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Legitimizing the Use of Force in Kosovo

*Julie A. Mertus**

A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West, Noam Chomsky (New York: Verso, 2001), 160 pp., \$23 cloth.

Civil Resistance in Kosovo, Howard Clark (Sterling, Va.: Pluto Press, 2000), 286 pp., \$59.95 cloth, \$19.95 paper.

Degraded Capability: The Media and the Kosovo Crisis, Philip Hammond and Edward S. Herman, eds. (Sterling, Va.: Pluto Press, 2000), 232 pp., \$59.95 cloth, \$19.95 paper.

Kosovo: War and Revenge, Tim Judah (New Haven: Yale University Press, 2000), 336 pp., \$40 cloth, \$17.95 paper.

Masters of the Universe? NATO's Balkan Crusade, Tariq Ali, ed. (New York: Verso, 2000), 446 pp., \$65 cloth, \$20 paper.

Saving Strangers: Humanitarian Intervention in International Society, Nicholas J. Wheeler (New York: Oxford University Press, 2001), 348 pp., \$39.95 cloth.

Virtual War: Kosovo and Beyond, Michael Ignatieff (New York: Metropolitan Books, 2000), 246 pp., \$23 cloth.

Winning Ugly: NATO's War to Save Kosovo, Ivo H. Daalder and Michael E. O'Hanlon (Washington, D.C.: Brookings Institution Press, 2000), 352 pp., \$26.95 cloth.

Kosovo has captured the attention of policymakers, ethicists, journalists, peace and human rights activists, military analysts, and international relations scholars. We all sense that something new happened there. As Adam Roberts has pointed out, the NATO bombing in Kosovo, to take only one small part of the Kosovo story, has many claims to uniqueness.¹ It was the first sustained use of armed force by the NATO alliance; the first

* This essay benefited from the comments of the participants in a roundtable on humanitarian intervention at the Minda de Gunzburg Center for European Studies, Harvard University, "After Kosovo: Humanitarian Intervention at the Crossroads," January 18–19, 2001.

¹ Adam Roberts, "NATO's 'Humanitarian War' over Kosovo," *Survival* 41 (Autumn 1999), pp. 102–23.

time a regional alliance, acting without UN authorization, had used a bombing campaign against a sovereign country with the stated intent of ending human rights abuses; and the first time high-tech combat succeeded in obtaining most if not all of its goals without a single allied combat fatality. Kosovo was not the first military campaign termed a “humanitarian intervention.” But it did rekindle debate on whether and when a state or group of states may use force with the stated aim of preventing or ending widespread and grave violations of fundamental human rights of individuals other than their own citizens.² Kosovo demonstrated the increased currency of humanitarian intervention rhetoric as grounds for legitimizing the use of force. And while commentators have yet to agree on the exact contours of the doctrine of humanitarian intervention, there is little doubt that states increasingly seek to use it to justify the forcible intrusion into sovereign states, and that the mainstream media and many nonstate actors participate in laying the groundwork for intervention justified in human rights terms.

Those who support humanitarian intervention stress the responsibility of powerful countries to address gross and systemic human rights violations wherever and whenever possible. For the pro-interventionist, the media play an important role in exposing and publicizing the kinds of violations that may give rise to intervention on humanitarian grounds. In liberal democracies, media-driven public support for humanitarian intervention is crucial for politicians to accept the political risk of military engagement. Pro-interventionists often come to the support of military force reluctantly, asserting that it should be used as a last resort, and with appropriate legal safeguards to ensure that it is not misused against weak states by self-interested strong states. Reluctant pro-interventionists may see a place for humanitarian intervention only when it is explicitly sanctioned by the United Nations; other pro-interventionists see a role for collective and even unilateral state intervention. Some would-be interventionists withhold their support until an international force (under the auspices of the UN, most commentators urge) can be created and the criteria for intervention can be standardized and/or codified, to remove them as far as possible from the decision-making of self-interested states.

Those who fall in the anti-interventionist camp can be divided into four categories of naysayers. First, pacifist anti-interventionists oppose all use of force as immoral and inconsistent with larger human rights and pacifist goals. For them, the sanctity of life permits no grounds for justifiable violence and, thus, “humanitarian intervention” is a contradiction in terms. Second, anti-imperialist anti-interventionists do not rule out the possible legitimacy of humanitarian wars altogether. Rather, they oppose the particular

² J. L. Holzgrefe developed this definition of humanitarian intervention for a roundtable on the subject at the Minda de Gunzburg Center for European Studies, Harvard University, “After Kosovo: Humanitarian Intervention at the Crossroads,” January 18–19, 2001. This definition excludes non-forcible interventions as well as forcible interventions aimed at protecting or rescuing the intervening state’s nationals.

forms of American and European humanitarian diplomacy that have arisen in the aftermath of the Cold War and the rise of a unipolar world order, claiming that these hegemonic democracies use the rhetoric of humanitarianism selectively to validate the projection of their own military power and economic dominance. These anti-interventionists view the mainstream media as important collaborators in calling attention only to certain humanitarian catastrophes and, in so doing, shaping public approval for imperialist military actions. Third, conservative anti-interventionists may support some forms of intervention in the national interest, but assert that humanitarianism is incompatible with national interests and, thus, a waste of military power. Finally, some anti-interventionists fear that the “international order” would be threatened by the kind of invasions into state sovereignty that humanitarian interventions entail. These anti-interventionists warn that acceptance of the doctrine of humanitarian intervention would place us on a slippery slope toward negation of well-established rules of sovereignty that are central to Westphalian notions of statecraft and fundamental to the UN Charter—and would thus undermine the legitimacy of international law and international institutions. While some anti-interventionists in this camp would support a UN Security Council–authorized intervention, others continue to object because of the inability of most states to participate in Security Council decision-making.

