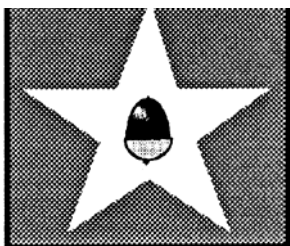


**Conflict Studies Research Centre**

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on Serbia, 1999**

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**G76**

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## **The Legality of NATO's attack on Serbia, 1999**

**Lt Cdr (Retd) N F Bradshaw**

NATO aircraft attacked Serbia in March 1999. By 9th June negotiations were under way both for the Serbian withdrawal from Kosovo and also, strangely, for a draft UN Security Council Resolution being prepared by the foreign ministers of the G8 Nations, meeting at Cologne. This resolution was to be presented for ratification by the Security Council once the parties concerned in drafting the resolution were happy with its content. The UN Security Council was not originally intended to act as a retrospective rubber stamp to legitimise illegal actions taken by alliances of aggressive nation states; quite the reverse, in fact. To use aggression to achieve foreign policy objectives was exactly the type of activity that the Second World War was fought to limit and prevent, and that the UN was set up to outlaw.

It is difficult to see the reason for the original attack on Serbia. It may well have been to improve relations between Saudi Arabia and USA, and to give support in the operations being launched against Iraq. Saudi Arabia and Turkey have both undergone great criticism for supporting the USA in its attacks against a Muslim nation, especially as the USA initially offered very little help to Bosnian Muslims.

The reason for the initial attacks against Serbia was not to prevent atrocities against Albanians in Kosovo. The extreme Serbian repression of the Albanian minority now quoted as justification began after the NATO bombing raids were taking place. How many Albanians have been killed is not yet known, although one would have been too many. British press estimates have ranged from 450 (probably low) to thousands. There is a general belief that the Serbs have murdered for months, and that the men from the Albanian community have been taken away from their families, and killed. Many of these men are now turning up alive. No doubt the demands of propaganda will eventually be overcome, and a realistic figure will emerge, but as with the Muslims of Bosnia, the Albanian interests and those of the KLA will be best served by fudging this estimate and inflating it, for as long as possible. Sadly, such efforts will also best serve the interests of the NATO nations involved, especially in the light of the criticism their actions are bound to attract as the details of troops and civilians killed, and the cost of repair of the damage to Serbia, especially over the last days of the bombing campaign, come home to roost. The murder of an Albanian Serb by a Serbian Serb is a disgraceful matter, as indeed is any murder; over 1400 Serb civilians have been killed by NATO.

There had been conflict between Serbs and Albanians in Kosovo before March 1999, dating back to the early 1960s when Albanian interests hoped to force the Serbs from Kosovo and to establish a Greater Albania, that Italian Fascist dream of 1941 which was used by Mussolini to limit the Serbs' efforts to support the allies. These interests were revived following the beginning of the disintegration of the Yugoslavian Republic; but such violence was definitely in the category of civil unrest, and the government of Serbia had every legal right to deal with it as the government saw fit. They had no duty to request international intervention. This is clearly the case, under Chapter 1, Article 2, paragraph 7 of the UN Charter, which reads:

*"Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any*

*state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”.*

The enforcement measures under Chapter VII are very short, clear and understandable. Indeed, the whole of the Charter runs to only 87 pages of English, in widely spaced paragraphs and in large type. The Charter is a very short document, penned by experts in conflict and with the lessons of history’s bloodiest war fresh in their minds. The statesmen who had waged that war knew what they were writing, had no need to impress their colleagues or an electorate, wrote the truth and spoke from the heart. Their document is the epitome of realism. It also embodies moral principles. It is not “realistic” in the modern, neo-structuralist sense beloved of those who find moral principles inconvenient, expensive and poor vote-winners.

