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Humanitarian Intervention Versus Sovereignty: The Case of Kosovo and Implications for Iraq[1]

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On March 24, 1999, NATO began bombing Yugoslavia[2] a move that was justified, in large part, on humanitarian grounds. As the case for bombing was debated within the NATO forum and among the allies following the failure of negotiations at Rambouillet, few would doubt that there had been serious violations of human rights in Kosovo by the Serbs for a number of years. The Serb government had systematically undercut the rights that had been granted to Kosovo as an autonomous province, and to the ethnic-Albanian majority within that province. Furthermore, through the 1990s as the west learned more about the wars in the Balkans, they also became familiar with the story of the atrocities committed there. After the war in Bosnia ended, more attention was focused on the "ethnic cleansing" in Kosovo. While neither side was blameless, much of the ethnic cleansing was committed by Serb forces (often police and militia), against the ethnic Albanians living in the province. Yet, among the factors that NATO had to consider before it did decide to take action was the fact that military force would be used against a sovereign state, specifically in response to decisions that had been made internally. At the time of the decision to take military action, the question of sovereignty was an important one and one that raised questions about the precedent this type of action would set.

The decision made by the United States to go to war against Iraq in March 2003 was also justified, at least in part, on humanitarian grounds. In this case, the argument put forward by the Bush administration was that Saddam Hussein was a tyrannical dictator who had gassed his own people (i.e., the Kurds). Although the initial rationale for the war was tied to the threat posed by weapons of mass destruction, when none were found, humanitarian reasons became more prominent. But in this case, as was the case against Serbia, many in the international community raised serious questions about the right of one country to attack another pre-emptively, especially in the absence of evidence of a threat.

This article uses Kosovo as a case study to explore the tensions between the justification used by some states to intervene militarily in support of human rights and/or for humanitarian reasons, versus the belief in the sovereign right of any state to make decisions regarding its own domestic situation and conditions. After an overview of the concept of sovereignty as a critical tenet of international law/relations, we will review briefly the history of Kosovo leading up to the NATO decision to bomb. As it turns out, the arguments developed in support of the military action over Kosovo can be extended to address the war that the United States mounted against Iraq in March, 2003. We will conclude by drawing conclusions about the apparent conflict between protecting humanitarian interests and respect for national sovereignty and how these can be applied to the

case of the United States invasion of Iraq. But this still leaves unanswered questions about the legitimacy of military intervention in these cases.

In this paper, I am not advocating a particular position but analyzing or describing what I see as a change in norms in global governance. I am not being normative here, that is, I am not going to say that the changes are good or bad; I am simply reflecting on what I see as the changes taking place.

The Concept of Sovereignty and International Relations

The sovereignty of any nation-state is one of the most central and enduring concepts in international relations. As Holsti notes in his classic text on international relations, the principle goes back to the Treaty of Westphalia in 1648, and "the principle [of sovereignty] underlies the relations between all states today." Holsti elaborates:

The principle of sovereignty is relatively simple: Within a specified territory, no external power has the right to exercise legal jurisdiction or political authority. This establishes the exclusive domestic authority of a government. That authority is based on a monopoly over the legitimate use of force. (emphasis added)[3]

Holsti then notes in a corollary to his definition that "no state has the right to interfere in the domestic affairs of another state. This prohibitive injunction has been breached frequently, but it is assumed and observed most of the time by most states."[4] And the point that Holsti also makes is that this concept has guided international relations, i.e., relations between states, since 1648 and the fact that "there are violations of the norms does not deny their existence."[5]

Tilly, in his treatise on the evolution of the modern (European) state, makes it clear from the outset that states can be defined as "coercion-wielding organizations...and exercise clear priority in some respects over all other organizations within substantial territories."[6] In his assessment, the means of coercion come first from the military, which is raised by and for the use of the state, and second from control of the economy, i.e., capital. Tilly also notes that one of the characteristics of the modern state system is the extent of interaction between and among states and "the degree that their interaction significantly affects each party's fate."[7] In other words, although each state is an independent actor, it is also true that the actions of one country will have an impact and affect the other countries. But this still begs the point about whether – and when – one country has the right to intervene militarily in another state because of a decision made domestically. And it also skirts questions about whether economic decisions which inherently affect other countries in a world that is economically inter-related, are significantly different from decisions that are purely domestic in nature, i.e., human rights.

In the case of Serbia and Kosovo, and more recently Iraq, what becomes critically important to this definition and to the legitimacy of the international community to intervene is the concept of the legitimate use of force. In other words, did the international community have a right – even a responsibility – to intervene in Kosovo if the Serbs were using their monopoly of military power for purposes that resulted in the violation of human rights of the ethnic-Albanians living within the province? Similarly, was the United States justified in going to war against Iraq because

Saddam Hussein used the military as an instrument of terror and repression against his own people? Or are these cases violations of sovereignty because, in fact, they require one state to make a value judgment about the domestic decisions of another? In other words, when is a domestic violation egregious enough to result in legitimate military intervention against another sovereign state, and who can – and should – legitimately make that determination?

The international system has attempted to address some of these issues in a systematic way. For example, the "Final Act" of the 1975 Conference for Security and Cooperation in Europe (CSCE) summit spells out certain basic norms that all states should adhere to, including the "promotion of fundamental rights..." By signing this document, the countries involved agreed not only to support these fundamental rights, but also to accept responsibilities including "full and active support for the United Nations and for the enhancement of its role and effectiveness in strengthening international peace, security and justice...."

