CHAPTER – 4

Role Of NATO In Kosovo Crisis

1. The Background of Kosovo Crisis

In the Middle Ages most of Kosovo’s people were Serbs, or at least they were Orthodox Christians, by 1389 Serbia had been carved up by feuding nobles. Under the leadership of one of them, Lazar Hrebeljanovic, several of Serbia’s barons came together in that year to take a stand at Kosovo Field against the Ottoman Turks.¹ The Serbs were not able to stop the Turks. Their last effort to stop the invaders was made at the Kosovo Polje. So strong were the memories of the Battle of Kosovo Polje that they became the most important historical event in the perception of the Serbian nationhood. On the feast day of St. Vitus (Vidovdan), 15 June 1389 (28 June in the Gregoria calendar), the Serbs, led by Lazar and joined by the Bosnians, led by Stefan Turtko, were defeated by the army of Sultan Mourad I. Both Mourad and Lazar lost their lives in the battle,² laying the foundations for 500 years of Turkish rule. Most Serbs in Kosovo moved north, to be replaced over the centuries by Albanians, who largely converted to Islam.³ For centuries after the battle, the Ottoman ruled Kosovo and the rest of Serbia, but no empire lasted forever, and the Ottoman spent most of the 1800s getting smaller. Serbia regained its independence in 1878 and in 1912 briefly reasserted control over Kosovo. After World War I, Serbia (including Kosovo) was in corporated into the Kingdom of Serbs, Croats, and Solvenes, later known as Yugoslavia.⁴ Yugoslavia was formed in 1918, incorporating Serbia with territories formerly under Austrian or Hungarian rule. The
Federal Republic was a mosaic of different nationalities consisting of six republics—Serbia, Croatia, Bosnia-Herzegovina, Slovenia, Montenegro, and Macedonia. During the Second World War, Tito and his partisans found very few willing recruits amongst the Kosovo Albanians, who did not want to be part of a future Yugoslavia. Some Albanian recruits did join after the 1944 Bujan Conference, which declared that the future Communist Kosovo would have the option of remaining united with Albania. The promise was not kept. By the late 1960s things began to change, as Tito allowed the Albanianisation of the province. By 1974 Kosovo had become a Yugoslav republic in all but name. It had its own assembly, police force and local government, and all the prerogatives of the other Yugoslav republics such as Croatia or Slovenia. In theory the Yugoslav constitution gave the republics the right to secede: Kosovo did not have this right. The powers that the 1974 constitution granted to the republics and Serbia's two provinces, Kosovo and Vojvodina in the north, were in many ways more theoretical than real. The republics and provinces did have a large measure of autonomy but Tito was the final arbiter and the real law of the land. In tracing the rise of Serbian President, Slobodan Milosevic, one was led to Kosovo. Following the ouster of his mentor Ivan Stambolic, Milosevic used Kosovo to initiate an anti-Albanian campaign, beginning in 1987. Fanning the flames of discontent, he took a hard-line position against Kosovo's Albanians. Following a 'wildcat' strike at the Trepca mines which brought the province to a standstill, Milosevic rallied over 500,000 Serbs in Belgrade's main square. He promised that those responsible would be punished and that Serbia would never give up Kosovo. He succeeded by late 1989 in increasing police precincts in Kosovo by 63 percent, police units by 58 percent and more importantly, in
gaining the majority he needed in the Kosovo Assembly to retract Kosovo's status as an autonomous province. Moving swiftly, Milosevic used the Serb-led Assembly to legislate Serbia's control over Kosovo's police, civil defence, courts and selection of officials. In July 1990, the Serbs dissolved the Kosovo provincial assembly and indicted 111 of its members for treason. Thousands of ethnic Albanian employees of the provincial government were fired because they were Albanians. Serb police occupied the province's television and radio stations, closed the main Albanian-language newspaper, detained hundreds of suspected dissidents, and killed at least 50 participants in street demonstrations. After Croatia and Slovenia seceded from Yugoslavia in 1991, Serbia sent additional police and army units to Kosovo and increased patrols and roadblocks there, turning the province into "a virtual police state". Milosevic's reimposition of Serbian power in Kosovo sparked a cycle of competitive nationalisms, which by 1991, was to lead to the demise of Yugoslavia and to war. The Albanians had fought the Serbs at least four times in the twentieth century, so the Albanians' decision not to fight in the early 1990s was born not of passivity but of shrewd logic. With the demise of Communism and the one-party state, Kosovo Albanian politics came to be dominated by the Democratic League of Kosovo (LDK) led by Ibrahim Rugova. But with the disintegration of Yugoslavia in 1991, he declared Kosovo's independence and became President of the Republic. Unlike Slovenia or Croatia, however, Kosovo had no means to make this independence real. Ibrahim Rugova believed that mounting an insurrection against the Serbs would be suicidal since they would use their vastly superior forces to respond with 'ethnic cleansing' and a campaign of massacres. Instead, he promoted a strategy of passive resistance and 'created parallel' state structures.
2. The Causes of the War in Kosovo

Until 1996, the resistance in Kosovo was generally passive. That year, with Milosevic under intense pressure from the West, the KLA (Kosovo Liberation Army) made its appearance. The heavy flow of illegal weapons from neighboring Albania strengthened the KLA. The KLA (also known under its Albanian acronym UCK for Ushtria Clirimtare e Kosoves) was the main military organization fighting for the liberation of Kosovo from Serbian rule. Its origins went back as far as 1996. Only in November 1997, however, did UCK members identified themselves for the first time to the public. The KLA had adopted a classic insurgency strategy to undermine Belgrade’s control. This included:

- attacks on Serbian forces;
- intermittent pressure on Serbian civilians to leave their homes;
- assassinations of local Albanian ‘collaborators’.

By early 1998, the KLA succeeded in driving the Serbian police from Drenica. On 4 March, the police struck back in Drenica and killing some 80 people, including many women and children, this indiscriminate Serbian violence infuriated the Kosovars and sparked a rebellion, for which the KLA was not prepared. The organization found itself attempting to manage and arm an uprising that grew far faster than it had anticipated. On April 30, 1998. The North Atlantic Council was firmly opposed to independence for Kosovo and to a continuation of the unacceptable status quo. It rejected all use of violence, either by state security forces to suppress political dissent or by separatist groups to seek political change.
In mid-1998 NATO conducted a number of military exercises in Albania, in conjunction with the Albanian armed forces, in an attempt to increase pressure on the Serbian Government to end military action in Kosovo. Vowing not to permit another slaughter like Bosnia's the NATO allies threatened Yugoslav President Slobodan Milosevic in June, 1998 with air strikes unless he halted his security force's attacks on the rebellious Albanians. Secretary of State Madeliene Albright wanted the White House to push harder for NATO military action, but Defence Secretary William Cohen balked, fearing air strikes would only embolden the Kosovo Liberation Army, then at the peak of its strength and demanding an independent state, which Washington opposed.

