

Was NATO's Intervention in Kosovo in 1999 'Just'?

Written by Laura Wise

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LAURA WISE, JUN 21 2013

"From the start the Kosovo problem has been about how we should react when bad things happen in unimportant places."

Thomas Friedman (in Chomsky, 1999: 5)

On March 23rd, 1999, NATO began a three month long bombing campaign against the Federal Republic of Yugoslavia (FRY), allegedly to prevent the ethnic cleansing of Kosovar Albanians in the semi-autonomous region of Serbia by Slobodan Milosević's authoritarian regime. The decision to launch a 'humanitarian intervention', and the way the campaign was conducted, is a highly controversial subject, as is expected with such a 'diffuse concept' that contravenes the international norm of non-intervention (Holst, 1994: 138). Whilst NATO offer self-justifications which solidarist and liberal just-war scholars use to argue that the intervention had degrees of moral legitimacy, opponents from a variety of theoretical schools reject the moral right of NATO to launch what can be described as a 'humanitarian war' (Roberts, 1999:102).

To assess whether the decision to intervene can be considered morally just, this essay explores the various theoretical frameworks drawing from classical Just War theory which argue that military intervention on humanitarian grounds can be justified in certain circumstances, and applies them to NATO's role in Kosovo. It examines the counter-arguments from scholars who reject the idea that breaking the norm of non-intervention can ever be considered just, or subscribe to the criteria for just interventionism but do not consider NATO's case strong enough for it to qualify. It argues that although NATO's intervention in Kosovo fulfilled some of the criteria that would establish it as just, when Just War principles of proportionality, right intention and legitimate authority are critically applied to Operation Allied Force, the intervention fails to qualify.

Although the word 'humanitarian' does not appear in the question, it is first important to clarify that in most of the literature NATO's intervention in Kosovo is described as being subject to theories and analysis of humanitarian intervention. The concept of humanitarian intervention is highly contested, but the term itself is given a clear definition by Holzgrefe, who considers it to be 'the threat or use of force across state borders by a state (or groups of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied' (2003: 18). The reference to action taken by a 'group of states' is particularly relevant to NATO, as the force against FRY was carried out by a collective of states once the concerned parties failed to receive authorization for intervention by the United Nations Security Council, and therefore acted outside the realm of 'traditional' international law (Chesterman, 2001: 228). The intervention was also framed in the language of humanitarianism, with military action undertaken in reference 'to only certain kinds of moral concerns, such as protecting the welfare of some groups of people, where this involves preventing genocide, or preventing mass expulsions' (Chatterjee and Schied, 2003: 3).

Having clarified why and how the term 'humanitarian intervention' will be used throughout the essay, conceptual tools presented by modern Just War thinkers will now be examined to establish how the moral justness of an intervention can be judged. As Michael Walzer says, 'moral choices are not simply *made*; they are also judged, and so there must be criteria for judgement' (2006: 106).

The Just War tradition was originally developed to limit the devastation of conflict between two opposing forces by

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'enabling moral judgement in wartime' (Orend, 2006: 10), and was rarely applied to interventions carried out on 'humanitarian' grounds. However, since John Stuart Mill and Hugo Grotius' questioned the unchallenged norm of non-intervention among post-Westphalian states (Mill, 1859; Wheeler, 2000: 45), interventions, supposedly in response to mass or gross human rights violations by sovereign states against their own citizens, have become a frequent occurrence, especially since the end of the Cold War. Modern Just War theorists are faced with the 'creation of a human rights norm as an imperative for action' (Chatterjee and Schied, 2003: 5), further challenging the sanctity of state sovereignty, if a state is considered to have abandoned its responsibility to protect its citizens by actively violating their individual and communal rights.

The decision to engage in a defensive war on behalf of another state's citizens presents a moral dilemma, as aside from breaking the principle of non-intervention supported by the United Nations charter (Nardin, 2003), it is a radical revision of the *jus ad bellum* principle, which states that the only just cause for pursuing an act of war is *self-defence* (Guthrie and Quinlan, 2003). Therefore theories have emerged presenting criteria for '*jus ad interventionism*... the justification of the use of force for humanitarian or peaceful ends' (Lucas Jr., 2003: 74).