One of the first premises outlined in the Final Act is on "Sovereign equality, respect for the rights inherent in sovereignty." This article specifies that "The participating States will respect each other's sovereign equality and individuality as well as the right inherent in and encompassed by its sovereignty, including in particular the right of every State....to territorial integrity and to freedom and political independence." And it states clearly that every state must respect other state's rights "freely to choose and develop its political, social, economic and cultural systems...." The Final Act also specifies that states will recognize the "inviolability" or frontiers and borders, and will refrain from the use of force "for the purpose of inducing another participating State to renounce the full exercise of sovereign rights."[8]

The Final Act was signed on August 1, 1975, by the representatives of the CSCE countries, as well as NATO through the North Atlantic Council (NAC) and the North Atlantic Cooperation Council (NACC), both. On December 20, 1991, at the first meeting of this latter group, which included all the former Warsaw Pact states, the three Baltic Countries and a representative of the former Soviet Union, the NACC joined the NAC affirming the commitments of the Helsinki Final Act. Ironically, this helped create the precedent for questions about the legitimacy of the use of military force in the former Yugoslavia. Gulnur Aybet notes that various international agreements, including the UN Charter on Human Rights, the General Assembly Declaration of Human Rights, and the CSCE Final Act while not "binding in the sense of warranting an UN intervention of enforcement..." would "have exerted international pressure on Belgrade." She continues that "there was already in place a precedent for intervention under a similar case – the intervention in northern Iraq after the Gulf War."[9]

But as Aybet also points out, there are anomalies built into the Helsinki Final Act as there were also built into the UN Charter, "that of the contradiction between the equal rights and self-determination of peoples and the territorial integrity of states" (emphasis added).[10] It is this contradiction that NATO had to confront in making the decision to bomb Serbia, and one that the United States and its coalition partners similarly had to face during the recent war against Iraq.

Kosovo: A Case Study

Although the decision was made by NATO to invade Kosovo in March 1999 following the failure of negotiations, the human rights abuses perpetrated by the Serb minority against the Albanian majority in that province were well known prior to that point. For example, in December 1992 the then President , George H.W. Bush issued his so-called "Christmas warning", when he stated that "in the event of conflict in Kosovo caused by Serbian action, the United States will be prepared to employ military action against the Serbs in Kosovo and in Serbia proper."[11] This warning was restated by President Clinton and it foreshadows many of the ideas stated by President George W. Bush in his National Security Strategy of the United States that became known as the "Bush Doctrine."

But at the time, 1992 through 1993, other issues (both foreign and domestic) were deemed more central to US national interest than Kosovo was. Instead, the situation was defined as a violation of the human rights provision of the CSCE and the West pushed for diplomatic sanctions, rather than military action. While this required states to support fundamental rights, it also stresses the importance of sovereign states to make domestic policy which, in this case, extended to Serb policy regarding Kosovo. The seeds for the inherent conflict between sovereignty and human rights can be seen clearly in this case. As the situation deteriorated through the 1990s, the six-member Contact Group pushed for economic and diplomatic sanctions against Serbia for its "unacceptable use of force" against ethnic Albanians. Thus, the western countries knew of the human rights abuses but chose not to act militarily, aware of the dilemma that they were facing. Despite increasing threats and political and economic sanctions, the Serb suppression/repression in Kosovo continued well into the fall 1998.[12]

By September 1998, with armed clashes between the Serbs and the Kosovar Albanians occurring almost daily, both NATO and the United Nations Security Council warned Milosevic to stop the attacks. On September 24, the NAC issued an "activation warning" for limited air strikes and a broader "phased" air campaign, and asked NATO military commanders to identify the forces that they would need for these options. As NATO discussions regarding what to do about Kosovo began in earnest, the question of the UN mandate for the use of force became a factor as well. Russia, France and Italy insisted that should the use of military force become necessary, the United Nations would have to authorize military strikes against Serbia, a task that would be time consuming if not impossible given the sovereignty question. Germany, too, insisted on UN authorization before force could be used. With US and French support, Britain had already started the process of trying to get such approval, although it was clear that Russia could (and probably would) veto a Security Council resolution which would bar NATO bombing or ground operations. On October 10, NATO Secretary-General , Solana concluded that "there was a sufficient legal basis for moving forward with issuing a specific threat of force and, if necessary, proceeding with its implementation." This paved the way for the NAC to set a date for the air strikes to begin.[13]

Early in October, as NATO apparently was gearing up for threatened air strikes against the Serbs, Richard Holbrooke was again dispatched to negotiate with Milosevic to persuade him to withdraw Serb forces in Kosovo or risk NATO attack. Under the immediate threat of force, specifically the belief that NATO attacks were imminent, Milosevic promised to return some of

the autonomy that he had stripped from Kosovo province including guaranteeing local elections within nine months, and authorizing an Albanian police force and autonomous government structures. Milosevic also promised to reach a preliminary accord on an election timetable by the beginning of November. As of the end of October 1998, there were 150 international monitors inside Kosovo, with 1,500 OSCE "verifiers" pledged to join them as part of a Kosovo Verification Mission.

Toward War in Kosovo

By the end of October, Yugoslavia had withdrawn substantial numbers of troops from Kosovo; nonetheless, NATO extended its threat of air strikes indefinitely in order to ensure Milosevic's continued compliance. In addition, NATO agreed to station a 2,000 troop "extraction force" in neighboring Macedonia in order to guarantee the safety of diplomatic observers being sent to Kosovo. Despite the apparent victory, leaders of NATO nations were not satisfied that the situation had been resolved. As Madeleine Albright noted: "We have dealt with a humanitarian catastrophe at this stage, but not with the political crisis inside it."[14]

Initially, the Serb forces appeared to be complying with the agreement. By late October, monitors indicated that Serbia was withdrawing troops from the region, albeit, slowly. However, whatever progress appeared to be made was short-lived. By the end of November, tensions had flared again and NATO was warning that if the violence continued, "it could destabilize the cease-fire, reverse the recent improvement in the humanitarian situation' and disrupt plans for an international monitoring force in Kosovo."[15] Further, the chairman of the OSCE was warning that the cease-fire was being breached on a daily basis with violations on both sides.

