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**Necessary, not perfect:
NATO's war in Kosovo**

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Note on the author

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Introduction

NATO's war over Kosovo has taken quite a beating: Even Joseph Nye – formerly Assistant Secretary of Defense in the Clinton administration – appears able to justify the campaign solely by reference to the need for NATO cohesion and credibility.¹ Michael Mandelbaum, meanwhile, dubs NATO's campaign "a perfect failure",² while Edward Luttwak admonishes us all to "give war a chance".³

The approach shared by most of NATO's critics is to describe NATO's policies, detect their faults – defined as anything negative which happened after or while those policies were implemented – and then proceed to condemn them. Less time has been spent pondering possible alternatives.

Focusing on the deficiencies of policies to the exclusion of the practical dilemmas from which they originated, is a common pastime of academics writing on current affairs. Surely, however, a realistic policy evaluation should take as its point of departure the concrete situation faced by decision makers, and on that basis evaluate the wisdom of the policies chosen and the viability of potential alternative remedies. Such an approach would reflect the rather obvious insight that even if a given course of action had unpleasant and/or unforeseen consequences, those may have been preferable to the consequences of any other available alternative.

What, then, were the essential characteristics of the situation NATO was facing in Kosovo? Four aspects of the conflict seem to stand out: first, the parties to the conflict had incompatible strategic goals, and were willing to apply (disproportionate) force to achieve them; secondly, the conflict occurred in the immediate vicinity of NATO territory, in an area where NATO was already deeply involved; thirdly, the United Nations Security Council was – as a consequence of the Russo-Chinese unwillingness to contemplate the use of force – precluded from managing the crisis; and, lastly, since the main goal of military action was to avoid a humanitarian catastrophe, force – if it was to serve its

purpose – would have to be applied preventively.

Taking these aspects of the situation into account, the argument in the following is that no viable alternative to NATO's general course of action was available. That is not to say that modifications to that policy could not have improved the final outcome.

The ultimate goals of the Serb authorities and the local Albanian population regarding the final status of Kosovo were clearly incompatible. As to President Milosevic, his entire political career has been built on two main factors – manipulative utilization of Serb nationalism and indiscriminate organized violence – both lay at the heart of the conflict over Kosovo: The area is sacred to the Serbs for historical and religious reasons, and is legally part of Serbia. It was thus highly probable that the Milosevic regime, in the absence of direct international pressure, would respond to any sign of unrest in Kosovo with extended and indiscriminate use of force. It was equally clear that the regime would reject any political solution that did not *de facto* allow for continued unchecked Serb dominance in Kosovo, including the access to employ unchecked force as a response to secessionist activity.

Among the Kosovar Albanians, meanwhile, there had occurred a gradual loss of faith in the ability of the non-violent approach of President Rugova to gain any degree of autonomy for the province. The growing strength and assertiveness of the KLA meant that Milosevic – never one for peaceful conflict resolution – suddenly had attained the perfect pretext for reasserting Serb control in Kosovo by violent means. This obviously served to reinforce Albanian opinion in favor of independence.

Thus, the international community was faced with a conflict driven by local actors in the absence of forceful international intervention, and unavoidably exploding into an inferno of human suffering. By late September 1999 – winter approaching – according to UNHCR there were more than 250 000 refugees in Kosovo, 50 000 of whom had fled to the mountains and thus had no access to shelter, food or

medicines. Without NATO's intervention, that forced Milosevic to accept an international presence in Kosovo, thousands – possibly tens of thousands – of those people would surely have perished.

The prospect of yet another humanitarian disaster in the Balkans was bad enough in itself. The acuteness of the situation was enhanced, however, by the realization that the credibility and effectiveness of NATO's effort in Bosnia, and the international community's efforts in the Balkans in general, would have been completely ruined had the world stood by and watched – live on CNN' – a humanitarian disaster in Kosovo, instigated by the same people who were largely responsible for the massacres in Bosnia. Humanitarian concerns, the general stability of the Balkans, and – as a result of these – NATO's credibility, thus hinged on avoiding the worst in Kosovo. Not acting was not a serious option – the question was when, how, and under which authority.