Serbian forces dealt the Kosovo Liberation Army a severe blow on 14 August 1998, when they captured the Junik in Western Kosovo. Situated in the hills just below the mountainous frontier with Albania, the village had served as the main distribution point for arms, ammunition and men smuggled — across the border to the KLA. The operation inflicted heavy casualties and drove thousands of ethnic Albanians from their villages.

Press accounts suggested a dramatic change in the attitude of NATO members after the discovery on September 29, 1998, that the Serbs had massacred Albanian civilians in the villages of Gornje Obrinje and Golubuvac. This time, the NATO countries did better at orchestrating words and deeds and conveying threats by deed as well as by word. Over the course of two carefully scripted weeks September 30 to October 13 — attack aircraft were moved to bases in Italy and Great Britain, an aircraft carrier and other naval vessels were moved closer to Yugoslavia, and an activation order authorizing an strikes was issued. On September 23, 1998, the UN Security Council had demanded an immediate cease-fire and the
start of a credible political dialogue between Serbs and Albanians. Shortly thereafter, the Serbs launched new offensives aimed at eradicating the KLA in the Drenica region, in the Cicavica Mountains northwest of Pristina, and in the Southwest part of Kosovo. This Serb offensives occurred even as the United States was asking the North Atlantic Council canvass NATO members concerning their willingness to contribute personnel and equipment to a military operation in Kosovo. Most of the NATO debate on the use of force against Yugoslavia took place between the Security Council voted on Resolution 1199 on 23 September 1998 and NATO’s brandishing the threat of force on 12 October. That threat took the form of an Activation Order (ACTORD) authorizing the Supreme Allied Commander in Europe (SACEUR) to launch air strikes within four days if Milosevic did not comply with the provisions of the UN resolution. NATO had insisted on full and unconditional compliance by President Milosevic with United Nations Security Council Resolution 1199 (to maintain the ceasefire and withdrawal the Special Police Force from Kosovo) and Resolution 1203 (The unrestricted access of NATO’s aerial surveillance assets and the Kosovo Diplomatic Mission in Kosovo). NATO knew that President Milosevic would move when he was presented with the credible threat of force. The agreement reached on 12 October between the US and the Federal Republic of Yugoslavia removed the immediate threat of NATO air strikes, and was an important step towards the internationalisation of the Kosovo conflict. The document stipulated that:

- Serbian forces in the province should be reduced to their pre-conflict levels (around 10,000 police and 11,000 army troops, compared to a total of more than 50,000 before the agreement);
• refugees should be able to return to their homes; and
• up to 2,000 ‘compliance verifiers’ from the Organization for Security and Cooperation in Europe (OSCE) would be deployed to monitor the situation on the ground.

Just before the Serbian redeployment began on 26 October, 1998, KLA sources were saying that the KLA had not signed the agreement and was thus not bound by its terms. After heavy US pressure to the KLA, however, they declared on 27 October that they would:

• abide by a cease fire;
• not set up checkpoints; and
• not begin any new offensives, as long as Serbian forces kept out of the areas in which KLA fighters were deployed.  

The agreement concluded between the Federal Republic of Yugoslavia and NATO established the air verification mission, complementing the OSCE ground mission, to verify compliance with UNSCRs 1199 and 1203. Sustained pressure was instrumental in achieving these results and averting a humanitarian catastrophe. The threat of the use of NATO airpower to verify compliance through the conduct of the air verification mission over Kosovo, Operation “Eagle Eye”. In order to provide the ability to withdraw verifiers in an emergency, NATO had deployed an Extraction Force, Operation “Joint Guarantor”, in the former Yugoslav Republic of Macedonia.  

Experts estimated that by the end of 1998, 2,500 Kosovars had been killed in the struggle for autonomy, and more than 200,000 had fled their homes in the province for fear of Serb paramilitary assaults. The Serbs not entirely living up to the
October agreement in any case, responded accordingly. In January 1999, the discovery of forty-five Albanian bodies in the village of Racak, most apparently murdered by Serb security forces or paramilitaries. Thus all the parties were summoned to Rambouillet, France, to try to achieve a permanent negotiated solution. Britain, France and the United States controlled the February negotiations, drafting the settlement document with little input from the Albanian and Serb delegation that were present. The proposed Rambouillet accords would have provided Kosovo with substantial autonomy, essentially self-government for its Albanian majority. The province would have been policed by NATO for three or more years. The Serb regular army would have been required to leave Kosovo except for 2,500 border troops permitted to remain in the province to survey its external borders. Twenty five hundred Serb interior ministry police would have been allowed to remain for one year. NATO forces required complete and unimpeded military access (including basing rights) anywhere in Yugoslavia. Sources in the U.S. intelligence community reported toward the end of February 1999 that “6,500 more Yugoslav troops, along with 250 tanks and 90 artillery pieces, were massing just outside (Kosovo) in apparent preparation for a large-scale offensive”. Other intelligence reports indicated that Yugoslav “army units and other security forces throughout Serbia were being mobilized for a possible attack.” That winter, NATO intelligence officers learned that the Serbs planned a massive encircling operation against the KLA, code-named “Potkova” (Horseshoe), after the Spring thaw. One report published in March 1999 concluded that Milosevic intended to ethnically cleanse all 1.8 million Albanians living in the province within a week.
The 17-day-long peace conference on Kosovo held in Rambouillet, France, in February ended in deadlock. Milosevic maintained that his government would not agree to the stationing of armed NATO peacekeepers in Kosovo and his government was against the Western proposal for holding referendum in three years time on the question of independence for Kosovo. NATO issued a warning that 400 aircraft were kept ready to strike if Yugoslavia did not sign an accord which would be readied in March 1999. The Kosovo Albanians signed an international peace plan for the Serbian province on March 19, 1999, but their Yugoslav adversaries boycotted the event and Russia declined to countersign the historic document as a witness. In a televised ceremony, four ethnic Albanian leaders signed an 82 page “interim agreement for peace and self-government in Kosovo “negotiated in February 1999 in Rambouillet, near Paris.”