By the end of 1998, it was clear that the attempts to reach a political settlement were not succeeding. Further, according to one high level official in the German government, by that time it was rapidly becoming apparent to the West that if there were to be a negotiated settlement, both sides (the Serbs and Kosovo Albanians) would have to be convinced to come to the table quickly, preferably by mid-January.[16] This altered the status of the Kosovo Albanians, in effect, putting them at the same level as the Serb government.

By early January 1999, it was apparent that the cease-fire that had been imposed in October was barely holding as fighting broke out between Serb police and ethnic Albanian rebels once again. The only hope of containing the situation was to get the belligerents to the negotiating table as quickly as possible, in order to try to reach a diplomatic solution to the growing conflict. As the winter continued Western officials feared a humanitarian catastrophe unless definitive actions were taken. The EU acted quickly and provided trade and aid to the region, and the UN continued to try to get food to the thousands of refugees driven from their homes in the fighting. While these were important measures that needed to be taken, little was done to address the underlying causes of the conflict or to bring the conflict to an end.

On January 17, 1999 NATO Secretary General , Javier Solana , issued a statement on Kosovo on behalf of the NAC that condemned the most recent massacre of Kosovar Albanians in the village of Racak, and demanded that those responsible be brought to justice.[17] The statement also

reaffirmed NAC support for the OSCE Kosovo Verification Mission and condemned the recent attacks on members of that Mission. It also made clear that the activation orders for NATO air operations would remain in effect. The statement concluded by condemning "all acts of violence" and by calling on "both sides to cease hostilities immediately and to begin negotiations toward a lasting political solution which provides greater autonomy for Kosovo and which preserves the territorial integrity of the FRY [the Federal Republic of Yugoslavia]."[18] In short, the statement was asking for both the cessation of human rights abuses and an acknowledgment of the sovereignty of FRY, that is, Serbia and Montenegro.

Secretary Albright and other foreign ministers met with Russian officials at the end of January. Although still resistant to the use of force, Russia and the United States issued a joint statement calling on both the sides to halt the fighting and negotiate a political settlement. And while moving forward and trying to pressure Milosevic to the bargaining table, NATO also started to move fighter bombers and an aircraft carrier within "striking distance" of Yugoslavia, should force become necessary. It was starting to appear that, despite any internal divisions, NATO was serious about its threat of use of force, and would take action if necessary.

Rambouillet: A Failed Negotiation

With the threat of NATO air strikes looming and facing increasing international political pressure, the two sides (i.e., Serb and Kosovo Albanians) finally came to the negotiating table early in February, meeting at Rambouillet, a chateau outside Paris. What is instructive about this is that the Serb government representatives were joined by the representatives of the Kosovo Albanians, clearly representing an ethnic group and not a state. And much was at stake at Rambouillet beyond just stopping Milosevic.

Journalist Tim Judah's assessment was that "at the time it seemed almost a foregone conclusion that Rambouillet would succeed," in part because "the alternatives were so awful that it just seemed inconceivable that either side would scupper the talks." Those alternatives for the Serbs were to agree with the draft proposal or risk NATO bombing and for the Albanians, it was the danger that failure to reach agreement would leave them to the mercy of the Serb forces.[19] For the Western allies it seemed that either option was so dire that neither side would risk it. And while they assumed that the negotiations might be long and difficult, the Western countries went to Rambouillet with the belief that an agreement could and would be reached.

The talks were scheduled to begin on Saturday, February 6, 1999 but because of last-minute maneuvering on both sides, actually started on February 7. According to one US government official who was present at Rambouillet, the negotiations were not intentionally set up to fail but did so because of incorrect assumptions and unfulfilled expectations on both the sides of the table.[20] One of the assumptions made by the West was that since Milosevic had come to Dayton prepared to reach an agreement, he would do so again here, which proved not to be the case. In fact, according to a German government official who was also involved with the talks, although the Serbs came to Rambouillet, they were never interested in bargaining in good faith.[21] In fact, Milosevic did not attend the negotiations but sent a deputy, which meant that the Serb side would not be able to accept any agreement without first consulting Milosevic thereby building more delays into the process.

Furthermore, the NATO allies assumed that the threat of NATO air power would pressure Milosevic to back down, again, an incorrect assumption. For his part, Milosevic similarly misjudged the Alliance. As Samantha Power notes, "The Serbs were accustomed to hollow NATO threats. They were not about to surrender control over a province of great historical and symbolic importance."[22] These perceptions clearly affected the course of the negotiations.

Once the talks started, they went far more slowly than had been anticipated. The implicit threat underlying the negotiations was that if a political settlement could not be achieved at Rambouillet, then NATO would take action against the Serbs. But the credibility of that threat was undermined by the knowledge that NATO had not yet agreed upon whether and when to send in troops. Rather, NATO nations had not agreed upon a force that would be deployed or what authority such a force would have, despite the fact that the delegates to the talks were told that they had a two week window in which to reach agreement or NATO forces would be used.

In his memoirs, Wesley Clark, then Supreme Allied Commander, Europe, (SACEUR) and commander of NATO military forces, stressed the uncertainty that the military faced in trying to plan for a military strike in the event that the talks should fail. He noted that "We were preparing for a peace support operation, to begin only if the Serbs invited us, and, simultaneously, we were threatening and preparing to bomb Serbia..... [This] provided an opportunity for the Serbs and others to attack the strategy as confused and misguided."[23] Clark's reflections are especially poignant when placed in the context that as early as 1995, he "had urged that war criminals be arrested immediately, while the parties were still smarting from NATO bombing." Among those he had targeted for arrest was Slobodan Milosevic.[24]

Press interviews with senior Pentagon officials shortly after the talks started indicated that the US had serious concerns about sending troops into Serbia without clear-cut military goals. These officials were cited as indicating "continuing confusion at peace talks in France about the exact military objectives in dealing with what amounts to a civil war between the Serbian authorities and ethnic Albanian separatists."[25] This, too, reinforced the belief that this was a domestic policy issue and therefore confounded the question about whether – and when – military action should be taken.