The legal basis

If the UN Charter is to be understood literally, it seems clear that, short of (collective) self-defense under article 51, military force in international politics – to be lawful – must be mandated by the United Nations Security Council, alternatively by the General Assembly under a "Uniting for Peace"-type resolution of the kind that was passed early in the Korean war. Neither of the two constituted the basis for NATO's actions over Kosovo. The question, then, must be whether there exists, in accordance with the spirit if not the letter of international law, room for the use of military force of the kind NATO employed against Yugoslavia. At the heart of this question lies the possibility of the great power veto being exercised in the United Nations Security Council.

The paralysis of the Security Council during the Kosovo crisis constitutes an excellent example of how the veto powers – acting purely in their own national interest and with supreme disregard for the international rules and norms

the Council is supposed to uphold – can use their institutionalized privileges to sideline the UN.⁴ This illustrates that a literal adherence to the UN charter on this subject may have rather gruesome consequences: A Holocaust-like situation – given that it is confined within the borders of *one* state, and that *one* veto-power is ready to condone it – may occur unhindered by the international community. The problem is structural rather than situational – the conflict between human rights and the principle of non-intervention is in such cases per definition unbridgeable – and few experts would therefore be willing to adhere to such a narrow interpretation of the UN Charter.

Given the structural deficiencies of the UN, it seems necessary to leave an opening – under exceptional circumstances – for military action even in the absence of a Security Council mandate. The criteria for when such action would be acceptable, however, need to be quite specific in order to minimize excess. One possible approach is to accept that acute humanitarian concerns can – if the Security Council is deadlocked – in themselves be sufficient reason for international intervention in a conflict area. Four conditions should be fulfilled in such cases: a humanitarian catastrophe must be imminent; the government of the country in which that disaster is occurring must have demonstrated that it lacks either the will or the means to handle the situation; all other possible remedies must have been considered; and the intervention should be restricted to what is necessary to prevent disaster from erupting.⁵

It is this author's view that NATO's air war against Yugoslavia met these criteria. That, however, does not make NATO's campaign unproblematic. Most governments, including a majority of NATO ones, would probably reject the above suggestions out of hand: The Norwegian government, for example, preferred a rather spurious formal justification of NATO's actions – based mainly on UNSC resolution 1199 and General Secretary Koffi Annan's statements – rather than to accept humanitarian rationales as sufficient.

The main objection to the idea of humanitarian concerns being a sufficient basis for armed intervention, relates to precedence effects – the fear being that accepting situational rather than institutional legitimization will lead to widespread abuse. This view cannot be disregarded. Yet it seems to confuse publicly stated rationales with the underlying real ones.

What the skeptics fear is presumably *the abuse* of such a precedent, not the actual precedent. It is not humanitarian intervention as such that is feared, but interventions for selfish gain masquerading as humanitarian. Moreover, it is hard to imagine any state going to war *because* a precedent exists for humanitarian intervention. More substantial rationales will usually be present when a country's leaders choose such an extreme option. Moreover, a reference to the "Kosovo precedent" in cases where the real motives are selfish ones, will constitute a rather shallow excuse, easily seen through by the international community. A precedent for humanitarian intervention, then, will most likely neither lead to, nor constitute a credible excuse for, interventions that are not in fact humanitarian in their essence.

Those worrying about precedent should also consider the precedent of inaction – that the disproportionate and indiscriminate use of force against civilians meets no forceful international response in cases where the Security Council is divided.

A strong case can thus be made for NATO's intervention being justified on humanitarian grounds alone. It should also be noted that the Secretary General of the UN has come as close as he possibly can to condoning NATO's actions. At the centennial of the first International Peace Conference in The Hague Koffi Annan stated that – though the Security Council holds primary responsibility for maintaining international peace and security – "it was the rejection of a political settlement by the Yugoslav authorities which made this action necessary", and there "are times when the use of force may be legitimate in the pursuit of peace."⁶ In other words, as seen by the General Secretary of the

United Nations, NATO did what the Security Council – had it done its duty – should have mandated NATO to do.

It should also be remembered that the decision to intervene was made unanimously by the NATO Council, which counts among its members some of the most democratic and human rights-conscious countries in the world. (This seems a hard point for the opponents of intervention to grasp – most seem to consider the NATO action to have been a US affair. In military terms that may have been a justifiable view; in political terms, it most certainly was not. Consensus in NATO may well constitute as good an insurance against the abuse of power as the unlikely consensus among the veto powers of the Security Council, should a Kosovo-like situation reoccur.

