

# CONNECTIONS

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Central Asian Stances on the Ukraine Crisis: Treading a Fine Line? .....	1
<i>Emilbek Dzhuraev</i>	
Strategic Implications of the War in Ukraine for the Post-Soviet Space: A View from Central Asia .....	11
<i>Farkhod Tolipov</i>	
How Russia, Step by Step, Wants to Regain an Imperial Role in the Global and European Security System .....	21
<i>Zofia Studzińska</i>	
<b>A Look Back at NATO’s 1999 Kosovo Campaign: A Questionably “Legal” but Justifiable Exception? .....</b>	<b>43</b>
<i>Ralph R. Steinke</i>	
Kosovo 1999 and Crimea 2014: Similarities and Differences .....	57
<i>Pál Dunay</i>	
Conflict in Kosovo through the Conceptual Framework of Stakeholders .....	69
<i>Aneta Nowakowska-Krystman and Marzena Żakowska</i>	
NATO SeaSparrow Program: Cooperation Based on Trust .....	83
<i>Dabrowka Smolny</i>	
The Terrorist Threats Against Russia and its Counterterrorism Response Measures .....	95
<i>Joshua Sinai</i>	
GAO Report on Combating Terrorism .....	103
<i>Foreign Terrorist Organization Designation Process and U.S. Agency Enforcement Actions</i>	

## A Look Back at NATO's 1999 Kosovo Campaign: A Questionably “Legal” but Justifiable Exception?

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*If one can say of any war that it is ethical, or that it is being  
waged for ethical reasons, then it is true of this war.*

~ Vaclav Havel, April 29, 1999

It was the last European war in a bloody century of European wars. Less than ten years after the collapse of the Berlin Wall, the 1999 Kosovo War—Operation Allied Force, as the North Atlantic Treaty Organization (NATO) referred to it—was unique in many respects. From the perspectives of both international law and the law of armed conflict, it significantly challenged the limits of *jus ad bellum*, the international laws of war governing the circumstances under which nations are permitted to use force, as well as *jus in bello*, the laws of war relating to proper conduct in war.<sup>1</sup> After decades of a NATO-Warsaw Pact standoff in Europe and proxy wars elsewhere it was not self-defense, but rather humanitarian considerations, that drew the NATO Alliance, with the United States in the forefront, into this conflict.

While the seventy-eight-day NATO bombing campaign captured the world's attention, not long after its conclusion this military operation began to fade from the public memory. Beyond the Balkans, a little more than two years after the Kosovo War's conclusion, the traumatic events of September 11, 2001, would virtually remove global examination and recollections of the Kosovo conflict from the agenda. The United States and much of the world embarked on an entirely new, 21<sup>st</sup> century ideological and combative struggle: fighting the scourge of terrorism. Nevertheless, the Kosovo War has alternatively been referred to as a reference point by Americans who have sought a response to the Syrian conflict as well as by Vladimir Putin as justification for claims to Crimea and the “protection” of Russian nationals.

Some sixteen years after the Kosovo conflict and Operation Allied Force, it is worth asking: are there any insights to be recalled and gained from this conflict? What has been the war's effect on the law of international armed conflict to date? Is it right to re-

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<sup>1</sup> David Wippman, “Kosovo and the Limits of International Law,” *Fordham International Law Journal* 25 (2001): 129–150, available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1813&context=ilj> (accessed 14 January 2015).

fer to the Kosovo campaign as justification for the use of force, either implied or explicit, in Crimea or greater Ukraine?

It will be argued here that in spite of significant concern and warnings then that the Kosovo campaign would provide a dangerous precedent for international law and even global stability,<sup>2</sup> it has had a nominal if not negligible effect on the body of international law as informed by *jus ad bellum*. In spite of attempts to try to identify it as a precedent, the Kosovo campaign was indeed an *exception*. While it was characterized as a messy and “ugly” affair,<sup>3</sup> it did accomplish what it intended to do: stop the killing of potentially tens of thousands of Kosovar Albanians and the expulsion of hundreds of thousands more from Kosovo, ultimately providing them with a better and more secure life than was possible in the pre-Kosovo campaign period.