Chapter VII does not allow the waging of aggressive war. Modern interpretation seems to believe it is the section of the UN Charter that justifies the invasion of a sovereign state in order to carry out peacekeeping. *“Most important of all, Mr Cook said, is that the draft explicitly states that it is brought forward under Chapter VII of the UN Charter, the ‘peacemaking’ provision which authorises the Security Council to intervene against another sovereign state in the interests of international peace.”*<sup>1</sup> It does allow an alliance to surround a potential aggressor and impose sanctions on such a country; it may isolate, cut off communications, blockade trade, defend neighbouring countries that have come under attack for as long as such countries ask them to do so: but it may not attack. What is more, any such sanction-based and non-aggressive action may only be taken by the Security Council of the United Nations. The UN Charter states that the Security Council is to be advised in such matters by the Military Staff Committee, which is to be made up of the Chiefs of Staff of those nations taking part in the action plus the Chiefs of Staff of the permanent members of the Security Council. Those members are Russia, China, France, Britain and the United States.<sup>2</sup> No advice from NATO is mentioned, nor from the foreign ministers of any group of trading partners, no matter how prestigious they feel themselves to be.

None of this has applied in the case of the attack against Serbia by, it is claimed, all the members of NATO. This must be an odd feeling for the Hungarian minority in the Vojvodina, part of Serbia but like Kosovo once an autonomous region, particularly as they watch their last bridge at Novi Sad sink into the Danube following a visit from the same NATO that their mother country has just joined.

NATO is not attacking Serbia under the UN’s rules, but claims it does so under those of its own organisation. This is odd; the North Atlantic Treaty is another very short document, drafted by experts with nobody to impress and nothing to prove. Article 1 (there are only 14 articles in all) states that the parties undertake

*“as set forth in the Charter of the United Nations, 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.”*

In Article 7 the Treaty says,

*“The Treaty does not effect (sic) and shall not be interpreted as affecting, in any*

*way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security.”*

The Security Council did not ask NATO to attack Serbia. It certainly had not done so as at June 1999. All attacks on Serbia up until that date were contrary to the UN Charter, which may be accepted as the basis for international law, or it may not; but as Robin Cook assures those guilty of crimes against international law that they will appear in court, he may care to consider that while he may not be guilty, there must be a case to answer.

In March 1998 Madeleine Albright stated that America no longer recognised that part of the United Nations Charter respecting the internal sovereignty of states. This point of view has been repeated since, by Robin Cook and at the beginning of June, in a TV interview by British Prime Minister Tony Blair. As the whole of the United Nations Charter is predicated by its respect for national sovereignty, this seems to be a categorical rejection of the UN. If this is the case, presumably, Serbia would be within its rights to request from the UN that its members band together under Chapter VII and take action to deter the aggressor from its actions. However, when Yugoslavia applied to the International Court of Justice at the Hague for emergency court orders against Britain and nine other NATO countries to stop bombing, the application failed. The court decided it lacked jurisdiction over America and Spain, and as for Britain, Belgium, Canada, France, Germany, Italy, Holland and Portugal, it lacked jurisdiction to grant provisional measures requiring that bombing stopped, but reserved the right to consider the question of whether these countries had violated international law, after fuller consideration. Yugoslavia had accused the countries named of violating their obligations not to use force against another state, claimed that they had violated international obligations to protect free navigation on international rivers. It also claimed breach of the Geneva Convention by inflicting conditions of life calculated to cause the physical destruction of a national group.

The court expressed its deep concern at the suffering and loss of life in Kosovo, and the continuing suffering and loss of life in all parts of Yugoslavia. The court expressed profound concern about the use of force which “under the present circumstances ... raises very serious issues of international law.”<sup>3</sup> The court could only adjudicate on the legality of certain acts if a state had accepted its jurisdiction; the UK had reservations about accepting its jurisdiction, and did not recognise it with regard to states that had accepted the Court’s jurisdiction in relation to the particular dispute, or for a period of time less than twelve months from the time of application; Yugoslavia had deposited its acceptance of the compulsory jurisdiction of the court only on 26 April 1999. However, the court made it clear that whether states accepted its jurisdiction or not, they remained responsible for acts against international law, and they had a duty to settle disputes by peaceful means under the UN Charter. The court clarified the definition of genocide as “the intended destruction of a national, ethnical, racial or religious group,” and used this definition to dismiss the allegation by Yugoslavia under the Geneva Convention; it would also seem to finally invalidate claims that the Serbs had perpetrated genocide against the Albanians in Kosovo. The Court rejected the Yugoslavian application by twelve votes to three, the three dissenting judges coming from China, Russia and Yugoslavia (appointed for the case). Eight of the cases were allowed to remain on file.