Timing

Military intervention in Kosovo would have to be preventive. The prevailing consensus was that another Srebrenica should not to be allowed to happen. At the same time, a negotiated solution was clearly preferable. This dilemma was the main reason for NATO's apparent dithering in the year leading up to the bombing.

In early October 1998, however, at least 50,000 people, having been forced by the Milosevic-regime's indiscriminate and disproportionate use of violence to flee into the mountains, stood in immediate danger of freezing/starving to death. To prevent this scenario from unfolding, the NATO Council issued its Activation Order for the bombing of Yugoslavia. This provided US negotiator Richard Holbrooke with increased leverage, ultimately leading to the Holbrooke-Milosevic deal on the OSCE Kosovo Verification Mission. This agreement allowed in 2000 unarmed observers and, equally important, permitted free access for humanitarian NGOs. The agreement gave both the refugees, NATO, and the Milosevic regime much needed breathing space.

It soon became obvious that Milosevic neither intended to make the political conces-

sions that would be required for an acceptable *status quo*, nor to cease the disproportionate use of force against the Kosovar Albanians. The Milosevic regime at no time showed any sign of accepting NATO's basic demands – some kind of autonomy for the Kosovars, a withdrawal of the Serb army from Kosovo, unimpeded international access to the province, and verifiable and enforceable guarantees against the resumption of ethnic cleansing. At the same time, violence against the Kosovar Albanians gradually resumed, and the deterrent effect of NATO's bomb threats was lessened by the day as no action was taken. Given the history of the Milosevic regime, its diplomatic intransigence, and its appalling actions in the field, there was no reason to give it the benefit of the doubt.

Ends and means

It has been frequently argued that the NATO bombing campaign was the direct cause of the Serb campaign of ethnic cleansing of Kosovo which was instigated a few days before the bombing started. That is possible, though less obvious than it has been made out to be. Even if correct, however, this hardly constitutes a decisive argument against the bombing. It is the nature of war that things will almost per definition get worse before they get better. Thus, when making the decision to bomb, the judgment of the NATO Council implied that any undesirable risks relating to that course of action were worth taking, because the alternative – unimpeded Serb control over Kosovo, and the abuses of power coming with it – was unacceptable in the long run. It should be noted that this judgment was widely supported by those who suffered most from the ethnic cleansing, the Kosovar Albanians themselves. There are few instances in the history of warfare when it has been clear from the outset that the use of military force would minimize human suffering. The costs of combat will always seem uncertain, even prohibitively high, in the short run. In June 1941, for example, it must have seemed far from clear that the UK/French

decision to declare war on Germany over Poland two years earlier had been a wise one, judged either by the standards of humanitarianism or *realpolitik*.

An evaluation of the results of NATO's actions should take the alliance's stated goals as a starting point. These goals were, somewhat simplified, to get the Serb forces out, the Kosovar Albanian refugees home, and a NATO peacekeeping force⁷ and humanitarian NGOs in. All of these were achieved. The number of casualties resulting from the campaign is yet uncertain, but they were probably lower than they would have been by now had NATO not intervened. As to long term consequences, several scenarios could still unfold. Still, the uncertainty regarding developments in the region would most certainly have been even greater – and the running costs significantly higher – had the Milosevic-regime been given a free rein in Kosovo.

The basic point is that NATO had run out of options: the position of the Milosevic regime was secure – removing it was a long term goal unsuitable as a solution to an immediate problem; the same regime showed no sign of granting concessions that would rule out future atrocities; the international presence in Kosovo had no enforcement capacity, and was becoming less respected by the day; finally, NATO's threats to bomb were losing credibility for every day without action. The last point has tended to be overlooked in the debates, but is clearly important: It was not possible to preserve the *status quo ante* over Kosovo, since the credibility of NATO's threats, on which the uneasy balance rested, could not be sustained forever if action was not taken.