Walzer attempts this by revising aspects of the legalist paradigm, establishing conditions where intervention could be allowed, which draw from the principles of *jus ad bellum* (justice of war) and *jus in bello* (justice in war). He believes that state sovereignty *can* be violated to: assist secessionist movements which truly represent the political community; counter-balance prior interventions during civil wars, and (as is most often invoked to justify NATO's intervention in the FRY) to rescue innocent civilians from the threat of 'enslavement or massacre by the state' (Walzer, 2006: 90). This applies to acts against civilians which are so horrific that they 'shock the moral conscience of mankind', as long as there is a reasonable expectation of success by the interveners (2006: 107). Acts that qualify for communitarians as presenting an obligation to intervene include genocide, ethnic cleansing, and grave human rights abuses of which the population cannot defend themselves (Chatterjee and Schied, 2003: 3).

Wheeler expands on this solidarist understanding of *jus ad interventionism*, and establishes four basic criteria under which an intervention can be considered 'just'. He draws from Walzer's concept of the 'supreme emergency' (under which the threat faced is so great that the law of wars are not as stringently applicable in acts of self-defence), to argue that suspension of the legalist paradigm could apply even if the threat is faced by a population in a state other than your own, and therefore is a 'supreme humanitarian emergency' (2000: 34). He subscribes to the *jus ad bellum* principles that 'the use of force must be a last resort', and any military action must be proportional to the threat posed (2000: 34). His final criteria is that there is a 'high probability that the use of force will achieve a positive humanitarian outcome', (2000:34) which is a consequentialist stipulation supported by Seybolt, who believes that military action taken in the name of humanity 'without a reasonable prospect of success is unjustifiable' (Seybolt, 2007: 281).

Having established the prominent theoretical criteria of *jus ad interventionism*, these will now be applied to NATO's intervention in Kosovo, as the arguments made to assert NATO's moral legitimacy rely on its actions against the FRY meeting these criteria.

The principle most frequently cited as a justification for NATO's intervention is that there was an imminent 'humanitarian catastrophe' (Wheeler, 2000: 265), and that such serious and widespread oppression of Kosovar Albanians rendered external assistance necessary. In the immediate period before the decision was made to intervene, over 200, 000 Albanians in Kosovo were killed in the conflict between secessionist group the Kosovo Liberation Army (KLA), and the Serbian authorities (Chomsky, 2000: 104), in addition to the number of civilians displaced and detained. The reasonable expectation that, if left unchallenged, Milosevic would enact a brutal plan of ethnic cleansing to consolidate Serb control of the province (IICK, 2008: 88), was concerning enough to shock NATO's moral conscience into taking action to rescue the Albanian population. Despite NATO's condemnation of the KLA's violent methodology, which they argued provoked crackdowns by the authorities (IICK, 2008:88), the KLA could be considered a secessionist movement representing the victimised political community, and therefore intervention could be justified under Walzer's revision of the legalist paradigm.

Another condition which was arguably met is the principle of last resort. The prolonged and ineffective negotiations

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between Slobodan Milosevic and Richard Holbrooke at Rambouillet failed to provide reassurance that human rights abuses in the region would cease, leaving NATO with little alternative but to intervene more forcefully to reduce Serbia's military capabilities (Herring, 2001).

The final *jus ad interventionism* principle which was evoked in defence of NATO is that the condition of conducting an intervention through proportional means was upheld through the use of a strategic bombing campaign targeting military installations. It can be argued that any collateral damage resulting from this does not delegitimise Operation Allied Force, as under the Doctrine of Double Effect, civilian deaths can be considered just, even if expected, as long as they were unintended (Walzer, 2006). NATO stressed from the start of the operation that air strikes were aimed at legitimate military targets (Clark, 1999).

