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THE KOSOVO CAMPAIGN: EXPLORING THE PROBLEMS OF INTERVENTION IN INTRASTATE WARS.

REVIEW BY JOHN D. BECKER*

LEGAL AND ETHICAL LESSONS OF NATO'S KOSOVO CAMPAIGN, Anduu E. Wall, (Ed.), *International Law Studies*, Volume 78, U.S. Naval War College, Newport, Rhode Island, 2002.

Kosovo stands as a symbol for many things in the world of international security affairs. First, it stands for intrastate war in a multi-ethnic society. Second, it stands for the role of collective action by regional organizations in intrastate wars. And lastly, Kosovo stands for the problems of fighting in interstate wars by regional organizations. Accordingly, many recent texts have looked to Kosovo as a case study for modern war. Popular works like *Waging Modern Wars* by General Wesley Clark and *War in a Time of Peace* by David Halberstam are reflective here. More scholarly works are following in kind, including *Legal and Ethical Lessons of NATO's Kosovo Campaign*, edited by Anduu Wall.

Wall's text contains the proceedings from a scholarly colloquium entitled *Legal and Ethical Lessons of NATO's Kosovo Campaign* hosted by the Naval War College on August 8-10, 2001. The colloquium looked at the international and legal lessons to be learned from NATO's Kosovo conflict from the standpoint of *jus ad bello* concerns. In other words, consideration was given to issues relating to the conduct of hostilities, rather than the *jus ad bellum* questions regarding the legal justification of NATO's initiation of the air operation in Kosovo. A variety of scholars and practitioners participated in the colloquium including representatives from the Carnegie Council on Ethics and International Affairs, the Center for National Security Law at the University of Virginia School of Law, Duke University of Law School, and the United States Naval War College, as well as all the branches of the U.S. military and military allies from NATO to Israel and even Sweden and Switzerland.

The opening remarks by Vice Admiral Arthur Cebrowski, then-President of the Naval War College, are insightful in two regards. First, unlike many post-conflict conferences, Cebrowski notes this one is not focused on lessons learned, rather it is on lessons to be examined. The distinction is important in that only the future will show if the lessons have in fact been learned. Additionally, and

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probably more importantly, Cebrowski talks about the linkage information age and modern warfare. This nexus was first seen in the Gulf War and is now more in evidence in campaigns like Kosovo and Iraq war.

The information age has been characterized by three trends—networking, greater globalization and economic interdependence, and technology assimilation. Each of those trends, in turn, has enormous implications for societies and their militaries throughout the world. These changes have been analogized as significant as the change from the agricultural age to the machine or mechanical age.

Network-centric warfare most notable enables a shift from attrition-based warfare to a much faster effects-based warfighting style, characterized by operating inside an opponents decision loop by speed of command as well as by a change to the warfare's context or ecosystem. In theory, at least, the result may well be decisional paralysis.

It is forth noting here that network-centric warfare is the generational successor to what was called maneuver warfare in post-Cold war defense analysis. This movement, initially articulated by a group of young Turks in the Army and Marines in the late 1980's and early 1990's, challenged traditional military doctrine and standards and opened up the fields to extended discussion both within and outside the military profession. This author was exposed to this group of reformers and their ideas during an assignment to West Point at that time.

The approach itself is premised on achieving three objectives: first, the force achieves information superiority, having a dramatically better awareness of the battlespace; second, forces acting with speed, precision, and the ability to reach out long distances with their weapons achieve the massing of effects versus the massing of forces themselves; and third, the results that follow are the rapid reduction of the enemy's options and the shock of rapid and closely coupled effects in his forces. This disrupts the enemy's strategy and, hopefully, forecloses the options available to him.

Underlying this ability is an alteration in the dynamics of command and control. The key to this possibility is the ability to provide information access to those forces that need it most at the time they need it most. Traditional military notions of top-down command and control are replaced by new bottom-up executions and organizational structures. With that change, a number of challenges result from this new type of warfare and the text looks at three major ones.

They are found within the area of *jus in bello* and include: 1) targeting, 2) collateral damage, and 3) coalition operations. In fact, the text is broken into three parts reflecting these areas, framed by an introduction, by keynote speakers and a conclusion, looking to the road ahead.