### The Roots of Conflict

The deep roots of the 1999 Kosovo War can be traced back to 1389 and the Battle of Kosovo, when, not far from present-day Pristina, the Serbs attempted to fend off the encroaching Ottoman Turks, with Albanians fighting on both sides. After a subsequent battle in 1448 between the Ottoman Turks and the Hungarians, however, the Ottomans came to dominate the region for centuries. Over time, the Albanians, who constituted the majority in the Kosovo territory, were portrayed as Ottoman sympathizers by the Serbian and mostly Orthodox Christians. The following centuries only contributed to this portrayal and associated hatreds, fears, and myths. With time, Kosovo became heavily populated with Albanians and in the 17<sup>th</sup> century the Serbs were forced out by the Ottomans. However, with the Ottoman Empire reaching its high water mark outside the gates of Vienna in the Ottoman-Hapsburg War of 1683–1699, the Serbs, Montenegrins, Bulgarians, and Greeks drove the Ottoman armies out of the Balkan Peninsula in the early 20<sup>th</sup> century.<sup>4</sup>

Both Albanians and Serbs, to varying degrees, had long-standing claims to the province.<sup>5</sup> Serbia gained control over Kosovo in 1912, but that was also the same year that Albania was declared an independent state, with a large population of Albanians residing in Kosovo. During World War I, Serbia lost control of Kosovo and after the Great War both Kosovo and Serbia became part of a greater Yugoslavia, with Kosovo becoming a province of Serbia. During the 20<sup>th</sup> century, the Serbs made several attempts to expel Albanians from Kosovo, yet Albanians remained the majority population in the province throughout the century.

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<sup>2</sup> Tom Barry and Martha Honey, eds., “Bombs Away: A Call for the Unconditional Ending of the Bombing Campaign,” *Foreign Policy in Focus* 4:13 (May 1999): 3, available at <http://www.ciaonet.org/pbei/fpif/bat01/> (accessed 14 January 2015).

<sup>3</sup> Ivo H. Daalder and Michael E. O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo* (Washington, D.C.: The Brookings Institution, 2000), 6.

<sup>4</sup> *Ibid.*, 6–7.

<sup>5</sup> *Ibid.*

In the 1980s, however, several major events led to the conflagration that erupted in the following decade. In 1981, not long after the death of Tito, Albanian students demonstrated against Yugoslavian authorities in Pristina. In 1987, Slobodan Milošević became president of Yugoslavia, and in 1989 he stripped Kosovo of the autonomy it had retained since the adoption of the 1974 Yugoslavian constitution. Serb oppression increased while Albanians continued to build parallel state structures. By the mid-1990s, Albanian desires for separation were well beyond a plurality, with a 1995 poll demonstrating that 57 percent wanted outright independence, while the remaining 43 percent wanted to join Albania.<sup>6</sup>

In the early 1990s, there were signs—and U.S. concerns—that conditions in Kosovo could cause a violent eruption. Those concerns were spread over the greater region, with significant Albanian populations residing beyond Albania in Greece, Macedonia, and Yugoslavia. At the time, the United States was essentially taking a “hands off” approach to the Balkans, while significantly drawing down forces from Europe in anticipation of a peace dividend. However, having received indications that the Serbian government was seriously contemplating a violent crackdown on Kosovo, President George H.W. Bush, in a “Christmas letter” to Serbian President Milošević, warned that in the event of an escalation in violence against the Kosovar Albanians, “U.S. military force would be aimed against Serbian troops in Kosovo and in Serbia itself.”<sup>7</sup>

In the mid-1990’s, the focal point for establishing stability on the Balkan Peninsula became the war in Bosnia and the resulting Dayton Peace Accords. Kosovo, while certainly of concern to the United States and its European allies, was not the most significant issue of the day and the Serbia-Kosovo problem essentially received short shrift in U.S. and European policy approaches. U.S. and European policy was limited to rhetorical pressure on Belgrade to recognize Kosovo Albanian human rights and improve treatment of Albanians in Kosovo, as well as working towards eventual Kosovo autonomy or independence.<sup>8</sup>

## The March to War

Violence among Serbs and Albanians in Kosovo significantly increased by 1998. Indeed, 1998 was a pivotal year on the road to 1999 and NATO’s Operation Allied Force. The U.S. increased its direct diplomatic engagement, warning Milošević of consequences if the potential “downward spiral of darkness” continued. On February 28, 1998, Serb forces killed some two dozen people in Qirez and Likosane. A few days later a major Former Republic of Yugoslavia (FRY)/Serbia military assault was conducted in the Drenica Valley, leaving another fifty-one people dead, including eleven children and

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<sup>6</sup> Ibid., 8.

<sup>7</sup> Art Pine, “Bush Warns Serbia Against Escalation,” *Los Angeles Times*, 29 December 1992, available at [http://articles.latimes.com/1992-12-29/news/mn-2755\\_1\\_bush-administration](http://articles.latimes.com/1992-12-29/news/mn-2755_1_bush-administration) (accessed 14 January 2015).