At Rambouillet, the delegates were working from two draft documents, one was a list of "non-negotiable principles" agreed to by the Contact Group on January 30, and the other was an "Interim Agreement for Peace and Self-Government in Kosovo", which dealt with a cease-fire, creation of an assembly, elections, etc. But other provisions of implementation, including deployment of foreign troops and issues of autonomy for Kosovo, were not included initially. While the Albanian delegation responded to the drafts, the Serb delegation did not until Milosevic was pressured by chief American negotiator, Christopher Hill, when he visited Belgrade on February 16; shortly thereafter, the Serbs produced their own document. The Contact Group then extended the deadline of the talks until February 20, and the negotiators worked on another draft of the proposal. The proposal then put forward incorporated most of the Serb demands, at the expense of the Kosovar Albanians thereby creating the next obstacle to reaching an agreement.

The military annex that also was presented at Rambouillet had been drawn up by NATO military officers and indicated, to the dismay of the Serbs, that NATO ground forces planned to be in Kosovo as peacekeepers for the duration of a three year interim agreement. On February 11, with NAC approval of a military annex to the draft peace settlement that spelled out the force requirements, the Pentagon indicated that it would seek administration's approval for the US deployment of about 4,000 troops, making up about 15 percent of the projected total force. Although the actual make up of the estimated 20,000 to 30,0000 troops needed was not specified, in addition to a core provided by Britain and France, Germany and Italy had pledged to send troops as well as the US deployment. Despite the added weight of the threatened deployment of US forces, Serbia refused to budge from its position. It ruled out NATO troops on its territory (Kosovo), and resisted the renewed threats of NATO air strikes if agreement were not reached. In effect, Serbia was asserting its right as a sovereign state to manage its own internal affairs.

On February 20, the Contact Group members announced publicly that although Serbia continued to refuse to allow NATO ground troops to police any agreement, enough progress had been made to extend the deadline once again, this time until Tuesday, February 23, thereby deferring the possibility of NATO air strikes. While on the one hand, the negotiators held out the hope that the delay would help guarantee an agreement, on the other hand, it also served to undermine NATO's credibility, reinforcing the belief that any threat is an idle one. Nonetheless, the US Defense Department and NATO officials said that they were moving forward with plans for air strikes on Serbia should they become necessary.

On February 23, Chris Hill, was able to get a commitment from both the Kosovars and the Serbs to accept an agreement in principle, and to meet again on March 15, when the talks would reconvene in Paris. On February 24, the day after the latest deadline for an agreement, the KLA announced that the Kosovars had set up a provisional government that was made up of three different ethnic Albanian groups, including the KLA and a more peace-minded group led by Ibrahim Rugova. When the talks resumed, the Serbs remained unwilling to give broad authority to the Kosovars along with the deployment of just under 30,000 NATO troops to guarantee the peace, as agreed upon earlier. Further, fighting in Kosovo had intensified during the period between the end of the earlier round of talks on February 23 and the resumption of talks on March 15, thereby putting more pressure on the negotiators to reach an agreement, and on NATO to move forward with military action if they did not.

Towards the middle of March, with the negotiations deadlocked and political settlement apparently impossible to achieve, NATO made the decision to begin bombing Serbia. Since the negotiations started in February, the fighting in Kosovo was among the worst since the previous October when an earlier agreement had been reached. In addition, more than 80,000 ethnic Albanians had fled their homes during the final three weeks of the talks.[26] One of the factors that confounded the political situation was the recognition of Serbia as a sovereign State. Despite its behavior toward the Kosovar Albanians, the prospect of NATO military strikes against Serbia over the situation in Kosovo could be seen as support to the ethnic Albanian rebels, thereby raising important sovereignty questions.

On March 18, 1999, the Kosovar Albanians signed the most recent draft of the agreement while the Serbs refused to do so. In the face of Serb intransigence, the British and French co-chairs

adjourned the talks. On March 22, Richard Holbrooke was sent to Belgrade to meet with Milosevic and issue a final warning. Holbrooke was quoted as telling Milosevic that "'I want to be clear with you, it [the bombing] will be swift, it will be severe, it will be sustained.'" To that, Milosevic replied that "'There is nothing more I can say.'"[27] Believing that it had little choice and with the military action already approved, 24 hours after that meeting NATO began bombing Serbia on March 24, 1999.

Although getting agreement to authorize the bombing had not been easy, the accelerated violence by the Serbs in Kosovo during the period from mid-February to mid-March 1999 while negotiations were underway seemed to convince even the most recalcitrant allies, such as France and Italy, that military action had to be taken. And, as Power notes, the ethnic violence against the Albanian population in Kosovo did not stop once the bombing started. "From the moment NATO began bombing, Serbian regular military units teamed up with police and militia to do something unprecedented and unexpected: They expelled virtually the entire Albanian population at gunpoint....Practiced at ethnic cleansing...Yugoslav National Army units surrounded Kosovo towns and villages and used massive artillery barrages to frighten the local inhabitants into flight." After documenting the atrocities, Power concludes that this "was the largest, boldest single act of ethnic cleansing of the decade, and it occurred while the United States and its allies were intervening to prevent further atrocity."[28]

One member of the Clinton administration reflected that it was a mistake for the United States to have ruled out the option of ground troops from the beginning and, had he to do it over, concluded he would not do that again.[29] Speculating along those "what if" lines, if the United States had been more forceful in its position, it would have made it clear that a NATO force, whether for peacekeeping or for war fighting if that had become necessary, had the backing of the United States, an important statement politically. It would have conveyed to Milosevic that NATO was not only serious but unified in its desire to address the situation in Kosovo, with plans to escalate a ground war in support of or in the event that the bombing campaign failed. It would have suggested that any peace agreement would be enforced by a strong military presence, a message that might have persuaded Milosevic to accept the terms of an agreement sooner. And it would have conveyed to Serbia as well as other nations that the countries of the West, led by the United States, were serious about the need to protect human rights and guard against humanitarian abuses, even if that meant war against another sovereign state. But bowing to domestic political pressures as well as the belief that the bombing would end quickly, according to Daalder and O'Hanlon, the Clinton administration "resorted to a policy based on political timidity."[30]