On March 24, 1999, four German Tornado fighter bombers took off from a NATO base and participated in the first wave of air strikes against Serb military targets in Kosovo. Fifteen German aircraft and hundreds of support troops were engaged in NATO’s Operation Allied Force for the next 78 days. The same day (on March 24, 1999) U.S. led NATO forces launched cruise missiles and bombs at target throughout the Federal Republic of Yugoslavia (FRY), plunging America into a military conflict that President Clinton said was necessary to stop ethnic cleansing and bring stability to Eastern Europe”. By bombing the FRY, Clinton informed the nation, “we are upholding our values, protecting our interests, and advancing the cause of peace”. “We cannot respond to such tragedies everywhere, but when ethnic conflict turns into ethnic cleansing where we can make a difference, we must try, and that is clearly the case in Kosovo”. Had we faltered in what the
heading of his speech calls “A Just and Necessary War”, “the result would have been a moral and strategic disaster. The Albanian Kosovars would have become a people without a homeland, living in difficult conditions in some of the poorest countries in Europe”, a fate that the U.S. cannot tolerate for suffering people”.33

From a NATO perspective, Milosevic’s campaign of ethnic cleansing started well before the initiation of airstrikes. In January 1999, two months before Allied Force, the Serb special forces had already forced 300,000 Kosovo Albanians from their homes and ethnic cleansing of the local civilian population was on upward trend and would have increased whether NATO had acted or not.34 NATO’s objectives in starting the raids were two fold. One was to induce President Slobodan Milosevic to accept the Rambouillet Plan, the minimalist agenda of which was to restore Kosovo’s autonomy abrogated by Milosevic in 1989. The other objective was to save the civilians of Kosovo from imminent ‘ethnic cleansing’.35 A total of 20 F-16 fighter aircraft of the Royal Netherlands Air Force (RNLAF), was made available to the NATO operations “Allied Force”. The contribution of the Netherlands was part of a combined Belgian Dutch detachment operating under the name of DATF. DATF flew its missions from the military airfield Amendola in the South of Italy. The Italians provided round-the-clock host nation support which included, inter alia, fire services, air traffic control, security etc. Transport aircraft were also flying almost round-the-clock from the Netherlands, carrying the right type of munitions on schedule to Amendola, while two KDC-10 tanker aircraft of the RNLAF provided air-to-air refuelling to NATO fighter aircraft. During the first hours of the strikes the RNLAF downed an MIG-29 Fulcrum by means of a Beyond Vision Range radar-guided missile.36 In the first days of the war, most air attacks
were directed against the Serb air defence network. But although NATO destroyed 12 of Yugoslavia's 15 most modern MIG-29 fighters and ten anti-aircraft missile sites, the bulk of Serb low-level air defence systems remained intact. On April 14, 1999, NATO warplanes dumped bombs and missiles on a convoy of Albanian refugees on the Dakovica Prizren road; they included elderly people, women and children. In the attack, 82 people were killed and 50 were injured. In the same month, Serbian state television accused NATO of using its helicopters to transport guerilla forces to positions from where they could launch attacks inside Yugoslavia. And according to Belgrade, by the third week of April, NATO had conducted more than 1,000 airstrikes using 600 aircraft and 800 cruise missiles. Three thousand tonnes of explosives were expended on 150 targets; more than 300 civilians were killed and 3,000 more were seriously injured. And the bombing of Radio-Television Serbia on April 23, 1999, as part of NATO's airstrikes against Yugoslavia during the Kosovo conflict. Sixteen people died in the attack. The weight of evidence suggested that NATO forces began the war over Kosovo without a well worked-out plan for employing airpower to affect directly the ability of Serb forces to operate in Kosovo: President Clinton's initial claimed that the purpose of the war was to punish Serb forces that were attacking Kosovar Albanians, and to reduce their ability to do so, had not been translated into an operational plan. Once it became clear that the initial limited air attacks would not influence the Serbs, who parallel campaigns were launched: one against Serbia proper and one against the Serb Forces in the field. NATO never came up with an answer to Serb forces in the field, though it often claimed to have them on the ropes. From the outset of the war through mid-May, it was reasonable for Milosevic to be
believe that his political strategy was working, if not perfectly. The Russians provided substantial diplomatic support. Germany, Italy, and Greece proved uneasy about the war. The expulsion of the Albanians had not, however, worked to undermine NATO’s cohesion. Russia immediately proved deeply distressed with NATO’s action, suspending most formal cooperative arrangements with NATO after the first night of the war. Milosevic’s efforts to exploit collateral damage failed to erode significantly U.S. or allied support for the short-term fighting of targeting restrictions on NATO bombers: in April, for instance, NATO modified its procedures to require that U.S. pilots receive authorization before striking military convoys, after a U.S. warplane mistakenly hit a refugee convoy. During Operation Allied Force, the U.S. airpower doctrine was not fully applied. It was a phased air campaign without ‘massive and overwhelming force’. The NATO intervention was not an intensive war, but an air campaign with sequential phases. The first phase was the so-called limited air response, with phase I of Operations Plan (Oplan) 10601, which required air superiority. The second phase was aimed to Serb units in Kosovo. This was the so-called tactical air campaign. Third phase was the so-called strategic air campaign throughout the FRY. It was aimed at isolating the Serbs in Kosovo. At the start of April, NATO thus decided to shift to a new phase in its air campaign. This involved targeting economic and communications points in Serbia, including bridges, oil refineries and power stations. Attack on civilian infrastructure were intended to cripple the Yugoslav army’s fuel supplies. They also signaled to the Serbian authorities and the population that, if they refused to surrender, NATO would do great damage in the long run Yugoslavia’s economy and to any prospects of national growth and prosperity. The second aspect of NATO’s
strategy: the move to hit Yugoslav forces in Kosovo with ground-attack aircraft and helicopters. The aim was both to restrict the ability of these forces to attack the ethnic – Albanian population, and to underline to Belgrade that NATO was determined to carry on its air campaign over a long-period and even at the cost of casualties. NATO thus deployed new aircraft, including, most importantly, some 24 US air force A-10 Warthog ground-attack aircraft, and a similar number of US army AH-64 Apache helicopters. The Albanian government gave permission for the Apaches to be stationed near its border with Kosovo, together with 18 multi-launched ground-attack rocket systems and 2,600 American ground troops. The declared purpose of these forces was to provide security for the Apaches and their crews and support staff against Yugoslav forces infiltrating across the border, a threat highlighted by the capture on 31 March 1999 of three US soldiers on the Macedonia border by Yugoslav forces. NATO war planners had the suppression of Serb air defences as their initial military objective. Once air defences had been suppressed, other attack aircraft could be avoided because the political leaders of NATO feared that there was not enough political support at home to continue the war in the event of sustained losses. The Serbs seemed to have understood NATO’s tactical hopes, and operated to thwart them. So long as Serb defences survived and continued to engage NATO aircraft, NATO’s overall effectiveness could be diminished. Thus the Serbs took great care in each potential engagement to weigh risk against opportunity. They had to show NATO that their air defences were still dangerous, everyday so they had to launch some weapons. At the same time, the Serbs had to take into account the limitations of their own systems vis-a-vis those of NATO. If radars were left on too long in the hopes of completing an
engagement, a NATO hunter-killer aircraft, the F-16 CJ equipped with high-speed anti-radiation missile and special targeting gear to locate Serb radars, would surely attack them. The Serbs played cat and mouse, they would turn off their engagement radars if they thought they would come under attack. On average, they fired only about 10 SAMs per night for the duration of the war—but occasionally as many as three dozen. On the eve of NATO’s 50th anniversary summit meeting in Washington, British and French leaders began pressing allies to consider sending ground forces into Kosovo. Critics warned, however, that holding the alliance together even during the air war nearly impossible, and they believed that the ground troops contingency might very well bring down governments across Europe. For example, leftists in the Italian government threatened serious political action unless the government could convince allies to offer a bombing pause as a concession for peace negotiations. The Greek government was deeply opposed to any use of force in the region, and the German government faced potential opposition to a ground war from the political left and right. Thus, NATO leaders sought a delicate comprises on the eve of the 50th anniversary summit: Prime Minister Tony Blair would stop talking publicly about an invasion, and NATO officers would update old contingency plans for ground operations in the Balkans. Within weeks they had come up with a preliminary plan for an attack on Kosovo by 175,000 troops set to begin on September 1, 1999. The ground troops issue came to a head on May 27, 1999, in a secret meeting of NATO Defence Ministers held at the German Defence Ministry Office outside Bonn, U.S. Secretary of Defence William Cohen, German Defence Minister Rudolf Scharping, British Defence Minister George Robertson, and the Defence Ministers of France and Italy met for seven intense
hours of debate about ground troops. While they did not reach a final decision, the ministers were united in their opinions that NATO could not afford to lose the war and that their five governments needed to reach a consensus on ground troops within the next week. On a very practical level, allied leaders were aware that initial deployments to ready a ground offensive were urgently needed; the first snowfall in Kosovo would arrive by the end of October.