<sup>8</sup> Daalder and O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo*, 9.

twenty-three women. A week later, eighty-five more people were murdered by Serb security forces.<sup>9</sup>

Meanwhile, on a lesser scale, the Kosovo Liberation Army (KLA) was also perpetrating attacks on Serbian security forces. So it went through much of 1998, with the resulting clashes between Serbian forces, Albanian civilians, and the KLA, resulting in the deaths of more than 1,500 Kosovar Albanians, with more than 400,000 driven from their homes by Serbian forces, many into the mountains or neighboring countries such as Albania.<sup>10</sup>

On 28 May 1998, the North Atlantic Council, meeting at the foreign ministers level, responded to the conflagration developing on its borders. At this meeting, it laid out two fundamental objectives: to help achieve a peaceful resolution by contributing to the international community and response, and to promote stability and security in neighboring countries, with particular emphasis on “Albania and the former Yugoslav Republic of Macedonia.”<sup>11</sup>

In September 1998, through UN Security Council Resolution (UNSCR) 1199, the United Nations expressed grave concern about the “excessive and indiscriminate use of force by Serbian security forces,”<sup>12</sup> resulting in “numerous civilian casualties” and the “displacement of over 230,000 person from their homes.” It also noted deep concern about the “rapid deterioration in the humanitarian situation” as well as expressed alarm concerning the “impending humanitarian catastrophe” and the “need to prevent this from happening.” It further reaffirmed the sovereignty and territorial integrity of the Federal Republic of Yugoslavia.

The situation continued to deteriorate, however, and by October 1998, in a move to give credence to ongoing diplomatic efforts to stop the violence and allow refugees to return to their homes, the NATO Council authorized activation orders for airstrikes against Serbian military forces. At the last moment, however, following diplomatic initiatives by NATO Secretary General Javier Solana, U.S. Envoys Richard Holbrooke and Christopher Hill, among others, Milošević agreed to comply and the airstrikes were deactivated.<sup>13</sup>

Two further actions were taken in the late fall of 1998: the establishment of a Kosovo Verification Mission (KVM) to observe compliance on the ground, as well as a NATO-led aerial surveillance mission. UNSCR 1203 endorsed both of these actions.<sup>14</sup>

In early 1999, after acts of provocation on both sides and the “excessive and disproportionate use of force by the Serbian Army and Special Police,” the violence in

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<sup>9</sup> *Ibid.*, 27–28.

<sup>10</sup> “NATO’s Role in Relation to the Conflict in Kosovo,” 15 July 1999, available at <http://www.nato.int/kosovo/history.htm> (accessed 15 January 2015).

<sup>11</sup> *Ibid.*

<sup>12</sup> United Nations Security Council Resolution 1199 (S/RES/1199), 23 September 1998, available at <http://unscr.com/en/resolutions/doc/1199> (accessed 15 January 2015).

<sup>13</sup> “NATO’s Role in Relation to the Conflict in Kosovo.”

<sup>14</sup> United Nations, Security Council, Resolution 1203 (S/RES/1203), 24 October 1998, available at <http://unscr.com/en/resolutions/doc/1203> (accessed 15 January 2015).

Kosovo again increased dramatically.<sup>15</sup> This included the massacre of forty-five Kosovo Albanians by the Serbs on 15 January 1999 in retaliation for Albanian killings of four Serbian policemen.<sup>16</sup>

As the months wore on, many NATO officials increasingly came to the opinion that the Alliance had to act, believing also that the reluctance to do so promptly and forcefully in the early 1990s led to many thousands of deaths that could have potentially been avoided, particularly in Bosnia. The specter of the Srebrenica massacre and the conflagration that consumed Bosnia in the early 1990s provided the primary impetus to act in order to avoid the possible deaths of hundreds, and perhaps even thousands, of Kosovar Albanians, as well as a major humanitarian crisis. Farther afield were also considerations of the fairly recent Rwanda genocide, in which the world stood by as hundreds of thousands were massacred. These factors led to a major diplomatic push for peace negotiations, which were held in Rambouillet, France, from 6 to 23 February, 1999, as well as a subsequent conference in Paris from 15–18 March between Kosovo and FRY/Serbia.<sup>17</sup>

These talks were brokered by the Contact Group, consisting of France, Germany, Italy, Russia, the United Kingdom, the United States, the OSCE, and UN Security Council representatives. The talks centered on the demilitarization of the KLA, a partial withdrawal of FRY/Serb forces and heavy weapons from Kosovo, and a timeline for the “final settlement” of Kosovo, which was to be determined in three years. The Rambouillet talks ended without resolution, with the Albanian delegation prepared to sign subject to final consultation at home and the FRY/Serbia delegation pressing for additional talks.<sup>18</sup>