The bombing campaign continued until June. On June 9, following the days of political wrangling and sporadic NATO bombing, the Serb military commanders agreed to a detailed plan for the complete withdrawal of Serb forces from Kosovo. On June 10, NATO suspended the bombing and the UN Security Council passed Resolution 1244, which "sanctioned the entry of NATO troops into Bosnia and guaranteed Yugoslav sovereignty" (emphasis added).[31]

Lessons of Kosovo

Writing in March through April, 1999, as the NATO bombing was underway, Kyril Drezov and Bulent Gokay noted that "The decision to interfere with the sovereignty of a European state by ordering NATO air strikes against Yugoslavia is the first time that a violation of this sort has happened since the Warsaw Pact invasion of Czechoslovakia more than 30 years ago."[32] But they also note that this attack was justified by NATO leaders who claimed that "it was the only way to halt the violence in Kosovo and to prevent further humanitarian catastr-ophes."[33] While they disagreed with this premise, the point that military action was necessary to halt growing humanitarian abuses is one that is echoed by other students of the topic. Tied to that is the acknowledgment of the tension that exists in international law between the respect for the sovereignty of a country's borders and the need for the international system to take any action necessary to protect human rights.

Author Tim Judah offers a different perspective when he claims that "many Kosovars successfully convinced many Westerners that the question of Kosovo was really one of human rights. In fact it was not. At the heart of the matter was a fundamental struggle between two people for control of the same piece of land."[34]

These different interpretations also ignore the role that domestic politics plays in affecting a nation's decision about when – and why – to justify a military action. For example, in reviewing the Kosovo situation, Samantha Power notes that "The NATO action was not purely humanitarian....However real the suffering of Albanians, the threat to US credibility was also a crucial factor in convincing President Clinton to take action."[35] In other words, the apparent justification for military action against a sovereign state was the need to stop the ethnic cleansing and egregious abuse of state power which would be consistent with international law. Yet, despite these high moral motives, national interest was equally, if not more important as a motivating factor.

It is in the confluence of human rights abuses, sovereignty issues and domestic politics raised above regarding Kosovo that parallels to the recent US decision to go to war against Iraq become striking.

The War with Iraq: A Humanitarian Intervention?

In September 2001, for the first time in its history, NATO invoked Article 5 in response to the terrorist attacks in New York and Washington, D.C. This sent an unambiguous message that the Alliance members take their responsibility of mutual security and defense seriously. NATO was willing to work on behalf of the United States, and sent AWACS aircraft to patrol over the US immediately after the attacks. However, the United States opted not to use the NATO framework for its military mission, preferring instead to work with individual countries bilaterally, building support for its coalition in much the same way that it did during the Persian Gulf War of 1991. This means that the coalitions built to fight both the first war against terrorism and then against Iraq have moved far beyond the NATO nations to include other countries in Europe and the Middle East, including those (such as Pakistan) who the US had previously shunned because of their dismal records of corruption and /or on human rights.

While the NATO allies initially expressed support for the US in the war on terrorism, it is also clear that that support eroded, especially as the United States made it clear that it intended to expand the war beyond Afghanistan to Iraq, with or without allied support. Chancellor Gerhard Schroeder of Germany, facing a tough re-election battle in September 2002, garnered a great deal of domestic support when he declared unambiguously that he would oppose a United States military action against Iraq. (The relationship between Schroeder and President Bush has not yet recovered from the acrimony this statement caused.) Similarly President Chirac made it clear that he would and could not support the United States' decision to go to war against Iraq. The result was that while the US was building a coalition in support of its policies and plans, other countries, many of them NATO allies, were building another coalition in opposition to the United States.

Dissension within the Alliance grew worse as the inevitability of war with Iraq became more apparent. Within the Security Council, France, Germany and Russia joined together to try to pressure the United States to work within the UN framework and to defer any military action until the inspectors had a chance to provide a comprehensive report. The three also made clear to the US that they would block any resolution to the Security Council authorizing the use of force by Iraq.

The deep policy disagreements among the allies were further played out in the NATO setting in February when France, Germany and Belgium worked together to block a US request to provide defensive military equipment to Turkey in anticipation of a possible war with Iraq. As a result, Nicholas Burns, the United States Ambassador to NATO, said "NATO's facing a serious test of its credibility to an ally, Turkey. Turkey took the unusual and historic step of invoking Article IV of the [NATO] treaty today and we believe it's incumbent on all sides to meet Turkey's request."[36]

Germany and France especially, reacted to what they perceived as the United States' bullying and often unilateral approach to international relations. Specifically, they felt that in pushing the question of aid to Turkey, the United States was using NATO to force a vote for – or against – war with Iraq. This ran contradictory to what these countries had been trying to avoid or at least delay within the UN Security Council. The United States, on the other hand, claimed that when Turkey invoked Article 4 it was in NATO's best interest to respond. The US also felt that the reluctance of Germany, France and Belgium to refuse was "unacceptable."

In many ways, the leaders of France and Germany were reflecting the views of their public. Surveys of public opinion done in 44 countries and released in December 2002 showed that the public in these countries were very skeptical of American intentions regarding Iraq, with 54% in Germany and 75% in France convinced that the US wanted to go to war with Iraq because it wanted Iraq's oil. Favorable opinions of the United States in general in those countries over the past two years showed a decline as well. What is also striking is that the findings suggested that the good will that the United States got after and as a result of the events of September 11 dissipated quickly.[37] Despite the data, it is unclear whether the position that the leaders of France, Germany and Belgium took was a reflection of their public, or whether the position simply reflected the anger that these national leaders felt about the way in which the United

States was pursuing its policies. The result was a deep division within the Alliance before one shot was fired in Iraq.