The recent spate of books on Kosovo evince compelling, yet contrary, views on the legitimacy of the use of force there, whether violence was averted or incited, and whether the results of the action were even desirable. The authors disagree on the facts and the applicable law, on appropriate moral and political considerations, and on the appropriate methods for analyzing the intervention and its outcome. In *Kosovo: War and Revenge*, Tim Judah expresses one strong line of sentiment found in many of these books when he contends that the legitimacy of humanitarian intervention cannot be determined on legal grounds. He writes, “With no final arbiter in such questions each country has to make up its own mind, and those decisions are usually intertwined with questions of realpolitik and national interests. . . . The answer is a point of view, not a point of law.”³ Yet most of the authors agree that states are not completely free to act as they will. As Nicholas J. Wheeler points out in *Saving Strangers: Humanitarian Intervention in International Society*, “State actions will be constrained if they cannot be justified in terms of a plausible legitimating reason.”⁴ Where the authors disagree vehemently is on whether human rights can ever be a legitimating reason for the instrumental use of violence.

Humanitarianism, the pro-interventionist authors contend, can be one strong legitimating reason for the use of force. How do we assess the validity of purported

³ Judah, *Kosovo*, p. 179.

⁴ Wheeler, *Saving Strangers*, p. 287.

humanitarianism? The main factors discussed by the authors that must be weighed when determining the legitimacy of intervention in the name of humanitarianism include the existence of humanitarian motives; humanitarian grounds for intervention; humanitarian means of intervention; and humanitarian results. While some commentators argue that motive, grounds, means, and results all must be positive in order to justify intervention, others assert that the evidence should be weighed as a whole and that only one or two of these factors are necessary. All of the issues are contentious, however, and each will be considered in turn.

HUMANITARIAN MOTIVE?

Do states need to profess a humanitarian motive for an intervention to be deemed justifiable on humanitarian terms? Nicholas Wheeler suggests that they do not. What matters, he says, is whether there are humanitarian results that legitimize the action, regardless of possible self-dealing. This provocative point is worth exploring further in a comparative framework. Nonetheless, Wheeler adroitly recognizes, even if humanitarian motivations are not necessary prerequisites for justifiable intervention, they are particularly powerful factors in assessing an intervention's legitimacy on an international level. Drawing upon the works of Thomas Franck and Martha Finnemore,⁵ Wheeler suggests that the perceived requirement of humanitarian motivations can both constrain and enable state actors. One of the fundamental disagreements of pro-interventionists and anti-interventionists concerns precisely this issue: the credibility of claims to a humanitarian motive for intervention in Kosovo.

Noam Chomsky and Tariq Ali are at the forefront of the anti-interventionist camp, which views the professions of humanitarian angst by Bill Clinton and Tony Blair with deep skepticism. In *A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West*, Chomsky mocks Blair's proclamation that the NATO allies in Kosovo were fighting "for values" and belittles Clinton's warning: "If somebody comes after innocent civilians and tries to kill them en masse because of their race, their ethnic background or their religion and it's within our power to stop it, we will stop it." While "Clinton's 'neo-Wilsonianism' had convinced observers that American foreign policy had entered a 'noble phase' with a 'saintly glow,'"⁶ Chomsky was not himself duped: the United States has continued to act only in accordance with

⁵ Thomas Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990); and Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in Peter Katzenstein, ed., *The Culture of National Security* (New York: Columbia University Press, 1996), p. 159. See also Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 2 (Autumn 1998), pp. 895–905.

⁶ Chomsky, *A New Generation Draws the Line*, pp. 1–3.

its own interests. The only thing that has changed, he says, is that humanitarianism has become the legitimating ideology for the projection of U.S. economic hegemony in the post–Cold War era. In comparing the response of the United States to communal violence in Turkey and Kosovo, Chomsky asserts that the problem is not inconsistency, but great consistency.⁷ “In the case of the Kurds, helping them would interfere with U.S. power interests. Accordingly, we cannot help them but rather must join in perpetrating atrocities against them.”⁸ He tells us that humanitarian catastrophes in places like Turkey and East Timor are not the product of the neglect of liberal democracies, but “substantially their creation” due to the offending regime’s historical reliance on the United States for arms and diplomatic support.⁹

Diane Johnstone, in her contribution to the volume edited by Philip Hammond and Edward S. Herman, *Degraded Capability: The Media and the Kosovo Crisis*, offers a similarly harsh critique of NATO. She writes, “According to the official version, Kosovo had a problem, and NATO provided the solution. In reality, NATO had a problem and Kosovo provided a solution. NATO’s problem was to find a new *raison d’être* in the absence of the ‘Soviet threat.’”¹⁰ Tariq Ali echoes this concern, contending in his introduction to *Masters of the Universe? NATO’s Balkans Crusade*, that the NATO military action in Kosovo was “designed largely to boost NATO’s credibility.”¹¹

Chomsky, Johnstone, Ali, and the many commentators offering similar critiques are partially correct. The United States and NATO intervene when it is in their interests to do so. Still, the motives of the Clinton administration and the NATO–allied governments are pluralistic. Although some within the Clinton administration had U.S. economic hegemony on the front burner and some people in NATO worried about that institution’s legitimacy in a post–Cold War world, others actually did think about human rights.¹² In their book *Winning Ugly: NATO’s War to Save Kosovo*, Daalder and O’Hanlon articulate the view held by many that human rights promotion is in fact in the United States’ national interest. According to them, “Upholding human rights and alleviating humanitarian tragedy are worthy goals for American national security policy. Doing so reinforces the notion that the United

⁷ Ibid., p. 42.

⁸ Ibid., p. 13.

⁹ Ibid., p. 21.

¹⁰ Hammond and Herman, eds., *Degraded Capability*, pp. 7–8.

¹¹ Ali, ed., *Masters of the Universe*, p. iv.