During the break between the Rambouillet talks and those held in Paris, however, FRY/Serbia concentrated its troops along the border with Kosovo and in Kosovo itself. Given this military pressure on Kosovo, on 20 March the OSCE Kosovo Verification Mission was withdrawn from the region. After the Paris talks closed without success, FRY/Serb military forces launched an offensive against entire villages and civilian installations. Within days, over 200,000 people had fled, many into the nearby mountains or across the borders and into Albania, Macedonia and other countries in the region.<sup>19</sup>

The Contact Group negotiators, however, were not yet finished, making a last ditch effort to achieve a resolution. Led by Holbrooke, a last attempt was made on 22 March to persuade Belgrade to cease offensive operations and accept the Rambouillet accords. No progress was made; later that day Holbrooke returned to NATO headquarters in Brussels and rendered a briefing to senior NATO officials regarding his discussions. On

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<sup>15</sup> “NATO’s Role in Relation to the Conflict in Kosovo.”

<sup>16</sup> Stephen T. Hosmer, *The Conflict over Kosovo: Why Milošević Decided to Settle When He Did* (Santa Monica, CA: RAND, 2001), 7.

<sup>17</sup> Marc Weller, “The Rambouillet Conference on Kosovo,” *International Affairs* 75 (1999): 221–223, available at [www.chatamhouse.org/sites/default/files/public/International Affairs/Blanket File Import/inta069.pdf](http://www.chatamhouse.org/sites/default/files/public/International%20Affairs/Blanket%20File%20Import/inta069.pdf) (accessed 14 January 2015).

<sup>18</sup> *Ibid.*, 231–233.

<sup>19</sup> *Ibid.*, 235–236.

23 March, 1999, British Prime Minister Tony Blair stated, “We must act – to save thousands of innocent men, women and children.” On that same day, NATO issued the order to initiate air strikes for Operation Allied Force.<sup>20</sup>

Thus, the proximate cause of war erupting in Europe and on NATO’s doorstep in 1999, after a very tumultuous 1998 in Kosovo and a decade of violence on the Balkan Peninsula, was Milošević’s refusal to accept NATO’s terms at Rambouillet and his subsequent drive to forcibly and violently rid Kosovo of Kosovar Albanians.<sup>21</sup> For NATO’s part, the driving force for action was humanitarian reasons. To a large degree, this anticipatory and preemptory action served to help Kosovar Albanians avoid even further violence and trauma. NATO’s actions in March 1999 and in the weeks that followed were seen in some, if not many, quarters to be a violation of international law; the legal basis of that action was debated then as it is now. FRY/Serbia, which included Kosovo, was a sovereign state that had not attacked another state. No NATO nation could directly claim a defensive response. At the same time, many quarters also recognized an imperative to act, an imperative to avoid a repeat of the Srebrenica massacre as well as a massive humanitarian crisis.

### **The Kosovo Campaign: International Legal Implications**

In spite of the argument in some corners of NATO that because FRY/Serbia’s military actions threatened peace and stability on the Balkan Peninsula, and that this potential diffusion of instability through Macedonia could threaten NATO member Greece, NATO did not invoke—nor did it have cause to do so—Article 5 of its charter. Arguably the cornerstone of the NATO alliance, Article 5 essentially states that an attack on *any* Alliance member is an attack on NATO as a whole, and will be responded to collectively by NATO member states, including with military force. This is the “collective defense” provision of the charter and the originating essence of NATO, meaning that Article 5 (which is based on the UN Charter’s Article 51) is valid if a NATO nation is externally attacked by a non-NATO state.<sup>22</sup> This, of course, did not happen in Kosovo as no NATO member was directly attacked or faced the threat of imminent attack.

Fearing vetoes by China and Russia, NATO neither sought nor received UN Security Council approval for its actions under Chapter VII of the UN Charter. Accordingly, from an international law perspective, NATO’s actions on that day and in the ensuing eleven weeks were highly controversial, and were judged certainly by some, if not many, observers to have been a violation of *jus ad bellum*.<sup>23</sup>

As a foundation of *jus ad bellum*, the UN Charter mandates that any non-defensive use of force must be approved by a Security Council supermajority, including approval by all of the Council’s permanent members. Written and approved in the aftermath of

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<sup>20</sup> Ibid., 235–236.

<sup>21</sup> Hosmer, *The Conflict over Kosovo*, 20–21.