Hungary was in a uniquely sensitive position among the allies vis-a-vis Serbia for several reasons. First, Hungary was the only NATO member that shared a border with Yugoslavia, so fears related to the spread of the war were foremost in the thinking of political leaders. Second, 300,000 ethnic Hungarians lived in the Vojvodina region of northern Serbia. Concern about Yugoslav reprisals against this segment of the Hungarian Diaspora drove Hungarian policy to oppose a NATO ground war and to refuse direct participation in a ground war should it occur. Only NATO, and certainly not the relief agencies, could resolve the worsening refugee crisis—one that would grow worse so long as Kosovo remained in the hands of Milosevic's thugs. It was NATO that took care of the refugees in Albania and Macedonia. Only a military organization had the money, the logistical capability and the political muscle to build camps for hundreds of thousands. If NATO were to withdraw from the camps in Macedonia, where the Kosovar refugees were hated by the ethnic Macedonian majority, new catastrophe would be all but a certainty. In this context, NATO during its April 1999 fifteenth anniversary meeting declared that it had the authority to intervene in conflicts beyond its borders without the sanction of the United Nations. NATO had provided an unprecedented level of humanitarian support to alleviate the suffering to those refugees. NATO supported for the UNHCR-led
humanitarian operation in Albania and the former Yugoslav Republic of Macedonia. When Yugoslav aggression against ethnic Albanians began to generate large numbers of forced expulsions and refugees, UNHCR again turned to NATO for assistance in:

- Managing the airlift of relief supplies;
- Easing pressure on the former Yugoslav Republic of Macedonia by transferring some refugees to NATO countries on a temporary basis;
- Off loading and providing immediate storage of aid cargoes;
- Setting up refugee camp sites; and
- Providing information regarding numbers and locations of internally displaced persons (IDPs).

NATO countries responded to appeals from UNHCR and the Skopje government by offering to provide temporary asylum for more than 110,000 Kosovar refugees in the former Yugoslav Republic of Macedonia. They had provided aircraft to move more than 60,000 people to all 19 NATO member countries.* On Friday, May 7, the CNN was reporting that NATO had bombed the Chinese embassy in Belgrade". The B2 bombers really had dropped bombs on a building that NATO’s pilots had thought was a Yugoslav weapons acquisition agency. Tragically, the targeters had confused the agency with a similarly shaped building nearby the Chinese embassy. The fateful error caused the death of three Chinese and injured twenty. The fact that the embassy had been hit several times prompted Beijing to accuse NATO of a deliberate attack.55 NATO’s accidental bombing of the Chinese embassy on May 7, probably encouraged the Serbs to stay in the game. Bombing of downtown Belgrade was suspended for nearly two weeks after this mistake. Given the minor diplomatic firestorm that immediately ensued, it was reasonable for
Milosevic to wait and see if he could profit from the error. And the change in NATO targeting no doubt suggested to him that he was profiting from it. On the other front, little damage was done to the Serb forces in Kosovo between May 8 and May 29, so Milosevic would not have felt under any great pressure in the province. And another colossal NATO targeting error on May, 13, in which perhaps eighty-seven Kosovar Albanian civilians were killed in bombing of the village of Korisa, might also have convinced the Serbs that there was still hope that collateral damage would produce internal fissures in the alliance.56

The NATO campaign aimed to prevent the Serb-Albanian conflict in Kosovo from spilling into Macedonia. This 'doomsday scenario' foresaw a war pitting Macedonian Slavs against Macedonian Albanians, which would then suck in the neighbours, Serbia, Albania, Bulgaria and Greece, and later, possibly even Turkey.57 The entire 78-day operation, AWACS aircraft in nearly three continuous 24-hour orbits controlled the Kosovo and Serbian airspace. Operation Allied Force required the NATO Airborne Early Warning (NAEW) Force to operate at 200% of its peace-time flying rate. NATO E-3s flew 656 sorties and 6,110 hours in support of Operation Allied Force from 24 March-9 June, 1999.58 More than 23,000 weapons were delivered with devastating effect against hundreds of fixed and mobile targets throughout Serbia and Montenegro. By early June, moderate damage had been inflicted upon Serb ground forces and the air defence and command and control systems. Significant damage had been inflicted upon the supply routes into Kosovo, fuel and other key military industries. The electrical power system, the sinews of the modern industrial state, was taken down but in manner that permitted rapid restoration upon termination of the conflict. Despite the launch of
almost 800 air defence missiles and significant expenditures of other air defence munitions, only two NATO aircraft were lost. Both pilots were recovered from Serb territory by Allied search and rescue teams. Operation Allied Force was also military significant. It was NATO’s largest combat operation to date, demonstrating significant prowess and featuring the most precise air campaign conducted in history, with a minimum of collateral damage. The technology was the key to their success. Some of the innovations introduced in Kosovo were the result of a U.S. Department of Defence Initiative called the Advance Concept Technology Demonstration Programme, such as the Predator unmanned aerial vehicle. This aircraft carried video cameras and other sensing devices. In Kosovo, Predators often flew over areas too dangerous for manned aircraft. They kept almost constant surveillance on enemy forces operating in open country and were also used to observe refugees and assess battle damage. NATO’s extensive surveillance during the Kosovo campaign increasingly drove Serbian forces into hiding, forcing them to rely extensively on camouflage and concealment. Though this made it more difficult for Alliance planes to find them, it also prevented their offensive employment. The damage count after these two and a half months read something like this: bridges demolished: 24; bridges damaged: 12; petrochemicals industry, totally destroyed; automobile and aeronautical industry, bombed to extinction; airports damaged: 7; television stations hit: 6; power plants destroyed in Belgrade, Kolubara, Kostulac and on the river Drina. In Washington, it was now frequently said that the war to undo Milosevic’s campaign for murder and mass deportation of the Kosovo Albanians could help usher in a new global moral order. But NATO’s unwillingness to attack on land meant that the moral claims it was now making for
itself needed to be treated with skepticism. Kosovo did indeed break new ground in terms of the lengths that great powers now seemed willing to go in ordering their soldiers to kill for high moral principles. But Kosovo revealed little about the far more important commitment that would have been involved had NATO been willing to have its soldiers die for such principles. It was all very well to talk about the defence of human rights. But such talk rang hollow when the commitment was not permitted to go much below 15,000 feet.62