¹² Stephen M. Walt, “Two Cheers for Clinton’s Foreign Policy,” *Foreign Affairs* 79 (March/April 2000), pp. 63–79. Walt identifies one of Clinton’s four foreign policy goals to be “build[ing] a world order compatible with basic American values by encouraging the growth of democracy and by using military force against major human rights abuses” (p. 67). See also Editors, “Clinton’s Foreign Policy,” *Foreign Policy* 79 (November/December 2000), pp. 18–28, who find that the so-called Clinton Doctrine included a strong human rights component, although it was inconsistently and opportunistically applied.

States is not interested in power for its own sake but to enhance stability and security and to promote certain universal principles and values.”¹³

To the extent that humanitarian concerns have gained influence over decision-making and state behavior there has been a significant normative shift. Indeed, in his exhaustive study of the practice of humanitarian intervention, Wheeler charts how international society has become more open to “solidarist themes,”¹⁴ which utilize a “voice that looks to strengthen the legitimacy of international society by deepening its commitment to justice.”¹⁵ He believes that if we look at states’ deeds rather than just their words, we will see support emerging for a developing international norm of humanitarian intervention.

In spite of the rhetoric of anti-interventionists, even the most self-righteous pro-interventionist does not pretend that the Clinton administration has a “saintly glow” on intervention decisions. Instead, these commentators, like Chomsky himself, acknowledge that the Clinton administration had mixed motivations for the NATO action in Kosovo—including bolstering the credibility of NATO and protecting neighboring countries from a tide of refugees. Their point is that humanitarian motives were among the concerns legitimizing intervention. Moreover, as Wheeler persuasively argues, “even if officials in the Bush and Clinton administrations invoked humanitarian justifications only for ulterior reasons, they found themselves constrained in their subsequent actions by the need to defend these as being in conformity with their humanitarian claims.”¹⁶ The legitimizing force of humanitarian and human rights claims has grown in importance, despite the inconsistency and hypocrisy of the United States and other Western governments. Whether the Bush and Clinton administrations were sincere in their professed humanitarian concerns is of little relevance. Wheeler applies the words of historian Quentin Skinner to this effect: “Even if [the administration] is not in fact motivated by any of the principles [it] professes, [it] will nonetheless be obliged to behave in such a way that [its] actions remain compatible with the claim that these principles genuinely motivated [it].”¹⁷ For the state claiming humanitarian motivations, this means acting in a manner consistent with humanitarian law and refraining from military actions that could not be justified on humanitarian grounds.

Wheeler points to another flaw in Chomsky’s outright dismissal of humanitarian motives. He writes, “The view that U.S. and Western policy-makers manipulate

¹³ Daalder and O’Hanlon, *Winning Ugly*, p. 12.

¹⁴ Wheeler, *Saving Strangers*, p. 285.

¹⁵ *Ibid.*, p. 11.

¹⁶ *Ibid.*, p. 288.

¹⁷ Quentin Skinner, “Analysis of Political Thought and Action,” in James Tully, ed., *Meaning and Context: Quentin Skinner and His Critics* (Cambridge, UK: Polity Press, 1988), p. 117; quoted in Wheeler, *Saving Strangers*, p. 288.

the legitimating ideology of humanitarianism to serve selfish interests ignores the extent to which the solidarist claims advanced by Western states are a result of normative change at the domestic level: the pressure for humanitarian intervention . . . from domestic publics, shocked by television pictures of slaughter and suffering, demanding that ‘something be done.’”¹⁸ For domestic publics, the rhetoric of humanitarianism and the reality of human rights violations and humanitarian crises play a key role in assessing state action and inaction, regardless of actually existing state motivations. The contributors to the Hammond and Herman volume examine the partisan role the mainstream media played in shaping public opinion. For example, Nick Hume speaks of the media “nazifying the Serbs” in order to create support for the NATO bombing.¹⁹ Such harsh critiques, many of which are solidly grounded, only further support the argument—even as they complicate it—that the legitimacy of an intervention depends heavily on the public’s acceptance of an articulated (although not necessarily real) humanitarian motive for intervention.

HUMANITARIAN GROUNDS?

Pro-interventionists and anti-interventionists also disagree on whether sufficient humanitarian grounds for intervention existed with respect to Kosovo. Under one theory of justifiable intervention, governments that commit gross violations of human rights are said to forfeit any claims to the protections normally offered by sovereignty. If sovereignty is contingent upon compliance with international legal obligations, the argument goes, then gross violations of international human rights guarantees open the door for intervention. Under another theory of intervention, where a state is incapable of protecting the human rights of a political or ethno-national minority or is itself the perpetrator of violations against civilians, the use of force on human rights grounds stands as a legal option in international terms.²⁰ Both these arguments depend on the participation of the state in gross human rights violations and/or the failure of a state to stop such violations.

¹⁸ Wheeler, *Saving Strangers*, p. 288.

¹⁹ Hammond and Herman, eds., *Degraded Capability*, p. 70. Hume argues, “The media bear a heavy burden of responsibility for the way that constantly accusing the Serbs of genocide [in Bosnia and Kosovo] has been used, both to distort perceptions of the situation in the Balkans and effectively to rewrite the history of the Holocaust” (p. 70). Hume goes so far as to accuse some journalists of “acting as little more than copy typists for NATO” (p. 75). Similarly, Diane Johnstone points out that this media coverage could incite a new form of racism: “To merit all those bombs, the ‘bad’ people must be tarnished with collective guilt” (Ali, ed., *Masters of the Universe*, p. 168).

²⁰ I develop both of these theories in Julie A. Mertus, “Reconsidering the Legality of Humanitarian Intervention: Lessons from Kosovo,” *William and Mary Law Review* 41 (May 2000), pp. 1743–87. See also Michael Reisman, “Sovereignty and Human Rights in Contemporary International Law,” *American Journal of International Law* 84 (October 1990), pp. 866–76.