The War in Iraq and its Aftermath

With or without the backing of its NATO allies, the United States was moving forward toward war with Iraq. In September 2002, the United States released its National Security Strategy. This document is remarkable for the shift in US foreign policy that it outlines. The document states in part that "The events of September 11, 2001, taught us that weak states like Afghanistan can pose as great a danger to our national interest as strong states." It then goes on to address the ways in which the United States will respond to this new threat including the commitment to "speak out honestly about violations of the non-negotiable demands of human dignity using our voice and vote in international institutions to advance freedom." And that the US will "take special efforts to promote freedom of religion and conscience and defend it from encroachment by repressive governments."

But the document also states that the first priority will be: defending the United States, the American people and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting pre-emptively....[38]

These points were further elaborated on by President Bush in a speech to the American public in October 2002 in what became known as "the Bush Doctrine". At that time Bush began to lay the framework for the war with Iraq tied not to the need to take efforts "to promote freedom...and defend it from encroachment by repressive governments," i.e., Saddam Hussein, but based on the need to combat weapons of mass destruction by developing a "comprehensive strategy to combat W.M.D." To that end, the US will "deter and defend the threat before it is unleashed...."[39] While war with Iraq was later justified on humanitarian grounds, it is clear that the initial rationale for military attack was the threat posed by weapons of mass destruction. Only when months had passed and these were not found, while evidence of genocide was, that the primary purpose for war shifted.

The United States-led coalition was able to defeat the Iraqi forces of Saddam Hussein relatively quickly and easily. On March 20, without Security Council approval, the US-led force went to war with Iraq. In a coordinated attack, British forces went into the country from the south with the United States taking the lead in the north, including bombing Baghdad and other critical cities. By April 9, three weeks after it started, the war was effectively over. The primary task then facing the United States and its coalition partners (primarily the United Kingdom and Poland) was to devise the plans for a post-war Iraq.

The period immediately following the end of the fighting indicated to many that while the United States had prepared for war, it had not prepared for peace. Stories of mass looting dominated the headlines, including the virtual destruction and desecration of the major museum in Baghdad. These were accompanied by reports of the problems that erupted in Baghdad and the other major cities where there was no electricity, water, food, medical supplies, etc.

In addition to creating humanitarian a crisis as well as political problems, the inability to confront and gain control of the situation in post-war Iraq delayed (if not derailed) the US plans to install a democratic regime. As a result of the situation, the United States has been open to charges that it planned for war far more effectively than it planned for the peace that would follow. According to one news story about the situation:

"Mr. Bush's aides cautioned reporters before the war that even the best plans would have to be rewritten on the ground. ...They envisioned cheering crowds and a swift restoration of electric power and other vital utilities. The quick establishment of a civilian Iraqi interim authority, officials said, would help demonstrate to a suspicious Arab world that America was not going to act as an occupier, as in Japan and Germany. ....Still no one in Washington anticipated the degree to which the chaos would undermine the central goal of presenting the United States as a liberator..."[40] The challenges of rebuilding a post-war Iraq have been exacerbated because of the differences among the former allies.

There has been some further shifting of positions and jockeying among the NATO allies since the war ended. On April 28, 2003, just before flying off to a meeting with Vladimir Putin, British Prime Minister Tony Blair stated that "My fear is that if we don't deal with the world on the basis of a partnership between Europe and America, then we will in a sense put back into the world the divisions that we wanted to get rid of when the cold war finished."[41] This warning was directed particularly at France and Germany who were then meeting in Brussels with the heads of the government of Belgium and Luxembourg to talk about a European defense initiative. The leaders of these four countries, all of whom were outspoken against the war with Iraq, also took pains to stress that they had no desire to undermine NATO and that the EU had long been working toward a European defense initiative to complement NATO.

By mid-May, further shifting became apparent when the government of Germany started to edge slowly away from France and inch toward the United States. Arguing that the partnership that emerged during the "war against the war" was limited, the German government stressed instead the close ties it has had with the United States. In May, US Secretary of State, Collin Powell met with Chancellor Schroeder in Berlin to talk, in part, about the reconstruction of post-war Iraq. Schroeder set the stage for these meetings when he said in a speech just before Powell's visit that "We really all agree that we want to have only one pole in world politics: the pole of freedom, peace and justice."[42] Although this was seen by some as an attempt at reconciliation, relations among the NATO allies and between the United States and Germany and France in particular remain strained.

The more time that goes by with the war continuing and no apparent end in sight, the harder it will be to achieve any reconciliation, especially since weapons of mass destruction have not been found. While the Bush and Blair administrations continue to claim that such weapons did exist, both have come under attack for waging war based on inconclusive intelligence information from which they might have drawn incorrect conclusions. Bush, though, shifted his emphasis away from the war , justifying pre-emptive attacks against an "axis of evil" threatening the US and its allies, and toward the stance that the war was fought on humanitarian grounds, to rid the world of an evil dictator and replace his regime with a democratic one, thereby justifying the

breach of Iraq's sovereignty. An article in The Los Angeles Times on June 15, 2003, just three months after the war started, identifies several arguments put forth for attacking Iraq: "Iraq was a champion of terrorism, that it stockpiled chemical and biological weapons, that it sought to produce nuclear weapons, that it maintained illegal missiles, and that it committed wholesale violations of human rights." As the article concludes after examining all of these, only the last one has been borne out.[43] Yet that was not the basis upon which the war was declared.