West Europeans were entitled to think that America’s way of waging war was ugly, for it involved putting thousands of civilians at risk while minimizing the dangers to its own armed forces. Yet the European method was even uglier; it was to pretend that war was such a horrible thing that it could always be avoided so long as men of good will were prepared to talk, and talk, and talk to each other. But sometimes men of good will were nowhere to be found. Then war might be necessary; but modern Europe was not ready for it. So for nearly a decade, Europeans had been unable to stop a succession of brutal conflicts in the Balkans. Even as sneered at the reluctant cowboys of the United States, the old World had to rely on the New World’s muscle.63 From a NATO perspective, the most helpful observations was that Milosevic’s campaign of ethnic cleansing started well before the initiation of air strikes that in January 1999, two months before Allied Force, the Serb special forces had already forced 300,000 Kosovo Albanians from their homes. The ethnic cleansing of the local civilian population was on an upward trend and would have increased whether NATO had acted or not. In doing so, he gave the lie to commentators who alleged that NATO caused the humanitarian crisis in Kosovo by taking action and that its cure was worse than
the disease. NATO task for starting the air campaign too slowly and ruling out a ground option at the beginning, thereby depriving the Alliance’s strategy of the element of surprise, which would have kept Milosevic guessing. They had a point, but conflict was the art of the politically possible as well as the militarily desirable. NATO’s choice was not between the perfect campaign and the imperfect variant. Given the need to achieve consensus among the 19 NATO governments, it was a choice between an imperfect campaign and none at all. Better perhaps to win ugly than to lose beautifully.64

3. HOW DID NATO END THE WAR IN KOSOVO?

On May 30, 1999, U.S. Deputy Secretary of State Strobe Talbot held talks in Bonn with Schroder, Fischer, President Ahtisari, and Russian envoy Viktor Chernomyrdin, as the international diplomats prepared for the final shuttle mission to Belgrade the next day. Schroder was optimistic about the prospects for peace, and he told reporters that the world was “on the way to a political solution of the problem and substantial progress had been made.” He was right. One June 2, 1999, Ahtisari and Chernomyrdin negotiated a final settlement with Slobodan Milosevic to end the Kosovo War.65 The G-8 hammered out a consolidated text by the morning of June 2, which was taken Belgrade the same day. The agreement included all of NATO’s critical demands for ending the war: the end of violence, the withdrawal of all Serb security forces, the deployment of substantial and unconstrained NATO force in Kosovo, the return of refugees, and commitment from Yugoslavia to “substantial self government for Kosovo”. From the Russian and Serb points of view, the document included a central political role for the UN in the “interim” administration of the province, an acknowledgement that “self-government” must also take into
account the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, "the demilitarization of the KLA, and no explicit reference to any process that could lead to dejure independence for Kosovo. Indirectly, the document also included a military role for Russia. Thus, while NATO insisted on a unified NATO command in Kosovo, its negotiators allowed ambiguity in the draft peace accords about the relationship of Russian troops to NATO. Had all ambiguity been eliminated, it seemed possible that Russia would have abandoned the negotiations which might have caused Milosevic to hang on a little longer to see if Russian anti-NATO diplomacy and concomitant European unease would reemerge to provide the possibility of a better deal. The diplomatic action then shifted to the technical talks in Macedonia between the Serb military and NATO's Kosovo Force (KFOR) about the modalities of the Serb withdrawal, where the fight over the role of the UN continued. NATO leaders expected that these talks, which began on June 5, 1999, would go quickly, but both the Serbs and NATO (and arguably the Russians) continued to argue over the terms of the settlement. The original NATO draft military agreement included no reference to the UN, and thus from the Serbs point of view represented a substantial deviation from the G-8 peace proposal they had just endorsed. In the last fortnight of the war, KLA operations near the Kosovo-Albanian border forced Yugoslav soldiers out into the open. This enabled NATO aircraft to attack them, causing what were probably the most substantial military casualties of the whole campaign. A NATO air attack on 7 June, in which US B-52s used cluster bombs against Yugoslav forces near Mount Pastrick, killing several hundred, appeared to have put effective pressure on the Serb negotiators in the stalled talks at Kumanovo, Macedonia. On June 10, 1999 UNSC Resolution 1244
set the basis for ending the air campaign. The air operation was suspended by Secretary General Javier Solana on June 10, 1999 after Milosevic had accepted the prescribed conditions and was formally ended on June 20, 1999 after the withdrawal of all Serb military, special police and para-military forces from Kosovo. The elite force for 200 Russian paratroopers outmanoeuvred the force of the North Atlantic Treaty Organization (NATO) and arrived in Pristina on June 12, Russian paratroopers had taken control of the Pristina airport before NATO troops could move in. NATO officials said off the record that Russian peacekeepers were not given a separate sector to patrol because such a move would have led to the partition of Kosovo, with the slavs protecting the Serbs and the Kosovars refusing to return to a Russian-controlled zone. Under the terms of the deal negotiated in July, 1999, Russia could send 3,600 peacekeepers to Kosovo. Around 750 of them would be located in the vicinity of Pristina airport, a Russian would be designated commander of the airfield but the overall air operations would be under the NATO command. The rest of the Russian troops would be in the three sectors located in the north and north-west of Kosovo, under the control of the U.S., Germany and France. The Chairman of the foreign affairs committee of the Duma (the lower House of the Russian Parliament), Vladimir Lukin, said the United States was trying to dupe Moscow. He said that the Security Council resolution provided for the deployment of an international security force under a joint command. However, after the resolution was signed, there was an announcement that NATO would conduct the operation. KFOR entered Kosovo from the former Yugoslav Republic of Macedonia on 12 June (“D-day”), with a force of 20,000 troops split up into six brigades led by France, Germany, Italy, the US and two from the U.K. In 11 days, the operation achieved that
stated aim: the withdrawal of the Yugoslav forces from Kosovo and their replacement by KFOR as the only legitimate military force under UN Security Council Resolution (UNSCR) 1244.