Scholars who support them are divided over whether intervention ought to be triggered by evidence of the imminence of a humanitarian disaster or whether it should only be undertaken in response to actually existing humanitarian crises.²¹

In either case, intervention that promotes central principles of the UN Charter is permissible.²² The central purposes of the UN, as set forth in Article 1, include developing “respect for the principle of equal rights and self-determination of peoples” and “encouraging respect for human rights and for fundamental freedoms without distinction as to race, sex, language or religion.” Humanitarian intervention thus promotes the most central aim of the organization, the maintenance of international peace and security—which must mean more than merely the absence of an internationally recognized war. Human rights violations short of all-out war also constitute major breaches of peace and security,²³ and Articles 55 and 56 of the UN Charter implore “all Members [to] pledge themselves to take joint action in cooperation with the Organization for the achievement of . . . universal respect for, and observance of, human rights and fundamental freedoms for all.” The UN Charter not only permits intervention on humanitarian grounds, but in cases of gross and systemic human rights abuses against civilians who are members of minority groups, it requires it.²⁴

Anti-interventionists contend that the intervention in Kosovo could not have been in response to gross human rights violations, for those violations did not exist. “In Kosovo,” Chomsky states, “the threat of bombing did not arrive too late to prevent the widespread atrocities, but preceded them.”²⁵ For Chomsky, the “crucial period” for analysis is December 1998 onwards, because it was the violence during this period that was used to justify and sell intervention to the public. This limited time frame, however, means that Chomsky completely ignores the many years in which Serb police and paramilitary troops committed gross and systemic human rights abuses against Albanians. To support his view,

²¹ See Richard Lillich, “Forcible Self-Help by States to Protect Human Rights,” *Iowa Law Review* 53 (1967–68), pp. 325–51; Nicholai Krylov, “Humanitarian Intervention: Pros and Cons,” *Loyola of Los Angeles International and Comparative Law Journal* 17 (February 1995), pp. 365–407.

²² See Michael Reisman, “Criteria for the Lawful Use of Force in International Law,” *Yale Journal of International Law* 10 (Spring 1985), pp. 279–85.

²³ The UN Security Council has recognized that “non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.” See United Nations Security Council Official Resolution, 47th Session, at p. 143, UN Document S/PV.3046 (1992).

²⁴ See Howard Adelman, “Humanitarian Intervention: The Case of the Kurds,” *International Journal of Refugee Law* 4 (Winter 1992), pp. 1–38. See also Michael J. Bazylar, “Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia,” *Stanford Journal of International Law* 23 (Summer 1987), pp. 547–619; Michael J. Levitin, “The Law of Force and the Force of Law: Grenada, the Falklands and Humanitarian Intervention,” *Harvard Interventional Law Journal* 27 (Spring 1986), pp. 621–57; Richard Lillich, “Humanitarian Intervention: A Reply to Dr. Brownlie and a Plea for Constructive Alternatives,” in John Norton Moore, ed., *Law and Civil War in the Modern World* (Baltimore: Johns Hopkins University Press, 1974), pp. 229–51.

²⁵ Chomsky, *A New Generation Draws the Line*, p. 36.

Chomsky cites the German Foreign Ministry and a German administrative court hearing Albanians' asylum claims in support of the proposition that there is "no proof of a persecution of the whole Albanian ethnic group in Kosovo." Rather, any attacks on Albanians in Kosovo are, in the view of this court, "selective forcible action against the military underground movement."²⁶ Chomsky seems not to be aware that Germany's administrative courts have their own self-interest in denying the existence of a pattern of human rights abuses in Kosovo, as they seek to close the door on Albanian asylum claims.²⁷

The works of Judah, Daalder and O'Hanlon, Michael Ignatieff, and Howard Clark provide strong documentation of widespread human rights abuses in Kosovo. Human rights researchers had been cataloguing such abuses since the early 1990s, yet, Judah observes, "because there was no apparent urgency then, and no all-important dead bodies on television to galvanize Western opinion, the very few diplomats who ventured down to Kosovo and who were beginning to realize that things were in fact changing found that their reports were having little impact. They were ordered to concentrate on confidence-building measures and especially on trying to resolve the bitter education question."²⁸ In the face of international inaction, the human rights abuses in Kosovo continued and, indeed, worsened.

Chomsky dismisses much of the pre-bombing violence in Kosovo as legitimate actions by a government to repress an armed resistance. He writes, "By March 1999 the Serbian authorities were responding much as would be expected in the face of the threat of bombing and perhaps invasion by the global superpower and its allies."²⁹ Daalder and O'Hanlon agree that "the levels of violence in Kosovo before March 24, 1999, were modest by the standards of civil conflict and compared to what ensued during NATO's bombing campaign. The violence had caused the death of 2,000 people in the previous year. This was not attempted genocide of the ethnic Albanian people."³⁰ However, Serb forces had committed fundamental human rights abuses against Albanians for years. Thus, Daalder and O'Hanlon continue, "there was good reason to believe that, without intervention, things would have gotten much worse."³¹ The situation deteriorated rapidly during the summer offensive of 1998 when "Serb military, paramilitary and interior police forces left little unscathed."³² By October 1998, Serbs had driven 300,000 Kosovar Albanians from

²⁶ Ibid., p. 112.

²⁷ For Germany's restrictive asylum policies, see Randall Hansen, "Asylum Policy in the European Union," *Georgetown Immigration Law Journal* 14 (Spring 2000), pp. 779–800. For anti-Albanian sentiment in Germany, see Roger Cohen, "A Family's Time in Germany Runs Out; Divide Over Immigration/Kosovars Must Go," *International Herald Tribune* (November 21, 2000), p. 2.

²⁸ Judah, *Kosovo*, p. 119.

²⁹ Chomsky, *A New Generation Draws the Line*, p. 103.

³⁰ Daalder and O'Hanlon, *Winning Ugly*, p. 12.