<sup>22</sup> “Collective Defence – Article 5,” 18 February 2005, available at <http://www.nato.int/terrorism/five.htm> (accessed 15 January 2015).

<sup>23</sup> Barry and Honey, eds., “Bombs Away.”

World War II and the development of the atomic bomb, this was intended to be an international safeguard against interstate violence potentially escalating out of control. While the Charter does express concern for human rights, its fundamental purpose was focused elsewhere: to “save succeeding generations from the scourge of war.”<sup>24</sup>

The Charter’s main calculus, in effect, is that the constraints on the use of force and resulting potential international escalation far outweigh any reasons to dilute these constraints for humanitarian purposes.<sup>25</sup> The UN Charter did provide a means for legitimizing NATO’s military actions, however. If one accepts that NATO meets the definition of a regional organization, NATO’s actions could have been sanctioned under Chapter VIII of the Charter. However, under Article 53, the Charter prohibits enforcement actions by regional organizations (as opposed to self-defense) unless authorized by the Security Council. Where humanitarian circumstances are of such grave and widespread consequence that international military action is required, the Security Council may accordingly approve such action.

If one disputes that NATO is a regional organization, then Article 42 could also potentially have sanctioned NATO’s actions with a Security Council finding that the situation constituted a “threat to the peace, breach of the peace or act of aggression,” per Article 39. In the case of Kosovo, if the actions were purely designed to drive FRY/Serbia to the negotiating table, it would require Security Council authorization under Article 53. However, if NATO action was mainly intended to ensure humanitarian relief for the people of Kosovo, one could also argue that Security Council authorization was not required.<sup>26</sup>

NATO did not easily arrive at the ultimate approach taken by its members. In fact, it was quite divided on the international legality of taking action without any reason to invoke Article 5, or said another way, without any real self-defense basis. France and Germany, in particular, argued for seeking Security Council authority and were supported by other nations in the Alliance. At the same time, China and Russia made it clear that they would trump any such attempt to gain Security Council authority.<sup>27</sup>

However, in spite of NATO’s decision to circumvent any concerted effort to comply with international law pursuant to the UN Charter, there was relatively widespread support in the international community for NATO’s actions. One reference for this support was evident in the vote on a draft Security Council resolution that would have condemned NATO’s actions early in the bombing. This vote essentially told two stories: one that said that a majority of the members supported action and another that said that two key permanent Security Council members did not support it. China and Russia, as

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<sup>24</sup> Wippman, “Kosovo and the Limits of International Law,” 131.

<sup>25</sup> Ibid.

<sup>26</sup> Frederic L. Kirgis, “The Kosovo Situation and NATO Military Action,” *American Society of International Law* (March 1999), available at [http://dspace.cigilibrary.org/jspui/bitstream/123456789/10010/1/The Kosovo Situation and NATO Military Action.pdf](http://dspace.cigilibrary.org/jspui/bitstream/123456789/10010/1/The%20Kosovo%20Situation%20and%20NATO%20Military%20Action.pdf) (accessed 15 January 2015).

<sup>27</sup> Daalder and O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo*, 36.



well as Namibia, voted for the draft resolution condemning the bombing, while twelve other nations voted not to condemn NATO's action, thus defeating the draft resolution.<sup>28</sup>

Individual voices in support of NATO were also quite strong. In his foundational "Doctrine of the International Community" speech delivered in Chicago, British Prime Minister Tony Blair assailed the "awful crimes" and "ethnic cleansing, systematic rape, [and] mass murder" that were being perpetrated against Kosovar Albanians. He further referred to it as a "just war," not based on territorial ambitions by NATO but rather on shared values.<sup>29</sup> While not everyone agreed with his use of the term "ethnic cleansing," U.S. President Bill Clinton, with the bombing underway, fully supported NATO's efforts to stop the "real enemy" and a "poisonous hatred unleashed by cynical leaders," while also leaving the door open for future assimilation of Serbia into Europe.<sup>30</sup>

However, there were critics of the NATO intervention.<sup>31</sup> NATO was assailed for breaching international law, led by "the arrogance of power" of the United States. One critical view was that NATO's actions, on the eve of the fiftieth anniversary of its founding, mainly served as a means for NATO to reinvent itself for the evolving post-Cold War era.<sup>32</sup> However, it must be recalled that NATO officials in many countries of the Alliance expressed grave concern about previous Western reluctance to intervene early and forcefully in Bosnia, thus resulting in thousands of deaths that could have been avoided.<sup>33</sup> In the end, NATO did unanimously support the action to intervene.<sup>34</sup>

Further, by March 1999, when NATO military action was initiated, previous UN actions had resulted in no definitive results in precluding FRY/Serbia from violently expelling Kosovar Albanians from Kosovo. In March 1998, through Resolution 1160, the Security Council imposed an arms embargo on the Federal Republic of Yugoslavia, "calling upon states to act strictly in conformity with this resolution." However, the UN did not allocate any broad competence for enforcing this resolution.<sup>35</sup>

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<sup>28</sup> Wippman, "Kosovo and the Limits of International Law," 134.