The effect on neighbouring countries is interesting. Commentators warn now that Milosevic might begin similar action against Montenegro as he carried out in

Kosovo: technically impossible, of course, as Montenegro is a nation state while Kosovo was and presumably still is, a region of Serbia. Serbia has one other region, Vojvodina, the population of which is around one-fifth Hungarian, and there is the Sanjak region, populated by Slav Serbs who are also Muslims. These regions may well look towards autonomy, independence even, and there are sure to be groups that will form to demand such independence as part of a political agenda. As things stand, any such group could hope for the full backing of NATO.

Montenegro attempted to distance itself from Milosevic but NATO bombed it nonetheless. They remain confused. Macedonia, a democracy with a constitution that carefully established citizenship as the basis of franchise and had many Albanian ministers (albeit deputy ministers and relatively powerless), has now seen its western regions filled with Albanian immigrants who demand the right to stay, and are determined to become part of a greater Albania. The Macedonian population sees the Albanian group of its own population reinforced by 250,000 refugees and protected by 15,000 NATO troops, soon to be increased to 30,000. These troops were allegedly there to police Kosovo, but waited to be invited to cross the border. The western press and some ill-informed ministers decided that the reluctance on the part of Macedonia to accept as many Albanians as cared to step into their sovereign state, was caused by Macedonian sympathy for Serbia. Macedonia nervously attempts to remain Macedonian, but inevitably needs the security of belonging to a larger political unit; they may feel this is best achieved by the de facto NATO membership that the present situation has conferred upon them; but more likely they will revert to being southern Serbs, or Western Bulgarians, or Northern Greeks. A State department spokesman stated at the end of April, in Skopje, that he thought it was the end of Macedonia as a nation state, and a tearful Gligorov, the country's first and last president, seemed to agree.<sup>4</sup>

Throughout all of this crisis, America (for this campaign was not driven by the alliance but by America) has been determined "to prevail." This odd infinitive was first used by Kissinger at the beginning of April. He deplored the lack of diplomacy that had led to the situation of bombing and war, but now it had begun "NATO had to prevail." Americans and British politicians use the word. The meaning of prevalence, and how it is achieved, and if it can be a military objective all seem questions that have yet to be answered. Cruise missiles and Paveway bombs do not prevail; they explode, they defeat, they terrorise. Military operations need to be able to identify an aim, a set of conditions at which fighting must stop. It seemed in this campaign that war was to be waged until the participants were told by the Americans that it was time to desist. The conditions signalling victory seemed open ended, and could have been used as a reason to desist or a justification to continue for as long as the participants desired. The demands were for an immediate cease-fire, withdrawal of all Serbian troops from a region of Serbia, deployment of an international peacekeeping force, return of all refugees, a high level of political autonomy for Kosovo. All of these demands are ill-defined, capable of infinite magnification, and make great impositions on state sovereignty; as well as being almost impossible to achieve in some cases. How can "all refugees" return, when there is nowhere for them to return to? Their houses have gone, their future home will be a Kosovo field just as their present home is a Macedonian or Albanian one. One of the attractions of Macedonia for refugees is that some refugees are being taken from there to the UK or, a favourite option, the USA. At present, those returning to Kosovo are asking for money to help them do so. Many of the Albanians in these camps never came from Kosovo in the first place, but from Albania proper.

Turkey attacks Kurds, and has done for many years, and has invaded Iraq to do so.

No action in the name of humanitarian outrage has been taken against them. This is not a matter merely of double standards: unless they are backed by international law, or by a reasonable interpretation of such law, the actions taken against Serbia are wrong, and deaths caused by those actions are murders. Present discussion centres on the lack of legal justification, and the need to create one; this is like a burglar saying that his acts are illegal, and therefore the law must be changed to allow him to continue to steal. Bombing Serbia was not merely a case of preventive, or coercive, diplomacy. It was aggression. It was also illegal.