Among the more interesting insights provided are those by conference speakers, the Honorable James R. Baker and Air Force Lieutenant General Michael Short. Baker, now a judge on the United States Court of Appeals for the Armed Forces, served as Special Assistant to the President and Legal Adviser to the National Security Council during the Kosovo campaign. Short, now retired

from active duty, served as the Commander of Allied Forces Southern Forces, and commanded NATO's Kosovo air campaign.

Baker argues that lawyers have a legitimate role in military operations, including in the vetting process of targets, targeting sets, and targeting in general. Lawyers, however, not always readily accepted in the military targeting team, for a variety of reasons including concerns about secrecy, delay, lawyer creep (analogous of mission creep, where one legal question becomes ten legal questions and which requires not one lawyer to answer but twenty lawyers to answer those legal questions).

Baker also forecasts three areas of tension between doctrine, policy and the law of armed conflict. The first of these, between Proportionality, Necessity and "Going Downtown," is the tension between the legal constraints of *jus in bello* and the military importance of striking hard at the start of a campaign to surprise and shock the enemy and thus, rapidly end the campaign. This was most recently seen in the Iraq War with the "Shock and Awe" campaign that kicked off the war. The second area is seen in dual-use targets, those targets which have both military and civilian objects, and accordingly the tension is found between effects-based targeting and the law of armed conflict. The attacking of convoys and bridges in Kosovo fell into this category. The third area is in the tension between the protection of noncombatants and the traditional understanding of military objectives. Specifically, this is expressed in the question of legally killing military (and political) leaders? This too was seen in the Iraq War with the decision to launch a missile attack against Saddam Hussein, based on intelligence reports which put him in a suburb of Baghdad. He concludes with the message that lawyers remain integral to the conduct of military campaign, particularly at the national command level, that the law of armed conflict is hard law, and that the application of the law armed conflict is a moral imperative.

General Short's remarks follows along the same topics Baker raises but his answers differ since his perspective is that of military commander—a professional soldier. And Short is clear about what he thinks here. Targeting is a shared responsibility but only in that the President and the National Command Authority should only be concerned with approving targeting sets—command and control nodes or power grids, for example. Individual targets that are not to be targeted should be put on a no-strike list. Once that is done, the commander and his forces should be allowed to get on with their mission and achieve the effects as rapidly as rapidly and with as little loss of life and as little destruction of property as possible.

The general also notes that anyone who understands anything about modern warfare knows that responsible commanders always take every possible step to limit collateral damage. But the job of a commander, and his staff of advisers, is to balance concern for collateral damage and concern for loss of life on the one hand with the risk you are asking your pilots to take. Citing an example from the Kosovo campaign, the bombing of a bridge outside of Nis, he notes that some Serb civilians were killed in an attack on the bridge. Milosevic quickly lined up the dead and brought down the international press from Belgrade to show off the dead. This had a CNN-effect on the Clinton administration and our NATO allies, resulting in unconscionable restrictions on bombing that target: only at night

between 10 p.m. and 3 a.m. and no bombing on weekends. The lesson taken away here ought to be that bombing, under any circumstances, is a difficult mission and putting unreasonable restrictions on that mission may limit civilian deaths but it also increases risks to friendly pilots, who are a valuable and limited resource. It may also encourage the enemy to take advantage of those imposed limitations and continue their campaigns of terror.

Finally Short acknowledges that while the United States should never undertake a military campaign alone—a lesson somewhat lost on the Bush Administration in the recent Iraq War—he also notes the difficulties involved in coalition warfare and military operations. Unlike the Persian Gulf War, where the norm was simply if your nation wanted to join the coalition of the willing, then you had to follow the coalitions' rules, it was different in the Kosovo campaign. Since NATO was an established regional organization that was fighting the war, albeit under U.N. Security Council resolutions, the decision-making process was set and accordingly, different. Each and every nation had to approve and agree on targets and target sets, to the point where a small nation member could effectively veto targets that a larger nation member might approve and want to strike. Likewise, some nations had much more restrictive guidance and other nations did not. The result was a complex targeting process, where specific state's military aircraft could be used on some missions and not others, where approval of bombing missions might be scratched in the air if approval was not granted in time, and where some restrictions applied sometimes and not other times, depending on where the combatants were in the timeline of the war (in other words, restrictions were less severe in the early days of the war than later in war, when they were much more demanding and controlling).