<sup>29</sup> Tony Blair, "Doctrine of the International Community," speech to the Economic Club of Chicago, 22 April 1999, available at <http://www.britishpoliticalspeech.org/speech-archive.htm?speech=279> (accessed 15 January 2015).

<sup>30</sup> William Clinton, "Crisis in the Balkans; Clinton's Remarks in Defense of Military Intervention in the Balkans," *New York Times*, 14 May 1999, available at <http://www.nytimes.com/1999/05/14/world/crisis-balkans-clinton-s-remarks-defense-military-intervention-balkans.html> (accessed 16 January 2015).

<sup>31</sup> Louis Henkin, "Kosovo and the Law of 'Humanitarian Intervention'," *The American Journal of International Law* 93 (1999): 824, available at <http://www.jstor.org/stable/2555346> (accessed 15 January 2015).

<sup>32</sup> Barry and Honey, eds., "Bombs Away."

<sup>33</sup> Wippman, "Kosovo and the Limits of International Law," 132.

<sup>34</sup> Madeleine Albright, *The Mighty and the Almighty. Reflections on America, God, and World Affairs* (New York, NY: Harper Collins Publishers, 2006), 62.

<sup>35</sup> Christine M. Chinkin, "Kosovo: A 'Good' or 'Bad' War?" *The American Journal of International Law* 93:4 (October 1999): 841–847, available at <http://www.jstor.org/stable/pdfplus/2555349.pdf?acceptTC=true> (accessed 16 January 2015).

Later, UNSCR 1203 of October 24, 1998 also had negligible effect. It directed obligations against the “Kosovo Albanian Leadership” to comply with all relevant UN resolutions, to condemn all terrorist actions, and to pursue its goals through peaceful means only. Meanwhile, the Federal Republic of Yugoslavia was also required to comply with relevant resolutions, to be mindful of its main responsibility to secure diplomatic personnel, and to return refugees to their homes.<sup>36</sup>

In March 1999, many NATO officials believed—mistakenly, in the end, to be sure—that Milošević would back down again as he had done the previous October and after NATO authorized the activation of aircrews and potential airstrikes against FRY/Serbia. While Holbrooke personally and quite unequivocally delivered the threat of NATO bombs to Milošević, emphasizing that the bombing would be “swift, severe and sustained,” it was not enough to deter Milošević.<sup>37</sup>

A post-war analysis of Milošević’s calculus revealed that he, too, had a mistaken belief: namely, that NATO’s bombing would be neither severe nor sustained. Further, Milošević believed that over time he could also undermine NATO’s unity. He was, of course, ultimately wrong on both counts.<sup>38</sup>

While the bombing itself did contribute in some degree to the refugee crisis that ensued, so did Milošević’s operational plan—Operation Horseshoe—designed to expel most of the ethnic Albanian population from Kosovo. More than 10,000 people are believed to have died at the hands of FRY/Serbia forces. While the NATO bombing contributed to the evacuation of the area by the tens of thousands, it was the terror and trauma that was widely inflicted on the Kosovar Albanians that drove most of them into the mountains or beyond Kosovo’s borders.<sup>39</sup>

In May 1999, after weeks of incessant bombing by NATO, a series of events took place that contributed to Milošević’s reckoning that he needed to negotiate for peace and cease and desist his military operations or face the destruction of the FRY/Serbia military forces.<sup>40</sup> On 10 May 1999, NATO began to publicly discuss a ground invasion option. By 12 May, there were 25,000 NATO forces on the ground in Albania and Macedonia; on 21 May, the U.S. administration announced that it would push NATO allies to increase that number to 50,000. On 19 May, Milošević began to engage Russian envoy Viktor Chernomyrdin about a potential peace plan “based on G-8 principles.” By 26 May, the KLA began concerted operations against FRY/Serbian forces in Kosovo. On 3 June, the Serbian parliament approved a NATO-proposed peace plan, and on 10 June 1999, NATO suspended air operations.<sup>41</sup>

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<sup>36</sup> Ibid., 842.

<sup>37</sup> Hosmer, *The Conflict over Kosovo*, 20.