NATO Secretary General Javier Solana justified the bombing which started on 24th March 1999 by citing the refusal of Milosevic to accept Rambouillet's recommendations in October 1998. The use of force, it was claimed, was the only way to prevent more repression and violence against the "civilian population of Kosovo," presumably not intended to include the Serbian civilian population of that region. The alliance's actions, Guicherd<sup>5</sup> says, were necessary (note, not 'justified') both politically and morally. This is an interesting point of view. "Politically" and "morally" are adverbs not easily defined; "legally," on the other hand, can be defined. It may be politically wise and morally forgivable to allow the father of a raped and murdered girl to strangle his daughter's killer; can it be legal? It may be that morally, one is justified in killing in self defence in circumstances where such killing is in fact illegal. In Kosovo, it may be morally forgivable (although I doubt this) and it is certainly, for the minute, politically acceptable and even prudent, but since when has political convenience been a justification for killing over a thousand Serbs?

Since 1945 the UN has provided the framework for what little international order exists. Any state threatening that order has been labelled a "rogue" state. Such states have often been condemned by Security Council Resolutions. In this case, I suggest, NATO and in particular the USA have labelled Serbia a rogue state, and gone ahead with an attack on it, assuming that the UN would agree, and as the UN has refused to do so, the USA has seen fit to disregard the UN. Indeed, as early as 8 March 1998 Madeleine Albright indicated that the USA no longer recognised the UN Charter, and certainly not its ability to limit the USA's right to wage war on whichever nation it cared to label "rogue". Yet NATO, as we have seen, bases all of its existence on the Charter of the United Nations. Guicherd calls for this serious gap in international law to be bridged; I suggest she should instead have called for the states who were breaching what is already a satisfactory international law to desist from so doing. The purpose of the UN Charter was to prevent, not to facilitate, conflict. The rogue state in this crisis, that is the state ignoring the UN, has been the USA and its allies.

NATO could claim that it was justified in terms of human rights. These are difficult to define. Human rights are not mentioned in the UN Charter. The only exceptions allowed by the UN Charter to its prohibition of the "threat or use of force against the territorial integrity or political independence of any state" (Article 2 paragraph 4) are defined, claims Guicherd, in Article 51. Yet Article 51 states that individual or collective self defence is permitted "if an armed attack occurs against a Member of the United Nations." Such action is allowed only until "the Security Council has taken measures necessary to maintain international peace and security." Kosovo is not a member of the United Nations; it is not a nation state; and the measures that the Security Council might take probably would not have included continuous bombing of the region from high altitude. The NATO action is certainly taking the side of the KLA in a civil war, which was prohibited by the General Assembly of the UN in Resolution 2625, 1970 as quoted by Guicherd. She then goes on to quote

Chapter VII, Articles 39 and 42 as justification for NATO's actions; yet Article 39 merely allows the Security Council to determine what a threat is, when such a threat exists, while Article 42 does not allow it to wage war. It allows it to take such actions by "air sea or land as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea, or land forces of Members of the United Nations." Kosovo (not a state, not a Member of the UN, part of a sovereign state) can only be considered under Paragraph 7, Article 2 (see above). Chapter VII, as Guicherd admits, is not designed to justify violence.

Guicherd identifies a divergence of state-centred and human-rights centred international organisation. This writer suggests that state-centred control, in the main, favoured democratic members' interests. Human rights was a convenient banner for those organisations which had over-ridden nation states, usually as part of the formation of a totalitarian, collectivist bloc. The USSR was extremely keen on claiming (but not awarding) human rights, for example. Even today Russia justifies its interference in the affairs of its former colonies by claiming to protect minority rights. The Helsinki Accords were driven by the USSR's desire to see some weakening of the strength of the protection given by international law to the sovereignty of western democratic nation states, and the CSCE, later the OSCE, has always been seen by the USSR and now by Russia as an alternative to NATO as an enforcement and intervention organisation for UN decisions.

The 1948 UN Declaration of Human Rights was made in the context of the Charter, and as such made sense and did no harm. Free it from that context and the human rights issue is set head to head against the sovereignty of the State. Protection of sovereignty was not an oversight of the UN; it was in fact a decision to protect the State. State stability does more for the rights of the citizens of well-organised states than does any revolutionary situation caused by social unrest stimulated by those who believe their rights have been infringed. There will always be such a group in any state, usually those to whom the existence of such a state is an anathema; for instance in a democratic state, communists will see their rights infringed, as will fascists, revolutionaries and anarchists. Creation of a state creates such groups; indeed, from their confrontation comes much of the meaning of the very term "the state."