As noted by the prestigious International Institute for Strategic Studies in its recent Strategic Survey, "...American attempts to warm the world to its cause by portraying the Iraq campaign as a war of liberation did not appear to be taking hold." The piece continues, "Of course, the war could be vindicated even in the eyes of many Arabs and Muslims if the US and its partners were able to remake Iraq into a unitary democratic polity that provided for its people in a palpably better way than did the former regime. But that is one of the stiffest of postwar challenges."[44] In other words, the initial reason for attacking Iraq, its potential as a threat to the United States and its allies, has evolved into other reasons.

Tony Blair is similarly bedeviled by the post-war situation in Iraq. As a staunch supporter of the Bush policy regarding Iraq, often in defiance of his own government, Blair basked in the glory of the success of the US-British coalition in the immediate aftermath of the war. But that soon faded when members of the British intelligence service claimed that Downing Street had deliberately altered reports. According to a report in The Economist, "Mr. Blair stood accused of misleading the House of Commons by saying that Iraqi WMD could be launched within 45 minutes. ...The narrow charge was that the Downing Street spin machine...had bent the intelligence reports to win over doubters on the Labour benches." The article concludes that "Mr. Blair genuinely believed that there was a threat from WMD and he welcomed any information that bolstered that belief, whatever the pedigree."[45] In other words, the sole justification for British involvement in the war was due to the putative threat from weapons of mass destruction, not because of human rights abuses. Now facing national elections, it remains to be seen whether the British public will continue to support Blair.

As this article is being written, the war in Iraq is continuing with the death toll mounting daily. Elections are scheduled to be held in January 2005, although there are many (both in Iraq and outside) lobbying to push that back until some order is maintained within the country. Regardless of the alleged reason for the war, the question that remains unanswered at this time is what about the peace?

Conclusion

Gulner Aybet writes that "The aftermath of the Gulf War set an important precedent in intervention for the protection of human rights. As this exercise was carried out by the main proponents of the western security community – i.e., the US and its European allies – then the lessons derived from this exercise had to be incorporated into the institutions they were trying to promote beyond Cold War boundaries. However, the lessons that had emerged were far from clear." And, as she reflects on the first Gulf War of 1991, she also notes that: this legal blessing of the UN [to restore peace and security] did not authorize the coalition to overthrow the regime of Saddam Hussein in Iraq. The UN mandate extended only as far as the removal of Iraqi

occupation of Kuwait and no further. In this sense, the Iraqi government was also protected by Article 2(4) of the UN Charter which states that 'All members shall refrain...from the threat or use of force against the territorial integrity of political independence of any state...[46]

The point she makes here is an important one and one that is relevant to both Kosovo and to the war against Iraq: countries have only limited rights to invade the territorial integrity of another. If one state directly attacks another, then the international community has a right, in fact, an obligation to respond. However, if one country is perpetrating human rights abuses on its own peoples, then the circumstances under which one country can attack another is far murkier.

But more important, there is a question of responsibility that comes with international intervention. If/when the international system makes a decision to intervene in another sovereign state, regardless of the reason, then it has to take responsibility for what follows. While President George W. Bush resisted the idea of state-building, the lesson from Iraq is that it is impossible to avoid doing so when military actions result in the ouster of the existing governments. It means that there is an ongoing responsibility to ensure the protection of basic human rights, especially when that was the initial justification or rationalization for war. But it also raises the dangers of trying to "impose" democracy from outside, with little regard for the basic values or cultures of the peoples affected by the actions.

In her book on genocide, Samantha Power concludes that the United States has been too tolerant of human rights atrocities and argues that "The personalities and geopolitical constraints influencing US decision-making have shifted with time, but the United States has consistently refused to take risks in order to suppress genocide." And she notes that the United States is not alone in this, but that the European nations have similarly ignored this despite the ongoing reminders that "never again" will genocide be allowed.[47]

The NATO nations ultimately did decide to intervene in Kosovo on the basis of human rights abuses, albeit only after the government leaders felt that the political winds would support that decision. This became a test of the contradiction between sovereignty and the use of force to protect basic human rights. The conflict with Iraq represents yet another shift in international norms in that it was a pre-emptive strike on a sovereign state justified on the need for self-protection from the threat posed to another sovereign state. The fact that there were human rights abuses taking place within the country became an ex post facto justification for the war.

But in going to war with Serbia, NATO and the United States also were willing to accept responsibility for the consequences, including sending peacekeeping troops (KFOR) into Kosovo to make sure that all sides complied with the terms of the peace agreement. When Bush was running for Presidency in 2000, he spoke of the need for the United States to keep away from the business of state-building in the belief that was not the responsibility of this country. Implicit in that, though, is the idea that the United States would return to a more isolationist foreign policy that would allow it to remain more removed from circumstances that would require ongoing involvement.

As President Bush, as other presidents before him, learned on September 11, events do intervene entailing the change in the direction of policy. Once the United States made the decision to go to

war and invade Iraq, including toppling its government, the country accepted a responsibility to help reconstruct the country. While it is too soon to tell what might happen in Iraq, what cannot be disputed is that the US altered significantly the direction of another sovereign nation.

Both the cases of Iraq and Kosovo suggest that there are fundamental shifts taking place within the international arena regarding the legitimacy of the use of military force by one state against another. It suggest that issues other than sovereignty are starting to prevail when decisions are being made about when one country could legitimately wage war against the another. But it also suggests that human rights abuses are not the only determining factors. And these do not surmount the importance, even primacy, of sovereignty.

If this precedent remains, then the order that has prevailed since 1648 would inevitably change; although it is not clear what shape it would take. Or, what is perhaps more likely, is that the pendulum will swing back to the point where the laws that have guided the international system and are codified in its multi-lateral organizations would continue to prevail. And that will leave unanswered the questions about how to deal with the tensions between sovereignty and humanity.