<sup>38</sup> Ibid., 20–22.

<sup>39</sup> Wippman, “Kosovo and the Limits of International Law,” 134.

<sup>40</sup> Hosmer, *The Conflict over Kosovo*, 40–47.

<sup>41</sup> Daalder and O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo*, 233.

## Kosovo War as Precedent?

With the cessation of the bombing, the follow-on deployment of NATO (and Russian) forces into Kosovo and the return of the vast majority of refugees to their homes, NATO had essentially accomplished its mission: the lethal threat to the people of Kosovo was effectively removed and the great majority of the 1.3 million people that had been driven from their homes were able to return.<sup>42</sup> While the Kosovo War did damage relations with China and Russia, those damages were effectively repaired within months.<sup>43</sup> With the events of September 11, 2001, the world had far greater challenges to international order and security with which to be concerned.

In the intervening years, the Kosovo War has on occasion been referred to as a precedent for potential or realized state action. In August 2013, during U.S. presidential administration deliberations on Syria and on an appropriate response to suspected Syrian chemical weapons use, the NATO air war in Kosovo was identified as a “possible blueprint.” It was recognized by President Obama that Russia would likely veto any attempt to obtain a UN mandate for action. With that realization, it was also clear that the President had serious questions about international law violations, as well as the degree to which broad international support would be required to legitimize U.S. actions. Ironically, these deliberations also included the fact that Russia had longstanding ties to Syria, much as it did to Kosovo.<sup>44</sup> In the end, military force was not employed.

In March 2014, Russian President Vladimir Putin made reference to the Kosovo War as a precedent, deriding the increasingly prevalent notion that it was an exception. He stated that the ongoing Ukraine situation is “like a mirror” reflecting “what is going on and what has been happening in the world over the past several decades,” whereupon the first example he provides is “Yugoslavia; we remember 1999 very well.”<sup>45</sup> With this comment directed against the United States, he notes that the U.S. forced “necessary resolutions from international organizations” and, barring that, ignored and bypassed the UN Security Council. The lack of a UN Security Council resolution justifying U.S. and NATO action in Kosovo was also noted.<sup>46</sup>

While his latter point is evident, in comparing Ukraine to Kosovo, this commentary leaves out several facts bearing upon each country’s situation. In Ukraine, there is no evidence that the Ukrainian government was trying to forcibly or systemically “ethnically cleanse” the country of Russian inhabitants. In Kosovo, while the KLA cannot

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<sup>42</sup> Ibid., 4.

<sup>43</sup> Ibid., 21.

<sup>44</sup> Mark Landler and Michael R. Gordon, “Air War in Kosovo Seen as Precedent in Possible Response to Syria Chemical Attack,” *New York Times*, 23 August 2013, [www.nytimes.com/2013/08/24/world/air-war-in-kosovo-seen-as-precedent-in-possible-response-to-syria-chemical-attack.html](http://www.nytimes.com/2013/08/24/world/air-war-in-kosovo-seen-as-precedent-in-possible-response-to-syria-chemical-attack.html) (accessed 16 January 2015).

<sup>45</sup> For further discussion, compare “Full Text of Putin’s Speech on Crimea,” *Prague Post*, 19 March 2014, available at <http://praguepost.com/eu-news/37854-full-text-of-putin-s-speech-on-crimea> (accessed 29 March 2014).

<sup>46</sup> Ibid.

fully escape some degree of having episodically prodded FRY/Serbia military responses, the FRY/Serbia forces responses far exceeded any relation to proportionality, not only killing but also terrorizing thousands of Albanians, as well as driving hundreds of thousands from their homes. In the case of Ukraine, there is no widespread humanitarian crisis as was evident in Kosovo.

Another point is the collective nature of NATO's action. Multiple nations were involved in Operation Allied Force, as well as the deployment of forces to Kosovo thereafter (which included Russia). This was not the case of a single state taking unilateral action against a neighboring state. Further, while NATO neither sought nor received UN Security Council approval for its actions, the humanitarian crisis and efforts to ameliorate it were clearly underwritten by UNSCR 1239, issued on 14 May 1999.<sup>47</sup>

There is serious doubt that the UN Security Council will similarly underwrite any Russian actions based on military force, covert or otherwise, with respect to Ukraine and Crimea. In Ukraine, it is evident that Russia is trying to turn back the clock by trying to reestablish or "re-extend" its sphere of influence, and purporting to do so under the guise of protecting its citizens. In fact, in the past sixteen or so years, there has been very little accorded to the Kosovo War as a precedent for international law and, more specifically, *jus ad bellum*.