Admittedly, as Guicherd says, the OSCE states that "the commitments undertaken in the field of the human dimension of the OSCE are matters of direct and legitimate concern to all participating states and do not belong exclusively to the internal affairs of the state concerned."<sup>6</sup> Yet this, I suggest, puts greater pressure on nation states to consider the work of the OSCE as well as to obey the UN Charter, and in addition to their responsibilities under the Charter and not instead of those responsibilities. All international order depends on the original structures not being replaced when they become inconvenient. Rights-based organisations have been tried before, and have failed. They have led to war. As the memories of war fade, a new willingness to risk the consequences of abandoning the safety of the UN Charter is growing, among statesmen with no experience of war or even of military service. Arguments *ad hominem* notwithstanding, if conflict results from their activity, there will presumably be a re-discovery of the wheel, of the utility of the stable nation state once again. In the meantime, politicians may succumb to the allure of electoral gains by pandering to the demands of marginal groups rather than rigorously protecting citizenship and the advantages for the common good that accrue from the structure and existence of the state.

Guicherd distinguishes between human rights legislation which springs from the UN Declaration on Human Rights, and humanitarian law which she sees as coming from an ancient source, made up from theology, philosophy and law and finding its latest expression in the Geneva Conventions (1949) and additional protocols. Humanitarian law, she believes, justifies the prosecution of individuals, whereas human rights legislation is needed to judge the actions of states. She considers that the two areas intersect. In fact, they often compete. States can demand from their citizens action contravening humanitarian law, which could be used to prosecute individuals should they belong to the losing nation. Guicherd says of the two systems of law, humanitarian and human-rights, "the only certainty about" humanitarian practices "is that they give primacy to human rights over the sovereignty of states when the two principles conflict." Perhaps, but not if one abides by the UN Charter; and international organisation must always be regarded as underpinned by the Charter. Human rights and humanitarian law will always find an area of disagreement with the sovereignty of the state. The state is created across such rights. As soon as a border is imposed, members of some marginal family will find themselves separated from their relatives, lands will be divided, ownerships will be split, loyalties will be severed, hegemony will be exerted and fealty demanded. The state will always have marginal groups, and it is essential for the good of the vast majority that sovereign states must be able to demand loyalty and obedience from members of such groups. In sovereignty lies both the strength of the state and its greatest weakness. This fact is well-known, well-tried and much abused over the past century by revolutionary and anarchist groups. To see it surface now, protected by the full weight of a newly-discovered and deeply flawed rationale for international law based on either human-rights or humanitarian roots, is deeply worrying.

Guicherd claims that the Security Council has availed itself of "a right to intervention." Not so: the Security Council has a right of intervention as it sees fit, as long as the decision is made by the Security Council as a whole. The examples quoted are interesting: UNSCR 688 on 5 April 1991 authorised a humanitarian relief operation in Iraq which declared humanitarian enclaves, protected them, launched Operation Provide Comfort but did not entail any attack on any party. Resolution 770 in August 1992 protected Bosnia-Herzegovina from Serbs; it could be seen as protecting a newly identified sovereign state but even this did not allow force. Resolution 794 in December 1992 on Somalia did foresee intervention in support of humanitarian objectives, and led to the Operation Restore Hope carried out by the USA. It was, apparently, a reversal of previous interpretations of the UN Charter, and the first such forced upon the UN General Assembly by a triumphalist USA. On the other hand, it was also a serious mistake, it did not work, it inflamed the situation and indeed, made little difference in the long run to the deterioration in the region's security situation; we saw US gunships hosing dead over a thousand unarmed civilians, and if any lessons should have been learned, one might have been not to repeat the mistake. Resolution 929 in June 1994, led to France running Operation Turquoise, and to intervention in Rwanda and Eastern Zaire, but this was a matter involving the interface between two sovereign states and a large refugee problem. Resolution 940 in July 1994 led to Americans in Haiti, again a poor operation, with several unfortunate repercussions including the UN being seen once again as a US-dominated excuse for particular American foreign policies, as well as to bargaining between the USA and Russia in which Russia's agreement not to use its veto was bought at the price of a declaration that all Russian troops situated outside the RF were UN peacekeeping troops. Those in Tajikistan at the time, busy shelling Afghanistan, promptly sent a bill for the shells to the UN, on the grounds that if they were UN peacekeeping troops, the UN should pay for their

