with impunity attaching to many of the crimes that appear...to have been directly or indirectly the work of top KLA leaders” (Marty 2010, p. 7).

The NATO powers, according to Marty, knew all about KLA criminality but had no interest in bringing anyone to justice. “What is particularly confounding is that all of the international community in Kosovo—from the Governments of the United States and other allied Western powers, to the E.U.-backed justice authorities—undoubtedly possess the same, overwhelming documentation of the full extent of the [KLA] crimes, but none seems prepared to react in the face of such a situation and to hold the perpetrators to account” (Marty 2010, p. 16).

## **LEGALITY V. LEGITIMACY**

NATO claimed that it was bombing Yugoslavia because of the humanitarian emergency in Kosovo. Yet the evidence clearly demonstrates that the humanitarian emergency that supposedly moved NATO to act began only after the bombs started to fall. Even the ICTY confirms this. Other than alleged massacre at Račak in January 1999, the crimes charged against Milošević in the May 22, 1999, Kosovo indictment all took place after NATO began to bomb. The 2009 Kosovo judgment against Serb leaders didn’t even list Račak as one of their crimes.

NATO’s bombing of Yugoslavia was clearly illegal. Yugoslavia posed no threat to any state, warranting invocation of Article 51 of the U.N. Charter. Yugoslavia posed no threat to any NATO country, warranting invocation of Article 5 of the North Atlantic Treaty. There was no authorization for military action from the U.N. Security Council under

Chapter VII. Not only was NATO's war illegal, it was illegitimate. Bombing Yugoslavia in order to compel it to sign the U.S.-drafted Rambouillet "agreement" was illegitimate. Even if NATO had succeeded and Yugoslavia had agreed to accept the U.S. proposals, the signature would have had no validity under international law. Article 52 of the Vienna Convention on the Law of Treaties couldn't be less ambiguous on this issue: "A treaty is void if its conclusion has been procured by the threat or use of force."

NATO's war against Yugoslavia was illegitimate. It was illegitimate because its objectives were illegitimate. If NATO's war lacked any legal basis or legitimacy, it stands to reason that its choice of targets was illegitimate. In addition, as legal scholar Ian Brownlie has argued, normal discussions about the risks of collateral damage to civilians are meaningless if the objectives of a bombing campaign are political, rather than military. The purpose of the Geneva Conventions was to identify when, if at all, civilian casualties can be risked in order to secure a military objective. The extent of civilian damage is looked at in light of the importance of the military objective sought. In 1999, on the other hand, Brownlie points out,

There was no conflict on the ground. Is it lawful to destroy even military objectives simply with the purpose of coercing the State into accepting a set of proposals? The bombing of oil refineries could not involve military objectives because nowhere in Yugoslavia were NATO troops on the ground and in a position to benefit from the destruction of fuel sources. NATO official statements were very frank in indicating that the purpose of the targeting policy was to cause hardship to the civilian population (Brownlie 1999, paragraph 120).

NATO's military occupation of Kosovo was authorized U.N. Security Council Resolution 1244. The resolution reaffirmed "the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia." That was in the wastepaper basket in no time at all, as the NATO powers conspired with the Kosovo Albanians to detach the province from Serbia. The resolution provided for the return of "Yugoslav and Serbian personnel" to maintain a "presence at key border crossings" and a "presence at Serb patrimonial sites." NATO flatly refused to abide by this provision. The KLA was supposed to be disarmed. Instead, the KLA handed in a few ancient weapons and renamed itself the Kosovo Protection Corps.

There was also the promise of "a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords" (United Nations Resolution 1244, 1999). NATO treated this provision with total disdain and embarked on creating an independent state in Kosovo, a process culminating in Kosovo's unilateral secession in February 2008, followed by swift recognition by most - but by no means all - NATO and E.U. states.

## CONCLUSION

The champions of the doctrine of humanitarian intervention have held help up NATO's military campaigns in Yugoslavia as exemplars of how force can be used in the service of morality.