## Conclusion

The 1999 war in Kosovo was exceptional in many respects. It was NATO's first engagement with military force beyond its borders. It was not based on invoking Article 5, the primary reason for NATO's existence. It was based on a relatively and commonly-perceived need for collective military intervention based on humanitarian needs. It happened in Europe's back yard and was initiated in a part of the world that had not seen war in roughly fifty years.

However, in terms of *jus ad bellum*, the aspect of the international law of armed conflict that governs the circumstances under which nations are permitted to use force, NATO's actions were criticized by some as a violation of those laws. At the foundation of these international laws is the UN Charter, which places—as it should—a premium on ensuring interstate violence does not potentially escalate out of control. In so doing, it places the need for direct force in alleviating humanitarian suffering in a secondary role. NATO and Operation Allied Force, by not obtaining Security Council approval for applying force for non-defensive purposes, challenged and perhaps even crossed these UN-established boundary lines. However, in the end, potentially tens of thousands of lives were saved and human suffering on a wide scale was significantly reduced as well as preempted.

While there have been some references to NATO's 1999 actions as providing a precedent, there has been little if any evidence to confirm that assertion and the angst that was originally prevalent among critics of the NATO action in 1999. If anything, the

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<sup>47</sup> United Nations Security Council Resolution 1239, 14 May 1999, available at [www.nato.int/kosovo/docu/u990514a.htm](http://www.nato.int/kosovo/docu/u990514a.htm) (accessed 16 January 2015).

Kosovo War did, however, move the bar somewhat in countenancing humanitarian intervention, based on real humanitarian crises and in the absence of a UN mandate. In the Kosovo War context, in 2006 former U.S. Secretary of State Madeline Albright referred to humanitarian intervention as a duty “to defend the vulnerable other.”<sup>48</sup> This is also evidenced by the fairly recent and emerging concept of the “responsibility to protect” and intervene in humanitarian crises.

More recently, some have argued that in terms of the use of force and *jus ad bellum*, it would be far more effective if the United States was more transparent concerning when it might intervene, backed by the credibility that it will do so. Although some degree of ambiguity is useful and at times perhaps even necessary, if a state is trying to deter aggression, either internationally or from non-state actors, some likelihood of a cost should be explicit in the event that any “line in the sand” is crossed.<sup>49</sup>

Further, the United States should now firmly refute any claim concerning the “precedent” of Kosovo, to justify aggressive actions in Ukraine or beyond, such as against the Baltic states. It was clear in Kosovo that NATO’s actions were based on irrefutable evidence that the Serbs were killing, maiming, and driving thousands of Kosovar Albanians from their homes. Further, while numbers alone do not justify actions taken, this was nonetheless a collective and unanimous military action taken by nineteen sovereign states of the Alliance. As has been discussed, NATO’s actions in Kosovo, based primarily on humanitarian reasons, reflect no resemblance to Russia’s recent and potential actions vis-à-vis Ukraine or beyond, and the United States should not blush at making that point.

Finally, in the U.S. Department of Defense particularly there is an unquenchable culture of constantly extracting lessons learned from past conflicts. This is in the main very healthy for organizational growth and change, especially in an organization where lives are put at risk as a matter of course. However, one must at the same time be cautious about drawing or extracting the wrong lessons, or perhaps even manufacturing lessons, as opposed to observations, where there are few if any to be learned. An article in *The New York Times* on 23 August 2013 reports that the Obama administration was considering the Kosovo War as precedent for a possible response to chemical attacks by Syria.<sup>50</sup> However, a subsequent article in *The Economist* in September 2013 rightly contested whether there were “any relevant issues for Syria from the Balkans,” further noting that the geopolitical context was very different.<sup>51</sup> With this in mind, the Kosovo War did not provide the “dangerous precedent” that some claimed it would during the

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<sup>48</sup> Albright, *The Mighty and the Almighty*, 61.

<sup>49</sup> With regard to this point, the author wishes to acknowledge the thoughts of Professor Michael Schmitt, Charles H. Stockton Professor and Director of the Stockton Center for the Study of International Law, U.S. Naval War College, Newport, Rhode Island.

<sup>50</sup> Landler and Gordon, “Air War in Kosovo Seen as Precedent in Possible Response to Syria Chemical Attack.”

<sup>51</sup> “What Did America Learn from the 1999 Kosovo War,” *The Economist*, 11 September 2013, available at <http://www.economist.com/blogs/easternapproaches/2013/09/balkans-and-syria> (accessed 10 April 2015).

war and its immediate aftermath and, as such, Operation Allied Force proved to be an exception.

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