³¹ Ibid.

³² Ibid., p. 40.

their homes. Chomsky is correct that the “prevent[ion of] mass atrocities” justification for the NATO bombing is diluted by the fact that the United States did not react to more egregious atrocities committed elsewhere during the same time period.³³ Nonetheless, the forced displacement, combined with the pattern of human rights abuses and the track record of the Milosevic regime in Bosnia and Croatia, support the argument that there were substantial grounds for humanitarian intervention.

Another potential justification for humanitarian intervention is the occurrence of ethnic cleansing. Chomsky and many of the contributors to the edited volumes by Ali and Hammond and Herman contend that the ethnic cleansing in Kosovo did not occur until after the bombing began.³⁴ Daalder and O’Hanlon write that Milosevic approved Operation Horseshoe “for both eradicating the KLA and engineering a fundamental shift in Kosovo’s ethnic balance. The central idea of the plan involved employing Mao’s favorite guerrilla tactic of draining the sea in which the fish swam: in the case of Kosovo this meant emptying the villages of their Albanian population in order to isolate KLA fighters and supporters.”³⁵ Information about Operation Horseshoe can be traced back to an interview that Joschka Fischer, the German foreign minister, gave during the second week of the NATO bombing. “Without any firm evidence,” Judah notes, “it appeared to become established as fact in the Western media that the German intelligence services had indeed discovered this alleged plan.”³⁶ Judah has good reason to doubt Operation Horseshoe’s authenticity. The Independent Commission on Kosovo, led by South African jurist Richard Goldstone, found no evidence of its existence, but it did conclude that “it is very clear that there was a deliberate organized effort to expel a huge part of the Kosovar Albanian population and [that] such a massive operation cannot be implemented without planning and preparation.”³⁷ Judah’s exhaustive research leads him to a more tentative conclusion. “While there was without a doubt a major plan to crush the KLA which would have resulted in large numbers of refugees,” he writes, “until the archives are opened in Belgrade, the real picture remains unclear.”³⁸

Even if evil plans for Kosovo did exist, they could not justify intervention, Chomsky argues, because such plans would never have been implemented but for the intervention. “It is a long step from the existence of plans and preparation to the conclusion that the plans will be implemented unless the planner is subject to military attack—eliciting implementation of the plans.”³⁹ To support his argument, Chomsky

³³ Chomsky, *A New Generation Draws the Line*, p. 111.

³⁴ See *ibid.*, p. 32.

³⁵ Daalder and O’Hanlon, *Winning Ugly*, p. 58.

³⁶ Judah, *Kosovo*, p. 240.

³⁷ Independent International Commission on Kosovo, *Kosovo Report: Conflict—International Response—Lessons Learned* (New York: Oxford University Press, 2000), p. 88, also available at www.kosovocommission.org/reports.

³⁸ Judah, *Kosovo*, p. 241.

³⁹ Chomsky, *A New Generation Draws the Line*, p. 33.

writes that General Wesley K. Clark, NATO's supreme allied commander, has stated that he had no knowledge of a NATO plan to "thwart ethnic cleansing" and that he repeatedly had informed the press that brutal Serb atrocities would be an "entirely predictable" consequence of the bombing.⁴⁰ Pro-interventionists do not deny that the forced deportations of Albanians were accelerated during the bombing campaign. Nonetheless, they argue that although it is difficult to determine what would have happened if the bombing had not occurred, it is quite likely that the bombing prevented a greater evil from occurring. For interventionists the bottom line is that the existence of an ongoing ethnic cleansing campaign is not necessary to justify humanitarian intervention; the existence of gross human rights abuses may be sufficient.

Finally, the breakdown of diplomatic negotiations is for many commentators a prerequisite for intervention. Anti-interventionists contend that efforts for a diplomatic solution in Kosovo had not been exhausted. The absence of mass expulsions in the months leading up to the bombing suggests that diplomatic solutions were in fact being pursued. According to one theory, the Rambouillet negotiations were "set up to fail."⁴¹ Chomsky points to a "killer clause" that would have allowed NATO troops the freedom to operate anywhere in Yugoslavia and to other provisions of the accord that few leaders of sovereign countries would accept. Daalder and Hanlon agree with Chomsky that "NATO did err [at Rambouillet] in insisting on military access to all of Serbia." Nonetheless, they point out that that the Serbian negotiators never raised this point, "focusing their opposition instead on the proposed deployment of a NATO-led force inside Kosovo."⁴² Daalder and O'Hanlon claim, I believe convincingly, that had Serbian negotiators objected to the point, "negotiators would surely have recommended that alliance military authorities change their position."⁴³

Judah describes the Rambouillet negotiations as an intense effort by foreign diplomats to reach a deal. It is hard to believe that the many people involved in the negotiations would have put in such a great effort had they wanted the negotiations to fail. The terms of the proposed agreement may not all have been well crafted, but to see in this a conspiracy theory is to deny human error. By the time of Rambouillet, the situation on the ground had worsened and any solution would have had to contain a strong military option. While Chomsky and others contend that the Serbian negotiators were willing to accept a fair bargain, Judah has the more persuasive argument: It would have been difficult, he notes, for Milosevic to sign on to any agreement with a military component strong enough to satisfy the NATO allies. U.S. negotiator Chris Hill told Judah that in the spring of 1999 Milosevic was open to a political deal, but he "wanted to avoid the military ele-

⁴⁰ Ibid., pp. 35 and 115.

⁴¹ Ibid., p. 126.

⁴² Daalder and O'Hanlon, *Winning Ugly*, p. 15.

⁴³ Ibid.

ment that came with it because ‘he felt that the true intention of the force was to eliminate him—and/or detach Kosovo from Serbia.’”⁴⁴ Milosevic was correct in realizing that by the spring of 1999, the NATO allies had little interest in dealing with him further and desired to remove him from power. While an earlier diplomatic effort may have been successful if its timing and terms had been appropriate, the Rambouillet talks simply came too late for an agreement meaningful for both sides to be reached.