I began my research on NATO's involvement in Yugoslavia by looking at the debt-servicing programs that the International Monetary Fund imposed on the country during the 1980s. This was the source of the conflict among the SFRY's republics. The IMF had not only demanded the familiar austerity remedies, it urged re-centralization of the SFRY. The attempt to implement the IMF program led eventually to demands for independence, which, led to Western powers' intervention in support of the secessionists. Rather than facilitate a negotiated resolution of the disputes among the republics, the Western powers took the side of the secessionists and threatened sanctions against the central government in Belgrade should it resort to force to prevent the disintegration of the SFRY. Belgrade was in an unwinnable situation. If it used force to prevent secession, it would be attacked for standing in the way of national self-determination, and risked E.C. recognition of the rebel states. If it accepted secession, dissolution of Yugoslavia would be unstoppable and recognition would be inevitable. If it accepted secession, but insisted on respect for the aspirations of the Serbs in Croatia and, later, in Bosnia, it would be denounced for seeking to carve out a Greater Serbia out of the wreckage of Yugoslavia.

I then examined in detail The Hague conference in October 1991, convened under the auspices of the Europeans, that was heavily weighted in favor of secession. In attendance were the presidents of the SFRY's six republics. The Serbs, the most populous nation and the biggest losers in any dissolution of their common state, were one vote out of six and thus easily outvoted by everyone else. European and American recognition of Yugoslavia's secessionist republics soon followed. Most significantly, the Western powers insisted that there could be no changes to the internal administrative boundaries of the SFRY and that they become the international frontiers of the successor states. Such a division meant that something like a third of the Serbs, by far the SFRY's most populous nation, would overnight find themselves living as national minorities in states to which they didn't want to belong.

This Western intervention made war a certainty. The Serbs of Croatia and Bosnia opted out of the newly-independent states and declared that they continued to be citizens of Yugoslavia. Since the secessionists who had taken matters into their own hands by seizing borders and unilaterally declaring independence had been rewarded with recognition it was inevitable that others in the SFRY would also try to change facts on the ground by force and set up boundaries that could then serve as new international frontiers. Thus the Balkans wars' distinctive feature: ethnic cleansing, the purpose of which was to forge new territorial arrangements in anticipation of the next round of international arbitration. The West, furious with the Serbs for their rejection of the prescribed dissolution of the SFRY along its internal administrative boundaries, responded with threats and sanctions. The Western-

decreed order was moral; rejection of it was immoral. This Manichaeism was to guide future interventions.

Having made their bizarre decisions, granting statehood here, refusing statehood there, conjuring nations out of thin air while making others disappear, having provoked certain war, the Western policymakers needed to come up with a plausible explanation as to why their self-evidently good intentions, based as they were on boilerplate about democracy, human rights and anti-Communism, had resulted in such total fiasco. A villain therefore had to be found. It was not the secessionists and their Western supporters that were to blame for the break-up of Yugoslavia and the subsequent wars there. It was the Serbs.

Policymakers, journalists, foreign policy pundits, think-tank denizens and the human rights lobby explained the wars in Yugoslavia as a consequence of the Greater Serbia ideology. This claim was to guide the jurisprudence of the ICTY and to inform the innumerable analyses of the human rights lobby, in particular of Human Rights Watch. I discuss this in Szamuely (2007), Szamuely (2011) and in Chapters 2 and 3 of Szamuely (2014).

The results of this research are to be found in Chapter 1 of Szamuely (2014).

My studies focused on the various peace plans Western intermediaries put forward in subsequent years to bring the conflicts in Croatia and Bosnia to an end. The initiatives were hampered by the NATO powers' pursuit of incompatible objectives. On the one hand, Western leaders claimed they were seeking a negotiated resolution of the conflicts

besetting Croatia and Bosnia. On the other hand, NATO was flatly rejecting the two outcomes that could lead to a peaceful resolution: either changes to the borders of the SFRY's successor states that would take into account demographic realities or establishment of federation or confederations in place of the unitary states that emerged in the wake of the dissolution of the common federal state.

In the case of Croatia, once the Europeans had acceded to all of Croatia's demands - independence, unitary state and unchangeable borders - there was little incentive for the Croatian government to attempt to resolve its conflict with the republic's Serbs by any means short of war. This meant that the Vance plan, formulated by former Secretary of State Cyrus Vance, acting as the personal envoy of the U.N. secretary-general, was doomed to failure. The plan promised protection for the Croatia's Serbs, to be provided by U.N. peacekeepers. In addition, there were to be final status negotiations between the Zagreb government and representatives of the Serbs. The plan was explicit about not prejudicing the outcome of final status negotiations. The E.C.'s recognition of Croatia however resolved all outstanding issues in Croatia's favor. The Serbs became in the eyes of the world rebels who had no choice but to accept the rule of Zagreb. It was now simply a matter of time before Croatia would move against the Serbs in order to assert sovereignty over territory that the West deemed belonged rightfully to Zagreb.