NATO, then, was right to use force at the time it did. That, however, does not absolve the alliance of responsibility for the manner in which it acted. On that count the critics have a strong case. Preparations for the flood of refugees in the early days of the bombing were insufficient – though NATO troops in Macedonia and Albania rapidly adapted to the new situation. The limitations on the air war made the cam-

campaign less effective – particularly against the Yugoslav forces who were conducting the ethnic cleansing – than it could have been.

A more serious fault in NATO's policies, however, concerns the explicit ruling out of ground troops. This decision both deprived the Alliance of its most valuable deterrent asset and gave the Yugoslav forces in Kosovo the opportunity to disperse and conceal, and thus lessen the effect of the air war. An early and credible threat of using ground troops could conceivably have avoided the war altogether, as President Milosevic may have concluded that such a conflict posed too great a challenge to his own power. That he finally yielded only when convinced that NATO was ready to move in on the ground, supports this conclusion. This was the cardinal weakness of NATO's Kosovo policies, for which all alliance governments must share responsibility.

The reasons for this position, however, are not hard to find. The need for alliance cohesion made it necessary both to minimize own losses and also limit the gravity of the military campaign. This need for cohesion, moreover, was magnified by domestic political opposition to the war in many NATO countries. Thus, the limited air war became the lowest common denominator. This should not set a precedent for future action, on the part of NATO or any other alliance. Less efficient crisis management and less decisive use of force may, however, be an unavoidable price to be paid for the increased legitimacy of multilateral action – one actor will almost per definition be more decisive than sixteen, or nineteen. This should induce caution as to the circumstances under which multilateral action should be taken.

Still, over Kosovo NATO had no choice but to act, and, as former Secretary General Javier Solana has pointed out,⁸ the Alliance achieved all its stated goals in Kosovo. Moreover, the overall effects of the campaign have almost certainly been positive, granted the situation that local actors had created on the ground.

Preventive military action – especially when it is conducted mainly for humanitarian pur-

poses rather than purposes of traditional national interest – will always be vulnerable to Monday morning quarterbacks claiming that developments without intervention would have been preferable. That is unavoidable when action is taken before disaster strikes. NATO, however, chose to choose sides, and – as the newly released UN report on the Srebrenica massacre concludes – impartiality is neither an honorable nor a workable option when faced with ethnic cleansing. The lesson from Kosovo should not be that NATO should not act to avert humanitarian catastrophes in the future, but that it should act with greater determination, and be better prepared to secure peace for all when peace arrives.

Notes

¹Joseph Nye, "Redefining the National Interest", *Foreign Affairs* 78/4, July/August 1999, pp. 22-35.

²Michael Mandelbaum, "A Perfect Failure", *Foreign Affairs* 78/5, September/October 1999, p. 2.

³Edward Luttwak, "Give War a Chance", *Foreign Affairs* 78/4, July/August 1999.

⁴Another excellent example is the Chinese veto against the prolongation of the mandate for UNPREDEP, the preventive UN mission in Macedonia, at the height of the Kosovo Crisis (February 28 1999). This veto was cast as a protest against Macedonia's granting of diplomatic recognition to Taiwan, and had nothing to do whatsoever with the situation in the area.

⁵A fifth criteria concerns the need to be reasonably certain that the costs of military intervention will not be higher than the costs of non-intervention. This, however, is not related to the question of legal basis – such considerations are as important with as without a Security Council mandate.

⁶United Nations Press Release, SG/SM/6997, 18 May 1999.

⁷It should be noted that NATO did not originally demand an international military presence in Kosovo. That demand was added only when the Milosevic-regime had repeatedly demonstrated that it would not voluntarily limit military actions against civilians in the province.

⁸Javier Solana, "NATO's Success in Kosovo", *Foreign Affairs* 78/6, pp. 114-120.

IFS Info - tidligere utkommet:

1991:

1. Div. forfattere: Perspektiver på Norges sikkerhet.
2. C. Archer Security Options for Denmark.
3. Div. forfattere: Perspektiver på Sveriges sikkerhet.
4. O. Riste De Gaulle, Alliances, and Minor Powers.
5. T. Huitfeldt, Sovjet i nord etter CFE.
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& J.K. Skogan
6. R. Kristiansen Norsk forsvarsindustri ved en skillevei?
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8. N.A. Røhne Norwegian Attitudes Towards the Briand Plan.

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