ammunition. Resolution 1101 in March 1997 allowed Italy to run Operation Alba, which it was claimed brought humanitarian relief to Albanians but in fact was primarily concerned with stemming the flow of Albanians who were claiming refugee status and moving to Italy for what were really economic reasons. It was enforced by Italian troops on Albanian soil (for the first time since the fascist invasion of the Second World War), and it did nothing to stop the collapse of government control or the vast amounts of arms and ammunition from sacked government armouries being sent into Kosovo and causing the crisis in that region which we are seeing at the moment.

Guicherd traces a development through these Resolutions, which allow increasing amounts of force to be used in support of what are seen as Chapter VII operations, and she goes on to claim that these are not mere mistakes compounding previous mistakes, examples of the UN losing its way or being manipulated, but are key points in the development of some sort of case law or precedent allowing the UN to sanction such force; a precedent by which NATO may assume they may use such force even in advance of the UN making such a resolution.

In the case of Kosovo, this is absurd. The UNSC clearly and repeatedly failed to support the aggressive action in Kosovo, and now will ignore that matter; the resolution being flaunted by NATO troops ignores the conflict, and concentrates on procedures allowing KFOR-plus troops into the region to oversee the return of refugees. Russia and China have explicitly condemned the aggression against Serbia, and China has abstained over the Resolution which has been accepted under the terms set out above. That Russia did not abstain presumably indicates some further large IMF or World Bank agreement is to be made concerning its foreign debts, just as was made in March when Primakov turned his aircraft back to Moscow on hearing that the bombing had begun, Yel'tsin threatened the Third World War, and IMF officials rushed to Moscow.

If UNSC backing is a prerequisite for legality in international law, there can be no doubt that NATO action against Serbia should never have begun, should have stopped as soon as it became clear that no UNSC support would be forthcoming, and those responsible for the aggression against a nation state were liable to trial as criminals if they did not stop such action, and possibly even if they did. No such trial will happen, of course, and it is interesting to consider why this should be the case. Guicherd points out that the Charter prohibits the use of force. Victims, on the other hand, have a right to expect assistance. If such assistance is aggressive military force against a nation state, under the Charter it can never be legal. If, on the other hand, the decision is taken no longer to respect the present sources of international law, so be it; but it is a decision to abandon the security framework on which the peace of the world has depended for the last fifty years, and it would be a decision that would lead to an exciting, dangerous, but almost certainly war-riven future for the world.

The alternative to an imperfect international order and framework must be considered. Guicherd is clear that change is required and discusses "the unsatisfactory state of international law." She points out that military intervention has been common in the 1990s and this is true; but it has been concomitant with the surge of over-confidence that occurred in the UN, following the perceived end of the cold war and the unprecedented level of co-operation in the Security Council as its permanent members jockeyed for position and aid in the new world order. She suggests that there is a need for a new interpretation of Article 2.4. There may well be a need to scrap it, if it is obsolete, but she seems to advocate keeping the chapter

heading but changing the content, demonstrating an understandable insecurity about getting rid of bathwater in which a baby might somewhere be snorkelling. She suggests that foreign troops on sovereign soil might not be seen as infringing the rights of the state if they were in fact supporting humanitarian rights of minority groups; from the point of view of the citizens of the invaded nation, expecting such a level of understanding seems optimistic, especially if it is realised that those troops might not be well-disciplined soldiers, but poorly-paid conscripts from one of the less developed UN members who might see their prime task as being less important than pillage and profiteering. Even in Bosnia, UN troops had a poor record when it came to resisting the temptation of profiteering from the needs of the local population, including those they were sent to protect. UN food was on sale in markets, UN troops ran brothels, they sold taxi rides in Armoured Personnel Carriers to the locals...alas, depart from the Charter and we risk the release of the evils it was designed by clever experienced men to avoid.