In Bosnia, the NATO powers insisted on independence plus unchangeable borders but seemed unsure as to the republic's constitutional arrangement. However, since the United States was convinced that the Serbs were the aggressors, it considered any concession on

issue of Bosnia's constitution as rewarding aggression. This meant that the peace negotiations had little prospect of success. The United States threw its weight behind the cause of the Muslims, insisting that there was little point to negotiating until the tide of the war had turned in their favor. In violation of a U.N.-imposed arms embargo, the United States clandestinely sent weapons to the Muslims and facilitated the dispatch of mujahedin fighters. With support from Washington in the bank, the Muslim-dominated government of Bosnia had little incentive to seek a negotiated outcome.

The results of this research are to be found in Chapters 2 and 3 of Szamuely (2014). Here I detail the unfortunate fate of the early peace plans to end the wars in Bosnia and Croatia. The first plan, put forward by Jose Cutileiro, Portugal's foreign minister, envisaged an independent Bosnia organized along cantonal lines. There was to be decentralization, consensual decision-making and restrictions on simple majority rule. Bosnia would be a state comprising three nations with unalterable borders and from which no nation could secede. The Cutileiro plan collapsed following U.S. advice to Alija Izetbegović, the Bosnian Muslim leader, to withdraw his signature from the agreement. The United States argued that the plan legitimized ethnic cleansing. Washington backed a unitary Bosnian state even though this had the support of neither the republic's Serbs nor its Croats. The Bush administration's intervention set the course for U.S. policy on Bosnia for the next three years: unconditional support for Muslim objectives and rejection of every peace plan on the ground that it wasn't generous enough to the Muslims and/or punitive enough on the Serbs. It was a vote for indefinite continuation of the war.

The next peace plan, the Vance-Owen plan, envisaged the division of Bosnia into 10 non-contiguous regions, each one of which would be dominated by one of Bosnia's three national groups. The regions had to be non-contiguous because the mediators did not want to be seen to be sanctioning the dissolution of Bosnia. This plan failed as a consequence of U.S. as well as Serb rejection. The United States was opposed to the plan because it deemed the proposed partition of Bosnia as too favorable to the Serbs. The Serbs rejected the plan because the division of the republic into non-contiguous areas, with no secure land links between them, meant that Serbs could find themselves at the mercy of their adversaries.

Chapter 3 of Szamuely (2014) addressed, among other things, the increasing conflict between the missions of the United Nations and those of NATO. While the U.N. carried out humanitarian work such as monitoring ceasefires, securing safe passage of U.N. convoys delivering aid or opening airports to traffic, NATO was anxious to show its relevance by continually threatening military intervention. As U.N. peacekeepers saw it, the only NATO military mission that made sense was protection of U.N. personnel. However, NATO leaders, particularly the Clinton administration, were more interested in using NATO on behalf of the Muslims. This obvious contradiction undermined the political position, credibility and effectiveness of the U.N.

There were also a number of new peace plans. The best known, the "Owen-Stoltenberg" plan, envisaged the division of Bosnia into a confederation of three republics. Bosnia was envisaged as a de facto confederation among its three constituent nations, each of which would have its own republic and its own constitution, executive, legislature and judiciary.

None of the three republics of Bosnia would be permitted to secede without the prior agreement of the other republics. The Serbs and Croats accepted the plan; the Muslims rejected it, claiming they had not been granted enough territory. The Americans and the Europeans echoed the Muslim claims and demanded territorial concessions from the Serbs. In addition, the United States sought to advance the military fortunes of the Muslims, repeatedly demanding an end to the arms embargo and the start of a NATO bombing campaign against the Serbs. The Europeans additionally insisted that the Serbs of Croatia reach a “modus vivendi” with the Zagreb government. Under such circumstances the Muslims had little incentive to accept the plan and the Croats little incentive to accommodate Serb demands for self-government.