HUMANITARIAN MEANS?

To be legitimate, the means of intervention must be consistent with international humanitarian law.⁴⁵ In a nutshell, the means employed should be necessary to meet a legitimate objective, they should be proportionate to a legitimate military outcome,⁴⁶ they should discriminate between civilian and noncivilian targets, and they should be appropriately related to the probability of success. Interventions that fail to conform to these criteria are not only illegal, they are immoral. Human rights activist and analyst Holly Burkhalter has suggested essential questions that potential intervenors must consider: “Do the lifesaving benefits of the contemplated military action outweigh potential cost in human lives? Do the military tactics under consideration themselves cause significant or disproportionate civilian casualties?”⁴⁷ At all stages of their operations, intervenors should consider whether their actions place noncombatants at increased risk.

The adverse effects of the campaign, authors on both sides of the issue agree, stemmed from the lack of a coherent Balkans policy and, therefore, an incremental and reactive method of dealing with Milosevic. Daalder and O’Hanlon, however, contend that the NATO campaign, while not flawless, was in accordance with international standards. “The air campaign was conducted very professionally and precisely by the armed forces of the United States and other NATO member countries. Although some 500 Serb and ethnic Albanian civilians were killed accidentally by NATO bombs, that toll is modest by the standards of war.”⁴⁸ The book’s main thesis is summarized by its title: winning

⁴⁴ Judah, *Kosovo*, p. 219, quoting Hill.

⁴⁵ The main sources for the law of war include the Law of The Hague (1907); the Geneva Conventions of 1949; the 1977 Geneva Protocols; and customary international law. See Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War* (Oxford: Oxford University Press, 1989); also Howard S. Levie, “The Law of War and Neutrality,” in John Norton Moore, Frederick S. Tipson, and Robert F. Turner, eds., *National Security Law* (Durham: Carolina Academic Press, 1990), pp. 307–57.

⁴⁶ The concept of proportionality requires an ends-oriented comparative assessment: “The anticipated loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained.” U.S. Army, *Operational Law Handbook* (2000), sec. 5-4. See also Article 57 of Protocol I Additional to the 1949 Geneva Conventions (Protocol I).

⁴⁷ Holly J. Burkhalter, “Memorandum to the President,” in Council on Foreign Relations, *Humanitarian Intervention: Creating a Workable Doctrine* (New York: Council on Foreign Relations, 2000), p. 25.

⁴⁸ Daalder and O’Hanlon, *Winning Ugly*, p. 4.

ugly. NATO did win, Daalder and O'Hanlon conclude, but its plan was flawed in design because it was based on the premise that Milosevic would fold easily under coercive force. The NATO allies erred by undertaking hostilities when they were unprepared for combat and then by beginning the military campaign with "a lack of resolve."⁴⁹ Daalder and O'Hanlon also convincingly argue that the proper approach before the war would have entailed a more "muscular threat" to Milosevic, including the deployment of forces into the region to conduct a ground invasion if necessary.⁵⁰

Inserting ground troops into the situation was a political gamble that the Clinton administration was not willing to take. Both pro- and anti-interventionists agree that the NATO bombing was designed to avoid any allied casualties and that to achieve this entailed a greater risk that civilians would be hit. In *Virtual War: Kosovo and Beyond*, Michael Ignatieff emphasizes that "the alliance's moral preferences were clear: preserving the lives of their all-volunteer service professionals was a higher priority than saving innocent foreign civilians."⁵¹ Where pro- and anti-interventionists part company is on whether "flying high" comports with international standards. The Geneva Conventions IV and Protocol I provide that civilians shall be protected against "indiscriminate attacks"—that is, attacks that "employ a method or means of combat which cannot be directed at a specific military objective" or "employ a method or means of combat the effects of which cannot be limited as required." In addition, Protocol I requires military planners to "take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects." It is not within the spirit of these provisions to increase greatly the risk to civilians in order to avoid casualties to one's own military.

Throughout the bombing campaign, the principle of "proportionality" required NATO to undertake action designed to achieve some legitimate military objective.⁵² To the extent that the bombing campaign was necessary for ending human rights abuses and returning deported civilians, the action was within the scope of international law. Unavoidable and unplanned damage to civilian targets incurred while attacking legitimate military targets was also within the law. But when it became apparent that the bombing was not effectively advancing military objectives, and that the impact of the bombing was felt mainly by civilians, the action became questionable on both legal and moral grounds. In fact, as Ignatieff observes, "the extraordinary fact about the air war was that it was more effective against civilian infrastructure than against forces in the field."⁵³

⁴⁹ Ibid., p. 21.

⁵⁰ Ibid., p. 20.

⁵¹ Ignatieff, *Virtual War*, p. 62.

⁵² See generally Judith Gail Gardam, "Proportionality and Force in International Law," *American Journal of International Law* 87 (July 1993), pp. 391–413.

⁵³ Ignatieff, *Virtual War*, p. 108.

The most damning critique of the intervention is its failure to provide protection for innocent civilians. “Kosovo Albanians expected ‘protection,’” Howard Clark writes in *Civil Resistance in Kosovo*, “[such as] the deployment of ground troops, the use of attack helicopters against tanks and other units, at least some tipping of the balance in favor of the [KLA] forces. But NATO embarked on a campaign not to protect Kosovo, but rather to defeat and punish Serbia.”⁵⁴ Not only was NATO’s bombing of specific targets open to question as possible violations of international law, the entire strategy behind the campaign, which ignored the protection needs of civilians, was counterhumanitarian. The counterhumanitarian means employed by the NATO allies in their bombing campaign severely undercuts the humanitarian pretensions of the action.

HUMANITARIAN RESULTS?