Guicherd suggests that intervention should only take place if the situation has already been discussed by the Security Council which has been unable to agree on a course of action; yet if no Security Council Resolution is possible, surely the prohibitions of the Charter should assume even greater force? This cannot be used as an excuse for action, rather it is a very good reason to refrain from action. If those involved still decided upon intervention, then the intervention would be in breach of the UN Charter; presumably illegally. "Narrow national interest" is quoted by Guicherd as a suspicion dispelled as long as action is taken by a "group of states ... a coalition of the willing." If such a group is formed, as has been formed over the Kosovo crisis, what is there in such formation to dissuade us that the narrow interest at work is not that of the USA? The stronger members of the group will obviously attempt to ensure that the group's aims coincide with their own foreign policy.

Guicherd's suggestion that intervention should be subject to a strict list of criteria, overseen and stipulated by the International Court of Justice (ICJ) would merely debase the ICJ and make it the tool of powerful states. Such intervention, interest-driven yet claiming some spurious legal justification, has hitherto been a feature of the totalitarian, not the democratic, blocs of states. The clarity of the prohibition is preferable to the equivocation, semantics and casuistry that would eventually be built up by such justifications. She says it is important that the "danger of intervention be kept in mind by NATO countries when developing a rationale for intervention in Kosovo and elsewhere." Instead it should be seen as the very good reason for ensuring no such intervention ever takes place, unless those intervening are willing to risk international law's destruction, or its sanctions.

She criticises present international law, on the grounds that it becomes effective only when relations between the five permanent members are good; but this is exactly the point. What a force for good in the world it is, and what a fine justification for doing nothing when there exists doubt, that UNSC Resolutions can only be issued when all five permanent members agree that the action is justified and necessary. Such occasions will be rare, but at least will lead to no further violence or escalation of violence. No harm will come from such rare resolutions, unlike the rash of over-confident resolutions seen in this decade; and the priority of a state's foreign policy should always be to do no harm. To increase the size of the Security Council, as Guicherd suggests, may well be seen as an administrative improvement if efficiency is judged as being able to pass Resolutions quickly; she also recommends replacing the veto by a system of qualified majority voting. Would such a system really be appropriate for making decisions about whether or not to

wage war? Perhaps the certainty of the present system is preferable to one in which people can be killed on a majority decision. If people are to be killed, at the very least the decision should be unanimous.

The Kosovo matter was discussed in detail at the UN. UNSCR 1199 on 23 September 1998 was used by NATO to threaten force and issue the Activation Order authorising SACEUR to launch air strikes within four days if Milosevic did not comply with the provisions of the Resolution. The UN did not ask NATO to do this; it did not ask NATO to act, or why it had failed to act, and in March 1999 when NATO did bomb, the UN was as horrified as the Serbs. The justification of the bombing was said to be the Serbian failure to recognise the UNSCR; but the UN Security Council did not seem concerned enough to sanction the bombing, and in fact said the strikes should stop. The eviction of 250,000 Albanians from Kosovo was wrong, and that 80,000 of them had sought refuge by March, in Albania and Macedonia (but also in Belgrade) was inconvenient. The resolution noted all this, condemned terrorism and acts of violence against the refugees, and demanded they be allowed to return to their homes, but the resolution was wrecked by the bombing.

Political imperatives depend on the political judgement behind them, and the American judgement was that Milosevic had accepted aerial surveillance, he had accepted the OSCE, he was weakening and therefore a few bombs would see him fold. It was wrong in judgement and wrong in prosecution. That this is so gives scant comfort to the accomplices in the crime (NATO), the victims of the crime (Yugoslavia), or even to the victims of these victims, the Kosovar Albanians. The wrongs inflicted on them are coming from a variety of sources, some from Serbia, some from NATO, some from the KLA. Twist and turn as they may, one can see the new disregard being shown for the old limits of the force offered to the weak by the strong. This is not a legal argument, it is a prudential one; it favours, not right, but might.