Another Bosnian peace plan, the Contact Group plan, fared no better. This time the Serbs were the rejectionist party. The plan gave the appearance of having been crafted with a view to securing Serb rejection. To the Muslim-Croat federation went Sarajevo as well as all of the safe areas, including the eastern enclaves. The enclaves, in addition, were to be linked to the federation by roads traversing Serb republican territory. Brčko was also assigned to the federation. This was a significant move since it meant that the two Serb regions that would comprise the territory of the Serbs—one in eastern Bosnia and the other in western Bosnia—would essentially be cut off from each other. The United States had insisted that the Muslims retain their enclaves deep inside Serb-held territory and rejected proposals, accepted tentatively by both Serbs and Muslims, that the enclaves be exchanged for territory around Sarajevo.

It meant that only war could break the impasse. Szamuely (2014) argues that the Bosnian war could have been avoided had the Cutileiro plan implemented. The war could have ended in 1993 and 1994. It unnecessarily went on until 1995 because NATO, particularly the United States, continually sought to turn the tide of the war in favor of the Muslims.

Szamuely (2011) and Chapter 4 of Szamuely (2014) focused on the establishment and subsequent fate of Bosnia's "safe areas." These areas were supposed to provide humanitarian relief for civilians. Instead, they served as bases for Muslim armed forces and as staging grounds for attacks on neighboring villages. They also complicated immensely the attainment of any peace agreement. There could be peace in Bosnia without some form of partition. However, the presence of Muslim population enclaves deep in Serb territory made delineation of territorially contiguous areas all but impossible. Three of the safe areas were in eastern Bosnia, the part of Bosnia that would constitute a Serb entity in any final territorial settlement. The safe areas only served to encourage Bosnian Muslim leaders to believe that their ambition to preside of a unitary Bosnian state would eventually be realized. There could now be no resolution of the conflict without the use of force. Either the Muslims would have to defeat the Serbs to create a link between Muslim territory and the enclaves, or the Serbs would have to eliminate the enclaves altogether.

The "safe areas" were supposed to be demilitarized; in fact they were not. The U.N. Security Council authorized the peacekeepers to the safe areas in order to deter attacks on the areas. This turned the peacekeepers into de facto allies of the Bosnian Muslims. By forcing Serbs to withdraw their military from the vicinity of the safe areas and permitting the Muslims to retain their forces within them and to use those forces to attack the Serbs,

the peacekeepers were securing a military advantage for one side against the other. While Muslims could attack from a safe area, Serb retaliation would have the appearance of an attack on civilians, an action requiring swift retribution from NATO.

In the spring of 1995 heavy fighting resumed in Bosnia between Serbs and Muslim-Croat forces. The Bosnian government made use of Srebrenica in its overall military strategy. Yet the enclave continued to enjoy the protection of the United Nations. In addition, clandestine shipping of arms into the eastern enclaves convinced the Serbs that they had to do something about Srebrenica. With critical fighting taking place around Sarajevo, the Bosnian Serbs could no longer afford the distraction of defending Serb villages behind their own lines. This led to military action against the enclaves in eastern Bosnia and to tragic consequences at Srebrenica.

My research into NATO's 1999 bombing campaign culminated in three chapters of Szamuely (2014). Chapter 5 focused on the Western plan to use the insurgency in the province in order to topple the government of Slobodan Milošević. The insurgency, and the government's response to it, could serve as a humanitarian emergency that would provide a pretext for a NATO military intervention. The overthrow of a legitimate government by foreign powers could then be presented to the world as a humanitarian intervention to save unarmed civilians from genocide. The insurgency led by the Kosovo Liberation Army, enjoyed diplomatic and financial support from NATO countries. NATO seized on the deteriorating security situation in Kosovo to issue threats against Belgrade. Unless Belgrade withdrew its security forces from the province and immediately granted "autonomy" to Kosovo's Albanians, NATO would bomb Yugoslavia. However, since

Kosovo Albanian leaders were not prepared to accept anything short of independence, as the West well knew, Serb peace feelers went nowhere. NATO was articulating its 'humanitarian intervention' doctrine even though the humanitarian situation in Kosovo could hardly be described as an emergency.

Chapter 6 of Szamuely (2014) dealt with Western manipulation of supposed peace negotiations in order to provide a pretext for a NATO attack on Yugoslavia. NATO used the introduction of an OSCE verification mission into Kosovo, ostensibly to make sure that Belgrade was not using excessive force in the province to ratchet up its threats. NATO seized on the discovery of 40 bodies in Račak to accuse the Serbs of having committed a horrific war crime and to demand that they, along with representatives of the Kosovo Albanians, attend peace negotiations at Rambouillet.