The most ardent defenders of the intervention’s results are the Kosovar Albanians themselves. Clark finds that “there was more unanimity among Kosovo Albanians about the need for NATO intervention than there ever had been about nonviolence, and there remains a genuine gratitude to NATO and to the international leaders who—Kosovo Albanians hope ‘finally’—pushed Milosevic out of Kosovo.”⁵⁵ As time passes, however, and communal violence continues in Kosovo—now with more incidents of attacks committed by Albanians against Serbs—and emerges as a regional security threat in Macedonia, more Kosovars are questioning the results of the NATO intervention. Kosovo is not a land at peace.

None of the authors judge the action as an unqualified success, though some are more positive than others. Daalder and O’Hanlon note that NATO failed to achieve two of its three goals: “to stop attacks on the Kosovar people and, if necessary, to limit Serbia’s ability to carry them out.”⁵⁶ Nonetheless, they assess the outcome of the NATO intervention favorably, in terms echoing NATO’s own assessment of its actions:

NATO reversed a horrendous campaign of mass expulsion, contained a massive risk to innocent lives, preserved the dignity and political rights for the Kosovar Albanian people, and upheld important international principles at the cost of up to 10,000 dead ethnic Albanians and perhaps 1,000–2,000 Serbs. That, by the standards of war, is a very good outcome.⁵⁷

This cold assessment debases the value of human life and, in particular, that of Albanian and Serbian lives. Would the outcome still be “very good” if there had been 10,000 or even 1,000 dead among the NATO allies? Probably not.

⁵⁴ Clark, *Civil Resistance*, p. 183.

⁵⁵ *Ibid.*, p. 184.

⁵⁶ Daalder and O’Hanlon, *Winning Ugly*, p. 195.

⁵⁷ *Ibid.*

In other passages, Daalder and O’Hanlon applaud the fact that there were no military fatalities among the NATO allies. Indeed, the allies flew so high and with such precision that they could act with near impunity. Ignatieff worries that this unprecedented military achievement “transforms the expectations that govern the morality of war. The tacit consent of combat throughout the ages has always assumed a basic equality of moral risk: kill or be killed.”⁵⁸ The problem with risk-free warfare is that those on the risk-free side are unconstrained by consequences. War has been transformed into a spectator sport, Ignatieff says: “War affords the pleasure of a spectacle, with the added thrill that it is real for someone, but not, happily, for the spectator.”⁵⁹ Ignatieff points out that “the contest [in Kosovo] was so unequal that NATO could only preserve its sense of moral advantage by observing strict rules of engagement,”⁶⁰ something NATO tried hard to accomplish but ultimately failed to achieve. The result of this attempt at risk-free warfare thus cannot be said to be just. While Ignatieff supports the use of force in the defense of human rights, he forcefully warns of the “fables of self-righteous invulnerability.”⁶¹

Wheeler offers his own criticism of the outcome, noting that any successes are not attributable to NATO alone:

On the one hand the intervention precipitated the very disaster it was aimed at averting, and KFOR failed to prevent the exodus of Serbs or guarantee the security of those who remained. On the other hand, through a combination of bombing, Russian diplomacy, and the threat of a ground invasion, Milosevic accepted a deal that returned the refugees to their homes, and created KFOR and a UN civil administration committed to helping the Kosovars build a multiethnic polity based on the rule of law.⁶²

All of Wheeler’s observations on the results of the intervention are well taken. Ultimately, it is the critics of the intervention results who make a more persuasive case. Chomsky, Ali, and others argue that postwar Kosovo, beset by revenge killings of Serbs and Roma (“Gypsies”) and border clashes between Albanians and Serb police, is little improved and, thus, the result cannot be said to be humanitarian. To the extent that the NATO campaign sought to promote a multiethnic and human rights-abiding society, the campaign was a dismal failure. Daalder and O’Hanlon emphasize general improvements in the security of Kosovo, pointing out that “the level of per capita violence in Kosovo remains too high, but it dropped tenfold within the nine months after the war ended.”⁶³ This may be true, but

⁵⁸ Ignatieff, *Virtual War*, p. 161.

⁵⁹ *Ibid.*, p. 191.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, p. 215.

⁶² Wheeler, *Saving Strangers*, p. 284.

⁶³ Daalder and O’Hanlon, *Winning Ugly*, p. 16.

doesn't the failure of NATO to protect against revenge killings negate a humanitarian result? Daalder and O'Hanlon sound like apologists for Albanian violence when they write, "Serbs left in great numbers, many out of a very real fear for their lives, but the displacement of some 100,000 Serbs since the end of the war is a far less severe violation of human rights than what Milosevic did to the ethnic Albanians."⁶⁴ They pronounce: "Two wrongs do not make a right. But people who have been discriminated against for decades, oppressed for the last decade, brutalized for a year, and then driven out of their homes and their land . . . can be forgiven a certain amount of paranoia, even if their revenge attacks against Serbs cannot be condoned."⁶⁵ Yet there is a difference between the NATO allies condemning Albanian violence—something the allies have done—and the NATO allies taking necessary measures to prevent revenge killings—something they have yet to do. As long as revenge attacks continue against Serbs and the occupying international force fails to stop them, the result of NATO action in Kosovo cannot be called "humanitarian."

CONCLUSION

How then do we evaluate the legitimacy of the NATO intervention in Kosovo? By invoking the language and imagery of humanitarianism and human rights, the NATO allies sought to moralize their use of violence. Michael Ignatieff wonders, "What is to prevent moral abstractions like human rights from inducing an absolutist frame of mind which, in defining all human rights violators as barbarians, legitimizes violence?"⁶⁶ Safeguards must exist to prevent the misuse of force in the name of human rights. The weighing of evidence of humanitarian motives, grounds, means, and results provides some limitations. The most significant shortcoming of the Kosovo intervention was a failure to achieve humanitarian results.