The outcome on 9 June was a Military Technical Agreement (MTA) that set out in detail that was to be in effect a “relief in place” between the withdrawing Yugoslav forces and the advancing KFOR troops. On 10 June, the United Nations Security Council adopted Resolution 1244 which formalized the mission for the International Security Presence, provided by the NATO led KFOR, and the International Civilian Presence known as UNMIK (UN Interim) Administration Mission in Kosovo.73

The NATO forces were entering Kosovo on the basis of a U.N. mandate rather than an agreement between Belgrade and the Atlantic Alliance. Kosovo was explicitly described as a part of Yugoslavia, albeit an autonomous one; the territorial integrity and sovereignty of Yugoslavia were affirmed. The provision for a referendum at the end of three years had been abandoned, and the initial insistence on complete NATO control had been watered down some extent by a series of U.N. mandates.74 Given the magnitude of the tasks required by Resolution 1244, they obviously had to be carried out in an integrated manner with a clear chain of command. But reality did not quite comply. There was dualism at the top of the international administration between the United Nations Interim Administration in Kosovo (UNMIK) and KFOR and also significant divisions with UNMIK. Dualism at the top of the command of an international administration was not a novel problem. The Dayton Accords for Bosnia and Herzegovina envisaged a similar arrangement (although in that case, the civilian component was run by a specially created international authority rather than the UN).
This dualism reflected the reluctance of key NATO states to place their military forces under UN command, with inevitably created an accountability gap in the chain of command, and the capacity of the civilian administrators to display credible authority to the local population. During the first phase of Kosovo’s international administration, the problem of enforcing a clear chain of command were in fact bigger within KFOR, particularly between the commander of KFOR and national contingents, than between UNMIK and KFOR. The generally excellent personal cooperation between and first Special Representative of the Secretary General (SRSG), Bernard Kouchner, and the first four KFOR commanders reduced considerably the potential problems of this top-level dualism. Still, given that UNMIK could not promptly deploy a credible international police force, its ability to enforce political initiatives was limited by what KFOR was willing or able to do. One important consequence was the failure to exercise full authority in Serb-majority areas of northern Kosovo and divided Mitrovica.

4. NATO and the outcome of the War In Kosovo

The European Union had estimated that rebuilding Kosovo would cost at least $30 billion. The NATO bombardment had set Yugoslavia back into an almost pre-industrial state. A Belgrade research unit estimated that costs of rebuilding could run $50 billion to $150 billion and could take decades. The President of the European Union (E.U.), Romano Prodi, recently admitted that the NATO ignited war in the Balkans had “created a horrible environmental problem that is for us to take care of”. The United States dropped more than 1,100 cluster bomb on Kosovo: that was 1,100 “dispensers” containing a total of more than 200,000 “bomblets” as the soda-can-sized explosive were called. The British dropped hundreds more. Others were jettisoned into the Adriatic by
Allied pilots who deemed it unsafe to land with unused ordnance still attached to their wings. According to the World Health Organization, about 150 Kosovars were killed or injured by “land mines and unexploded ordnance” – including bomblets – in the first four weeks after the war ended on June 13, 1999.78

In just two weeks on KFOR’s operation, it had detained more than two hundred detainees, many of them held for such serious criminal offenses as arson, violent assaults and murder, but also for grave violations of international humanitarian and human rights laws.79 On 20 September 1999, the KLA was officially approved the statement by KLA (also known as (UCK) Chief of Staff, Lt. Gen. Agim Ceku that declared: “The UCK has complied with all provisions of the Undertaking (to disarm) and completed its process of demilitarization”. The Undertaking of Demilitarization and Transformation, signed by the KLA on 21 June 1999, stipulated that the KLA would hand over its weapons to be stored under NATO supervision. More than 9,000 rifles, 800 machine guns, 300 anti-tank weapons, 178 mortars, 27,000 handgrenades, 1,200 mortar bombs, over a ton of explosives and 5.5 million rounds of ammunition were handed in.80 The Kosovo Force (KFOR) had been instrumental in much of the progress made in many areas of the province’s daily life. Mandated by the United Nations with prime responsibility for preventing renewed hostilities, securing the province and ensuring public safety, KFOR was also tasked to support the lead civilian agencies in the areas of humanitarian relief and reconstruction, as well as the work to rebuild Kosovo’s civil society. One priority that was to clear mines. Explosive experts had cleared mines and other devices from 1,700 kilometers of roads, over 1,200 schools and 16,000 houses or public buildings. But the main challenge would be keeping a lid on ethnic tensions
and tackling crime. On any given day, two out of every three KFOR soldiers were out conducting between 500 to 750 patrols, guarding over 550 key sites and operating over 200 vehicle checkpoints. During the past year (1999), the number of serious crimes, such as looting, kidnapping and arson, had decreased dramatically and the murder rate was down from some 50 revenge killings a week to an average of five-fewer than many Western capitals. But many KFOR Commanders expressed their frustration in terms of being unable to place an armored vehicle outside every home. In fact, every Serbian or Roma pocket had a KFOR guard force, as did every Orthodox church and cemetery or Serbian monument. Despite the large number of troops engaged in guarding minorities, violence and murders continue and serve to further undermine KFOR authority.
4.1 The Liberation Army of Presevo, Medvedja and Bujanovac (UCPMB in Albanian)

On 21-22 November 2000, when ethnic Albanian militants launched attacks against Serbian police units stationed in the Presevo Valley bordering Kosovo. The area was within the demilitarised zone specified within the agreement between the Yugoslav government and NATO that ended the alliance’s 1999 air campaign against Yugoslavia. The militants were fighting to unite the predominantly Albanian Presevo Valley with Kosovo. After four Serbian policeman were killed in the fighting and 12 others were injured. The NATO-led Kosovo Force closed all routes leading to the border with the Presevo Valley and seized mortars, rocket launchers ammunition in a raid prompted by mortar fire into the valley originated from Kosovo. The Liberation Army of Presevo, Medvedja and Bujanovac (UCPMB in Albanian) named after three towns in this ethnic Albanian-dominated sliver of southern Serbia, the well-armed rebels were fighting for autonomy and the right to unify their region with neighbouring Kosovo. In December, 2000, NATO peacekeepers seized a truckload of ammunition, mortars, camouflage uniforms and shoulder patches bound for Presevo from Kosovo’s Drenica region, the birthplace of the KLA.