General Short concludes by noting that lawyers, particularly military lawyers, have an obligation to keep the commander within the bounds of the law, while conducting a military campaign. But, the job of the military lawyer is not to keep the commander from doing his job; rather it is to make it possible for the commander to do his job, without breaking the law, without blowing up things that shouldn't be blown up, without killing people who should not be killed, and without committing war crimes. And most importantly tell the commander the truth, even when he or she doesn't want to hear it.

Moving into the core of the book, Parts III, IV and V dealing with Targeting, Collateral Damage, and Coalition Operations respectively, a number of voices are heard. There is little agreement on all the issues but much insight to found. For example, Scott Silliman, a Duke University Law professor, notes while the precise linkage between *jus ad bellum* concerns and *jus in bello* concerns is not completely resolved, there is an important connection here. Whether one takes the 1950's view that the good guys, because they are good guys fighting a good war, don't have to follow *jus in bello* rules (which ultimately is problematic) or the more nuanced view, that since self-defense is the only basis for lawful conflict, then the conflict must be measured by both *jus in bello* rules and if it complies with necessity and proportionality requirements of self-defense, the link between the two concepts is an overarching concern.

Christopher Greenwood, Ivan Shearer, George Walker, and John Norton

Moore, to name but a few of the commentators here, discuss other issues like whether members of the armed forces of a party to an international conflict who find themselves in the power of the enemy are prisoners of war or not; whether it matters, in terms of legitimacy and the applicability of laws, if interventions are U.N.-based or regional-organizationally based; and whether the law of armed conflict always apply, regardless of the type of conflict or the parties to the conflict?

So it is clear that this text provides a broad and thorough consideration of the legal and ethical concerns of fighting modern war, specifically as viewed through the lens of the Kosovo campaign. It also suggests that the Kosovo experience can be most fruitfully used for scholars and practitioners. As Joel Rosenthal notes introducing the concluding section, we need to be able to see the choices clearly and be able to articulate the principles upon we make our decisions.

We also need to consider several inclusive legal and ethical issues stemming from rapid geopolitical and technological changes. These include recognizing that the law needs to keep up with those changes to be relevant, we need to carefully consider if we want to change that law from one focused on armed conflict to one focused on international human rights, and whether we can or even should try to learn lessons from history. These considerations will, hopefully, shed some light on the road ahead.

In sum, *Legal and Ethical Lessons of NATO's Kosovo Campaign* provides a nice summary of the difficulties found in waging modern warfare, including humanitarian interventions in intrastate wars, where jus ad bello concerns have become a dominant concern. It also helps us understand the difficult and complex nature of fighting war within the constraints of an established coalition and regional organization like NATO. One common criticism of U.S. action in the post-9-11 world has been its reliance on unilateral action. The problems and difficulties in fighting the Kosovo campaign suggest the other option—multilateral action—is not always the easy alternative to fighting wars.

Additional Comment:

Immediately after this review was prepared—March, 2004—fighting once again broke out in the Balkans. Erupting in the divided city of Mitrovica, clashes between Albanians and Serbs across Kosovo resulted in a handful of deaths and hundreds of injuries including U.N. peacekeepers. The U.N., according to reports by the *New York Times*, has lost control of several city centers throughout Kosovo. NATO responded by sending an additional 1,000 reinforcements to the already 18,000 troops in Kosovo.

Coming almost five years after the NATO intervention, the most recent clashes show at least two things. First, ethnic divisions in multi-ethnic states remain will remain for years and years, no matter the kind or type of interventions. Given that these divisions are often grounded in history and culture that extends for many generations prior to the present day it is sheer lunacy to assume that a few years of monitoring and controlling outward violence will change those divisions. Changing a culture—be it in an organization or a state—requires both strong leadership and long-term commitment, by the party desiring it. Second, the

relationship between the U.N. and regional organizations remains problematic in dealing with these kinds of conflicts. In past conflicts, there has not been the luxury of having regional forces available for almost immediate action. Somalia, Rwanda, and Haiti all come to mind as places where no regional organization was in place to work in conjunction with the U.N. In Kosovo, the U.N. is able to rely upon NATO to immediately deal with the problem of renewed conflict. But that reliance is not based upon communication and cooperative arrangements between the U.N. and the regional organization NATO. Rather, the regional organization deals with conflict as it sees fit. This is not the spirit or the intent of Articles 39-42 of the U.N. Charter, much less with Article 2(4), which is often considered the heart of the Charter.

Any long-term success in Kosovo is contingent upon recognition of these two factors and incorporation of them in the planning and executions of the operations for peace making and peace enforcement.