Given the ruptured lives, the burnt villages, the civilian casualties, the revenge killings, the complete and absolute polarization of Albanian and Serbian communities—is "success" a word that can be applied to the NATO intervention in Kosovo, which purported to be "humanitarian"? The degree of violence visited upon the peoples of Kosovo and Serbia tempers any claims of military and political victories. Perhaps what is most ironic, and what will unfortunately be one of the enduring legacies of Kosovo, is that this place where people had for many years agitated for autonomy through nonviolent means has now become an international symbol of violence.

In *Civil Resistance in Kosovo*, Howard Clark explains this tragic outcome. He describes the nonviolent tactics of the Ibrahim Rugova's political party, the League for

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ignatieff, *Virtual War*, p. 213.

Democratic Kosova—the force behind the Kosovar Albanian “parallel society” in the 1990s—as a pragmatic tool for survival: “What . . . emerg[ed] was a set of methods and organizational structures to identify violence with the Serbian oppressor while restraining counter-violence from the population.”⁶⁷ Throughout the early and mid-1990s, this form of pragmatic nonviolence was part of the construction of modern Kosovar Albanian identity. Albanians turned to more militant tactics only after the international community failed to respond to their nonviolent campaign. They supposed, rightly, that international recognition of their plight would be more effectively gained through the emergence of an armed resistance. At this point, the “culture of resistance” that Clark identifies as a hallmark of Kosovar society in the early 1990s, exhausted by years of only partially successful nonviolent struggle, looked for new heroes in the KLA.

But the international community is not the sole source of blame for the ultimate failure of nonviolence in Kosovo. Albanian leaders were also responsible for promoting a nonviolent campaign that depended on demonization of the oppositional “other,” that is the violent Serb. Clark explains that “the dangers of deriving one’s identity from a matrix of antagonism are evident—a lack of flexibility, an inability to appreciate what is held in common, ultimately a manichean worldview where one is always the victim or martyr, the Other always a victim.”⁶⁸ Values that should have been associated with nonviolence, such as respect for the rights of the other, were “underdeveloped in Albanian self-understanding.”⁶⁹ Thus, the seeds sown for nonviolence could easily grow into vicious, vengeful acts.

The failure of the international community to use all means within its power to stop revenge killings negates a humanitarian result in Kosovo. As the anti-interventionists (Chomsky, Ali, and Hammon and Herman) suggest, Kosovo may not serve as a precedent for future interventions that claim to be humanitarian because, in the final evaluation, the NATO intervention in Kosovo was not, in fact, humanitarian. Of all of the anti-interventionist work to date, Tariq Ali’s edited volume *Masters of the Universe?* is a particularly fine collection of well-crafted essays situating the Kosovo crisis in the context of larger post-Cold War power shifts and exposing the counterhumanitarian aspects of the NATO action. This work points out that the ideology of “humanitarian intervention” can be misused by Western governments to advance their own military and economic interests. The exposition of state hypocrisy and self-dealing deserves careful attention.

The works of Tim Judah and Howard Clark, however, remind us that Western governments are not the only important actors in the Kosovo story. Clark, writing from the vantage point of participant-observer, tells us about grassroots

⁶⁷ Clark, *Civil Resistance*, p. 59.

⁶⁸ *Ibid.*, p. 68.

⁶⁹ *Ibid.*

activists in Kosovo, a group overlooked by nearly all commentators. Judah, adopting the eye for detail of a seasoned journalist, unravels the roots of the KLA and sorts out the interpersonal dynamics of the Albanian and Serbian sides at the Rambouillet peace negotiations. The people in whose name humanitarian intervention is undertaken deserve a voice in its evaluation. While Clark and Judah did not set out to write studies of intervention, their insights on the ground can fill in some of the missing links in the routine assessments of the NATO campaign.

A reader seeking a U.S. foreign policy argument in support of intervention can look to Ivo Daalder and Michael O'Hanlon. In *Winning Ugly*, they interrogate closely the role of key decision-makers at the level of states, international organizations, and military alliances. Their work makes NATO's case for the decision to intervene, while at the same time critiquing NATO's means for intervening. On the other hand, a reader seeking a well-written moral inquiry into the bombing can turn to Michael Ignatieff. *Virtual War* contributes a biting analysis of risk-free warfare in an era marked by new technology and an insightful profile of the commander of "virtual war," General Wesley K. Clark. The profile of Clark explains how the Kosovo intervention was mobilized around the world, but fought by no more than 1,500 NATO airmen. Coalition warfare today, Ignatieff demonstrates, may depend on high-tech targeting and be mindful of humanitarian law, yet may still be riddled by low-tech human error.⁷⁰

Taken together, this diverse collection of books helps support Nicholas Wheeler's point: the rhetoric of humanitarian intervention has become an important factor legitimizing state action. *Saving Strangers* is the best monograph on humanitarian intervention to date. While only one chapter pertains specifically to Kosovo, a reader interested only in Kosovo would find that chapter an excellent summary of all the key issues surrounding the NATO intervention. Wheeler reaches to constructivist international relations theory and the "pluralist" and "solidarist" wings of the English School⁷¹ as tools for understanding Kosovo and other examples of state practice termed "humanitarian intervention." His comprehensive work convincingly demonstrates the emergence of humanitarian intervention as a norm that both enables and constrains actors. In answer to the question whether violence can ever be justified on moral, legal, and political grounds, Wheeler suggests that we are asking the wrong question. We should ask whether in fact states are using humanitarian arguments to provide moral, political, and legal legitimization of state action. Wheeler points us in the right direction. The answer is yes.

⁷⁰ Ignatieff, *Virtual War*, pp. 103–104.

⁷¹ The English School includes Charles Manning, E. H. Carr, Herbert Butterfield, Martin Wright, Adam Watson, Hedley Bull, and R. J. Vincent. See Wheeler, *Saving Strangers*, p. 6, n. 16.