No negotiations took place at Rambouillet. The Serbs and the Albanians were presented with a U.S.-drafted plan. The Serbs accepted the political part of the plan but they balked at the military part. The military part of the plan demanded unrestricted freedom of movement for NATO forces throughout Yugoslavia as well as complete legal and political immunity. NATO officials admitted subsequently that this demand was inserted with a view to eliciting Serb rejection. No nation would accept such a violation of its sovereignty. This Serb rejection provided NATO with the pretext it had been seeking to launch its long-planned bombing campaign against Yugoslavia.

Chapter 7 of Szamuely (2014) focused on NATO's military campaign against Yugoslavia. When NATO's bombs failed to force the Serbs to surrender immediately and, on top of that, triggered a massive flow of refugees out of the country, Western capitals launched a massive propaganda blitz to explain to the world that the humanitarian crisis was all the fault of the Serbs. The people were fleeing not NATO's bombs but Serb security forces. The Serbs, according to NATO, had always intended to expel its Albanian population. NATO's bombing campaign had provided the Serbs with the opportunity to accomplish it. The claims were self-evidently absurd. If NATO had known that the Serbs would respond in this way to its bombs, why would it launch a campaign that was guaranteed to result in a humanitarian catastrophe? NATO's only response was to intensify the bombing in order to compel the Serbs to surrender. There was plenty of evidence that NATO was targeting civilians in the hope that an angry populace would take out its rage against the Milošević government.

NATO's armed interventions in the conflicts in Bosnia and Kosovo illustrate what is problematic about humanitarian interventions. The interventions are not motivated by humanitarian concerns; the interventions are driven by a political agenda. The NATO powers that intervened were not disinterested bystanders, moved by the plight of suffering humanity. The NATO powers had been heavily involved in the destruction of Yugoslavia. They had been repeatedly warned that if they continued to pursue their policy of immediate recognition of the seceding states war was certain. They ploughed on regardless.

NATO's intervention in Bosnia was driven not by humanitarian, but by political, concerns. The NATO powers were determined to vindicate their hasty, ill-conceived and arbitrary partition of Yugoslavia. Had NATO been seriously interested in ending the war, and therefore the atrocities that are inseparable from war, it could have thrown its support behind the various peace plans that had been on the table before July 1995. The E.U. and the United States had given the secessionists everything they wanted. Those who had wanted to preserve the core state of Yugoslavia got nothing. The Western powers had pushed through a massive constitutional change in Yugoslavia, refusing to take into account the determinations of that country's constitutional court or of its federal organs. As a result, millions overnight found themselves to be without a state, minorities in someone else's country.

The NATO powers refused to reconsider their decisions. There were to be no redrawing of the borders of Yugoslavia's successor states. Bosnia had to be a unitary state even though this was contrary to the wishes of the majority of the population of Bosnia. Those who had had the temerity to reject the NATO-U.S.-E.U. diktat were to be punished by isolation, sanctions and bombs.

In the case of Kosovo, NATO got involved in a conflict between two nations, each of whom had a reasonable claim on the province—one historic, the other demographic. Resolution of this conflict may have been possible, but only if the Western powers had intervened in a genuinely evenhanded way, taking into serious consideration the merits of each side's claim. Instead, NATO threw all of its weight behind Kosovo's Albanians. The Serbs were

treated exclusively to threats, ultimatums and bombs. NATO had no interest in a negotiated outcome. The Rambouillet talks were not negotiations at all. The NATO powers sponsored the negotiations at Rambouillet for the sole purpose of ensuring failure and providing NATO with a pretext to launch its long-planned bombing campaign. The bombing, when it came, caused death, destruction and a chaotic flight of refugees. NATO's bombing achieved one outcome: NATO military occupation of Kosovo and the eventual theft of Kosovo from Serbia.

Humanitarian interventionists continue to argue that NATO's interventions in Bosnia and Kosovo were sterling examples of the use of force to secure noble ends. If they are right, then the entire humanitarian interventionist enterprise must be deemed to be illegitimate. For, as my book shows, not only did the interventions fail to secure humanitarian ends, they did not satisfy any of the criteria that the interventionists themselves put forward to render an otherwise illegal intervention justifiable.

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