Nothing in the present UN Charter justifies military force. What is mentioned is “further action and additional measures” and this means economic sanctions or diplomatic procedure. NATO knows that if it were to be requested to take military action, the UN would specifically say so. The UN would never have made such a request, however, and NATO knows that as well. If a rapid victory had resulted it might not have mattered, but it does now; the UN risks being seen as the poodle of the Americans, and so does NATO. As late as October 1998, Solana’s justification for military action in Serbia (as stated by Guicherd) was as follows:

- *“the failure of Yugoslavia to fulfil the requirements set out by Resolutions 1160 and 1199, based on Chapter VII of the Charter;*
- *the imminent risk of a humanitarian catastrophe, as documented by the report of the UN Secretary General Kofi Annan on 4 September 1998;*
- *the impossibility to obtain in short order a Security Council resolution mandating the use of force; and the fact that Resolution 1199 states that the deterioration of the situation in Kosovo constitutes a threat to peace and security in the region.”*

One needs to point out that the Resolutions were being enforced without the permission or request of the UN: that the humanitarian catastrophe might have been averted had troops been deployed in the region where the refugees needed help but it seems odd to bomb Serbs in Belgrade, many miles away, causing further catastrophes on a larger scale; that the reason it was impossible to get a UNSC

mandate was not the lack of available time, but that the SC would never grant one; and that this fact alone rules out the last justification. NATO stands condemned from its own mouth.

There is a great need for action in Kosovo. There has been, since 1912 when Serbia first regained the region from the Turks, and again in 1915 when the Albanians threw out the Serbs, and 1918 when the Serbs came back, and 1941 when the Italians used Albania to subdue Serbia. The issue was settled in 1945, by Tito, when he established the security of a nation state in the whole of the region; he did so by the massacre of his opponents, mainly loyalist Serbs who had fought on the side of the Allies for the previous four years; and again in 1974 when he relaxed controls on the Kosovo region and granted it semi-autonomy. The nationalistic flag is now being waved again, first in 1989 by Milosevic, and now since 1998, by Albania. It was Milosevic's alteration of the Constitution, giving Serbia greater control of Kosovo, that led Slovenia to believe it could amend the Constitution and declare independence in greater measure from Yugoslavia; this in turn was the start of the disintegration of the nation state which now seems to have come full circle. Why NATO should weigh in, however, remains to be seen. It will lead to the end of Macedonia as a nation state, to the expansion of Albania, to a mass of Kosovar refugees in Europe. It has already led to the increased supply by the KLA of heroin onto the European market; the land the refugees came from is so scorched by war that they cannot return, and yet another weeping sore has been established that will require policing by the international community for the foreseeable future. Is this an improvement on what the situation was before? Favours will now be sold by Russia and China, and the world will eventually settle into a new equistasis, just that crucial distance further removed from security than it was before. The rails that kept us safe are now even more broken than they were before. The stage is set for the next alliance, a real alliance, probably the focal alliance of the 21st Century; and it will in all likelihood be made up of those countries that fear attack from the USA, just as the last strong alliance was made up of nation states that feared attack by the USSR.

The KLA carried out a campaign in which they compromised the villages, the local Albanian population, just as the IRA did, just as the French Maquis did. The KLA will soon compromise NATO troops, if they can, and the quickest way to do so would be to shoot a Russian. The situation in Kosovo is fraught, and will not be cured by a retrospective UN Security Council Resolution. It does not confer legitimacy and may be seen by many to legalise crime. The treaties that are being made and the agreements that are being brokered are not the end of the Yugoslav crisis; they are the beginning of the next one. These are the foothills of the next great war, probably a world war, and possibly a nuclear war, but they are certainly not the beginnings of peace.

## Endnotes

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<sup>1</sup> “Resolution may end fighting”, Christopher Lockwood, The Daily telegraph, Wednesday 9 June 1999.

<sup>2</sup> The MSC, it has to be said, has never acted in such an advisory role.

<sup>3</sup> “Belgrade’s Court Bid To Halt Bombs Is Rejected” by Terence Shaw in the Daily Telegraph, 3 June 1999.

<sup>4</sup> Interview quoted to the writer.

<sup>5</sup> Catherine Guicherd, Deputy for Policy Co-ordination to the Secretary General at the NATO Parliamentary Assembly, “International Law and the War in Kosovo” “Survival”, the IISS Quarterly journal, Summer 1999.

<sup>6</sup> Malcolm Shaw, *International Law*, quoted in Guicherd’s article.

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