□

Endnotes

1. Paper originally prepared for presentation at the CEEISA/ISA International Convention, Budapest, Hungary, June 26-28, 2003. The author thanks Thomas Forsberg, of the George C. Marshall Center for European Security Studies, and the other members of the panel for their comments on that draft.

2. "Yugoslavia" consisted of the two republics of Serbia and Montenegro, in a loose federation. NATO began by bombing Serbia and then expanded the bombing to include targets in Montenegro as well.

3. K.J. Holsti, *International Relations: A Framework for Analysis,* Seventh edition, New Jersey: Prentice Hall,1995, p.46.

4. Ibid., p.47.

5. Ibid.

6. Charles Tilly, *Coercion, Capital and European States, AD 990-1992,* Cambridge, MA: Blackwell Publishers,1992, p.1.

7. Ibib., p. 4.

8. Conference for Security and Cooperation in Europe, 1975 Summit, Helsinki, 1August 1975, "Final Act," *http://www.osce.org/docs*.
9. Gulner Aybet, *A European Security Architecture after the Cold War: Questions of Legitimacy*, New York: St. Martin's Press, 2000, p.147.

10. Ibid., p.127.

11. Ivo H. Daalder and Michael E. O'Hanlon, *Winning Ugly: NATO's War to Save Kosovo Washington*, D.C.: Brookings Institution Press, 2000, p.9.

12. There are a number of excellent sources that detail the abuses that were taking place during this period in Kosovo. See, for example, Noel Malcolm, *Kosovo: A Short History*, New York: New York University Press, 1998 and Tim Judah, *Kosovo: War and Revenge*, New Haven: Yale University Press, 2000. Also see Daalder and O'Hanlon, *Winning Ugly*, op. cit., and Joyce P. Kaufman, *NATO and the former Yugoslavia: Crisis, Conflict and the Atlantic* Alliance, Lanham, MD: Rowman & Littlefield Publishers, 2002.

13. Op.cit., No.11, p.45.

14. Carla Anne Robbins and Thomas E. Ricks, "NATO Extends Airstrike Threat to Ensure Compliance in Kosovo," *The Wall Street Journal*, October 28, 1998, p.18.

15. Tim Weiner, "NATO Warns Time Is Short For Talks on Kosovo," *The New York Times*, November 11, 1998, A13.

16. Interview with the Author in Berlin in December 2000.

17. For more detail about the massacre at Racak and other acts of genocide in Kosovo, see Chapter 12, "Kosovo: A Dog and a Fight," in Samantha Power, *A Problem From Hell: America and the Age of Genocide* New York: HarperCollins Publishers, 2002.

18. *Statement by the NATO Secretary General* on Behalf of the North Atlantic Council, Brussels, Belgium, 17 January 1999," in NATO Communiques and Statements, 1999, Brussels, NATO Office of Information and Press, 1999, p.158.

19. Tim Judah, *Kosovo: War and Revenge*, New Haven, Yale University Press, 2000, p.197.

20 .This point was made and elaborated in an interview with the author in Washington, D.C. in August, 2000.

21. Interview with the Author in Berlin, December 2000.

22. Samantha Power, *A Problem From Hell: America and the Age of Genocide*, New York: Harper Collins Publishers, 2002, p.448.

23. Wesley K. Clark, *Waging Modern War*, New York: Public Affairs, 2001, p. 166.

24. Op.Cit., No.22, p.444.

25. Elizabeth Becker, "Pentagon Sees Risk in Going Into Kosovo," *The New York Times*, February 11, 1999, A7.

26 . "Kosovo on the Edge of the Knife," *The Economist*, March 20, 1999, 54-55.

27. Quoted in Judah, *Kosovo: War and Revenge*, p.227.

28. Op.Cit., No.22, pp.449-50.

29. Interview with the author in Washington, D.C., August 2000.

30. Op.Cit., No.13, p.99.

31. Op.Cit., No.19, p.285.

32. Kyril Drezov and Bulent Gokay, "Bombing Yugoslavia: It is Simply the Wrong Thing to Do," in *Kosovo: The Politics of Delusion*, ed. Michael Waller, Kyril Drezov and Bulent Gokay Portland, OR: Frank Cass, Publishers, 2001, p.80.

33. Ibid., p.81.

34. Op.Cit., No.19, p.84.

35. Op.Cit., No.22, p.448.

36. Quoted in Craig S. Smith and Richard Bernstein, "3 NATO Members and Russia Resist U.S. on Iraq Plans," *The New York Times*, February 11, 2003. Article 4 of the Treaty states that "The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the parties is threatened." (NATO Handbook, p. 396) Turkey invoked Article 4 out of concern that a war with Iraq would spread across the border into Turkey.

37. Adam Clymer, "World Survey Says Negative Views of U.S. Are Rising," *The New York Times*, December 5, 2002, A11. For changes in public opinion .after the war in Iraq, see Christopher Marquis, "World's View of U.S. Sours After Iraq War, Poll Finds, in The New York Times, June 4, 2003, A19.

38. Quoted *The New York Times*, September 20, 2002.

39. Ibid.

40. Eric Schmitt and David E. Sanger, "Looting Derailing Detailed U.S. Plan to Restore Iraq,"*The New York Times*, May 19, 2003.

41. Quoted in "Will a Quartet of Euro-Enthusiasts Undermine NATO?" *The Economist*, May 3, 2003, 52.

42. Christopher Rhoads, "Powell, Germans to Meet in Bid To Improve Ties," *The Wall Street Journal*, May 16, 2003.

43. Mitchell Landsberg, "A Review of the Evidence," *The Los Angeles Times*, June 15, 2003, A10.

44. International Institute for Strategic Studies, *Strategic Survey, 2003/2*, Oxford, England: Oxford University Press, 2003, 156-7.

45. "Those Damned Elusive Weapons," *The Economist*, June 7, 2003, 49-50.

46. Op.Cit., No.9, p.115.

47. Op.Cit., No.22, p.503.