4.2 The National Liberation Army (NLA)

NATO-led units based throughout Kosovo had all contributed to the success of alliance efforts to stop ethnic Albanian rebel forces of the National Liberation Army (NLA) using the U.N. administered province as base for their operation in Macedonia. The evidence was that it had been successful. More than 2,000 weapons, 1,500 handgrenades, over 132,000 rounds of ammunition had been seized. The border interdiction programme, dubbed ‘Operation Eagle’, aimed to seize arms, ammunition and
personnel smuggled across from Kosovo into Macedonia and involved between 11-15 companies of KFOR troops at any one time. “Operation Eagle was a highly successful operation”, it was only one part of KFOR’s campaign against extremist violence in Kosovo. Following the deployment of KFOR to the north, NATO had maintained about 2,500 troops in Macedonia. During Operation Essential Harvest, NATO forces helped enforce a cease-fire agreement between Albanian separatists and the Macedonian government. NATO forces collected 3,300 small arms and more than 70,000 rounds of ammunition. Alliance troops also provided border security and arrested more than 300 suspected rebels who were endeavoring to cross illegally into Macedonia.

5. The UN General Assembly under the “Uniting for Peace” mechanism and the Veto power of the five permanent members of the Security Council

The veto power of the five permanent members of the Security Council has been questioned in its present form. During the Korean War (1950-53), the then Western majority of the United Nations did not accept that the Security Council could be blocked out of action and influence by the use of the veto by the Soviet Union, at a time when peace was being threatened or broken. The so-called “Uniting for Peace” resolution, adopted by the UN General Assembly in November 1950, allowed a qualified majority of the Assembly to assume responsibility for the maintenance of international peace and security, whenever the Security Council was unable or unwilling to do so. During the Kosovo crisis—when both Russia and China threatened to veto any enabling Council resolution—NATO could have appealed to the General Assembly under the “Uniting for Peace” mechanism for approval of its armed intervention.
The latest report concerning NATO’s compliance with international humanitarian law took the form of a decision rendered on the 13 June 2000 by a Special Committee established on 14 May 1999 by the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), in pursuance of article 18 of its statute. Assessing whether the operations led by NATO in Kosovo violated articles 35(3) and 55 of protocol I pertaining to the protection of environment, the Committee concluded that the extent of harm did not reach the threshold encapsulated in these provisions. It also came to the conclusion that the damage to the natural environment was collateral, i.e. unintentional and furthermore proportionate to the military purpose. Such reasoning was also applicable to the use of depleted uranium projectiles. As to the use of cluster bombs, the report noted, unlike in the case presented in front of ICTY's Trial Chamber, that NATO’s intention was not to attack the civilian population. The first incident reviewed by the Committee was the attack on a civilian passenger train at the Grdelice Gorge on 12 April 1999, upon which the basic facts had been agreed. In the instance of the first attack on the train, the Committee declared that the information provided “did not provide a sufficient basis to initiate an investigation”, for the bridge should be considered as a legitimate military objective and it appeared that the train “was not deliberately targeted”. As to the second incident related to the attack on the Djakovica convoy that was composed refugees the Committee declared that it had “divided views” as to its legality but nonetheless held that “the incident should not be investigated” as it did not reach the threshold set forth in paragraphs 5 of the Committee's report dealing with the Review Criteria. The careful formulation of the Committee showed that whereas some members doubted as to the legality of the second
attack, they nevertheless did not believe that NATO should be held criminally liable for it.\textsuperscript{88} NATO officials explained to Amnesty International that, in practice, if a NATO member who had been given a bombing assignment by NATO staff, believed that “the target was illegitimate or that the attack would otherwise violate international law and possibly their national law”, then, that state might refuse to execute it. The attack would however not be reassigned to another member in that case. Rather frightening was the fact that NATO admitted that, in some instances, not all members were aware of the selected targets or the means and method used for a given attack. This meant that, despite its ignorance of an attack, a member state might be held legally responsible for the attack. In addition, some accounts suggested that the United States chose to bomb the Radio-Television Serbia (RTS) despite objections raised by other NATO members. For example, the British forces refused to take part in the bombing of the Serbian Television while the French refused to hit bridges. These positions “drove the level of American involvement upon 90\% range, simply because they read the Geneva Conventions [in a different way] and they were prepared to go and Europeans were not.”\textsuperscript{89} In a rather consternating conclusion pertaining to the bombing of the Chinese Embassy, the Committee declared that the aircrew should not be held criminally responsible as they were given the wrong target and that seniors leaders should not either be assigned criminal responsibility as they were provided with wrong information.\textsuperscript{90}

5.1 NATO and International Law in the Kosovo Crisis

When NATO threatened in October 1998 to bomb Yugoslavia for the first time over Kosovo, everyone of its then 16 members resisted the idea, as did the U.N. Security Council. As a U.S.
administration official said back then, "The Chinese didn’t like it because of Tibet. The, Russians hated it because of Chechnya, France and Spain have Corsica and the Basques".91

NATO’s intervention in Kosovo with the unsparing logic, a tension between “two pillars of world order”: the United Nations Charter prohibits the forcible violation of state sovereignty while the Universal Declaration of Human Rights guarantees the individual’s right against state supression.92

U.N. Secretary General Kofi Annan provided unexpected backing for NATO’s military threats. Portrayed at being at adds on the use of force during the Kosovo crisis in October 1998, Annan told NATO ambassadors that the international community must have no “illusions”, about the need to use force when all other means have failed".93 The better legal view is that the NATO bombing was not unlawful if it was a genuine and proportionate response as a matter of humanitarian necessity, to stop ( or even to punish) an ongoing crime against humanity.94 One of the most assertive proponents of military action was the US Washington’s arguments, however, was based more on political than legal arguments. Indeed, answering a journalist’s question on 8 October 1998, Secretary of State Madeleine Albright said that she did not think she had to answer international legal questions in detail.95 NATO Secretary General Javier Solana relied on a cluster of reasons to justify the threat of military action in October 1998. These reasons included:

• The failure of Yugoslavia to fulfil the requirements set out by Resolutions 1160 and 1199, based on Chapter VII of the UN Charter*;

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*Chapter VII of the UN Charter. Action with respect to threats to the peace, breaches of the peace, and acts of aggression.
• 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."

Resolution 1199 on 23 September 1998, in particular, had demanded that Yugoslavia inter alia cease all action by the security forces affecting the civilian population, and had referred to possible ‘further action’ if measures demand in the resolution were not taken. In addition, Resolution 1203 of 24 October 1998, by demanding Serb compliance with a number of key provisions of accords concluded in Belgrade on 15-16 October (including with the NATO Air Verification Mission over Kosovo), accepted that the Alliance had direct standing and interest in the Kosovo issue. An argument can be made that, even if the Security Council was not able to follow these resolutions on Kosovo with a specific authority to use force, they provided some legal basis for military action. On 26 March 1999, two days after the bombing began, the Security Council did, in a curious way give at least a crumb of legal comfort to the NATO cause. A draft resolution sponsored by Russia (and supported by two non-Council members, India and Belarus) called for ‘an immediate cessation of the use of force against the Federal Republic of Yugoslavia’. Only three states (Russia, China and Namibia) voted in favour, and 12 against. In the debate, the speeches in support of the resolution did not address in any detail the question of what to do about Kosovo. The representative of
Slovenia, which was among the states opposing the resolution, made the key point that the Security Council did not have monopoly and decision-making regarding the use of force. It has the primary, but not exclusive, responsibility for maintaining international peace and security.97

U.N. Secretary-General Kofi Annan showed awareness of this when, at the beginning of the bombing campaign, he issued a statement which recognised that there were occasion when force might be necessary, but also referred to the importance of Security Council authorisation.98 The most important was that the situation in Kosovo was indeed a threat to international peace and security. Both President Bill Clinton and Prime Minister Tony Blair, in their major speeches on the war, put emphasis on the proposition that a large new wave of refugees from Kosovo could destabilize neighbouring countries and lead to an expansion of the war.99 Further, it became increasingly clear that the recommendations, resolutions and roles of outside institutions – the European Union (EU), NATO, the Organization for Security and Cooperation in Europe (OSCE) and UN-were being ignored or violated, especially by the Yugoslav authorities. The absence of U.N. Security Council authorization for the use of force against Yugoslavia was always going to be a difficult problem for NATO. Russia and China had consistently made it clear that they would veto any proposal for military action against Yugoslavia regarding its conduct in its own territory. Was NATO right to have launch Operation Allied Force without at least making an attempt to get authorization from the Security Council? The argument for and would have enabled people around the world to see exactly which states were refusing to authorise action to stop atrocities.100 But NATO’s unilateral use of force, critics argued, was, at best, a significant departure from
international legality. At worst, it jeopardised the international order based on the UN Charter which entrusts the Security Council with the responsibility to monitor and guarantee international peace and security. The Alliance’s military action was necessary on moral and political grounds.

5.2 International Lawyers and the Kosovo Crisis.

The legal question, however, is important. It goes, indeed, to the foundation of the international order established since 1945 on the basis of the UN Charter. By and large, despite their criticism on the UN as an organisation, the countries of NATO had stood staunchly against ‘rouge’ and other lawless states that threaten to upset that order. More significant perhaps, NATO regarded itself as an alliance of democratic nations, whose political system is based on the rule of law and it had certainly been accepted as such by the new members eager to join the ‘Club of democracies’. Presumably, respect for the rule of law domestically should be joined by a similar respect for the rule law on the international scene. The use of forces is governed in international law by the UN Charter. At the root of that Charter is the principle of the sovereignty and integrity of states. As a result, the Charter sets clear prohibitions on ‘the threat or use of force against the territorial integrity or political independence of any state’ (article 2 § 4), allowing for the two exceptions only. The first is individual or collective self-defence (art.51), when a member state is the victim of aggression. Called to rule on attempts by some states to justify encroachment on other states’ sovereignty by claims of self-defence.

In late September 1998, Italian Defence Minister Benjamino Adreutta hinted that the danger of humanitarian catastrophe caused by Belgrade created the ‘conditions for the application of article 51’, meaning, presumably, the right to collective self defence.
According to the UN Charter, however, this right only applies to states not entities such as Kosovo. International law governing the right of humanitarian intervention is incomplete. International practice has evolved swiftly during the 1990s. Yet the incipient political and moral consensus that intervention is sometimes necessary to prevent human-rights violation on a major scale has not been formalised into a set of rules of international law. It is now urgent that this consensus should be transformed into law.¹⁰³ Incoming Defence Minister Rudolf Scharping came perhaps closest in spirit to German Foreign Minister, Klaus Kinkel's argument in stating that he considered it essential that international law be further developed so that massive human-rights violations could be considered as legitimate ground for military intervention.¹⁰¹ International human-rights law is an offshoot of the UN's Declaration of Human Rights, and consists of a body of rules adopted either at the universal level (for example, the 1966 Covenants on International Civil and Political Rights, and on Economic and Social Rights; and the 1984 Convention against Torture), or the regional level (the 1949 European Convention on the Human Rights). These provides for a set of political or judicial procedures to monitor and respect for the rights involved. Some of these rights, such as the prohibition of torture, have been confirmed as having erga omnes quality. One of the weakness of human-rights law, however, is that apart from genocide—which is the object of a specific convention (1948 Convention on the Prevention and Punishment of the Crime of Genocide) – definition of 'gross and massive violations of human rights' is no where to be found. Even in the case of genocide, which each state is obliged to 'prevent' and 'punish', the Convention does not have an enforcement mechanism, and is virtually silent on means to prevent the crime.¹⁰⁵ But what is
also common to international human-rights law and humanitarian law is that however sophisticated they are becoming in laying out sanctions, they are silent on preventive measures. Yet, it is precisely the prevention of massive human rights violations of humanitarian catastrophes that has become the basis of ‘humanitarian intervention’ practices in recent years. These practices have not yet been codified into law. The only certainty, about them is that, increasingly they give primacy to human rights over the sovereignty of states when the two principles conflict. At the root of humanitarian intervention is the recognition that population in danger of starvation, massacre or other forms of massive suffering have the right to receive assistance. That principles set-out by the Geneva Assembly’s Resolution 43/131 (8 December 1988), reaffirmed and specified in the General Assembly’s Resolution 45/100 (14 December 1990)-has been confirmed by many subsequent Security Council Resolutions.

One therefore has to agree with French lawyer Mario Bettati that there is a certain ‘hypocrisy’ in international right of victims to assistance, it is not possible to derive a right of states to bring this assistance by all means, including military force. At best one has to consider that states face a moral obligation which consists for the state where a humanitarian disaster is occurring, in refraining from obstructing relief operations, and, for other states, in bringing assistance to those in need. The unfinished state of international law, and its strong political coloration. As stressed above, there is increasing recognition that human rights do not belong exclusively to the domestic affairs of states. In addition, since the early 1990s it has become the practice of the Security Council, supported by international opinion, to allow military intervention to rescue the victims of domestic conflicts. Most international lawyers would
agree that the current law of the UN Charter does not accommodate
the bombing of Yugoslavia, since the action was neither based on a
Security Council decision under Charter VII of the UN Charter, nor
pursued in collective self-defence under Article 51 of the Charter—
the only two justifications for use of force that are currently
available under international law. Nevertheless, many of these same
lawyers, would also agree that there is a trend in today’s
international community towards a better balance between the
security of states, on the one hand, and the security of the people,
on the other. Recent statements by UN Secretary General Kofi
Annan also support this view. Addressing the Commission on
Human Rights in Geneva on 7th April 1999 – in the early days of
NATO’s bombing campaign and referring to the “universal sense out
outrage”-provoked by the repression of Kosovo Albanians by
Milosevic’s regime, he stated: “Emerging slowly, but I believe
surely, is an international norm against the violent repression of
minorities that will and must take precedence over concerns of
sovereignty”, and that the UN Charter should “never [be] the source
of comfort or “justification” for “those guilty of gross and shocking
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