Despite the evidence presented to argue that its intervention in Kosovo was just, critical examination of Operation Allied Force indicates that the principles were not maintained as stringently as NATO claims. Several important principles of *jus ad bellum* are not included in Walzer and Wheeler's frameworks of criteria, and yet are very relevant to the moral decisions that were made regarding Kosovo. Therefore it will now be argued that the intervention was not just, as it failed to meet basic criteria of moral legitimacy.

The first principle which the intervention fails to maintain is the *jus ad bellum* principle of right intention. This is a highly disputed principle in relation to humanitarian militarism, as some theorists argue that although intention to reduce human suffering should be a prominent motive for intervening, it is unrealistic to expect morally pure motives (Weiss, 2007: 7), and that 'motives are not discredited just because they are shown to be mixed' (Ignatieff, 2003: 23). Consequentially, it is not necessary for the principle of right intention to be met, as it is unimportant that other motives brought about a positive consequence if humanitarian ends are achieved.

However, several scholars argue that a lack of right intention could endanger the strength of a just cause argument, and that in the case of Kosovo, NATO's motivations were primarily material and selfish. Johnstone goes so far as to accuse the United States (the main contributor to Operation Allied Force) of selectively using the humanitarian crisis to assert their influence over Europe and consolidate NATO's regional dominance (2002: 259), which is easier for Western powers to legitimise in the case of a so called 'rogue' state.

Selectivity as a moral concern is developed further when comparisons are made to other humanitarian catastrophes within the region earlier in the decade, and the wider world during 1999, which NATO chose not to intervene in. Critics highlight NATO's lack of action in defence of Kurdish or East Timorese human rights from abuse by the Turkish and Indonesian states simultaneous to Operation Allied Force (Fisk, 1999; Chomsky, 2000), and use this as evidence of the selectivity of the West's moral conscience. Serbians themselves raised the question as to 'why NATO had acted over Kosovo when nothing had been done to stop the Croatian government's ethnic cleansing of Serbs from the Krajina in 1995' (Roberts, 1999: 108). This also contributed to a feeling of victimisation by Serbians, and discredits NATO as prejudiced, making a peaceful solution even more improbable in the short term.

Although Western states can argue that they do not possess the capacity to intervene in every incidence of human rights abuses, and therefore should take the opportunity to do good where they can, Booth responds that this 'merely says that on a particular occasion one [NATO] acted in *accordance with* humanitarian objectives; not that as a matter of principle one [NATO] acts *out of respect* for them' (2001: 321). Meanwhile, Coady argues that it is important to monitor disparate responses to humanitarian crises, as from a classical utilitarianism perspective, total impartiality between targets of intervention is necessary to ensure the most good is achieved (2003: 284). Although the aforementioned critics are not denying that Kosovar Albanians suffered immensely under the Yugoslav regime, they highlight that the primary motive for an action will have bearing on the methods employed, and that for humanitarian interventions, the lack of humanitarianism at the heart of the decision could endanger civilian lives. Additionally, the lack of coherence when NATO has made moral judgements to intervene or not adds to the suspicion that humanitarianism was *not* the primary motive for military action in Kosovo.

Concern regarding risks that mixed motives could pose to the methods chosen and the affect this has on civilians (who are supposedly the primary concern) is demonstrated by NATO's failure to use proportional means. This is one

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of Wheeler's key criteria, and yet despite NATO's statements declaring their intention to minimise civilian casualties, the use of a strategic bombing campaign seriously challenges this rhetoric. Throughout the bombing campaign, NATO stressed that it was only targeting installations which could be used by the Serbian military to carry out atrocities against Kosovar Albanians. However, Schue claims that 'the majority of NATO's bombs and missiles struck Serbia proper and its infrastructure, not the Serbian military, paramilitary, and police in Kosovo', and accuses NATO of intentionally targeting electricity supplies to provoke civilian misery, hopefully pressuring Milosevic into surrendering to NATO's terms (2003: 97). If this was indeed the aim, it fails to be justified by the doctrine of double effect, as civilian well-being was intentionally targeted, detracting from the moral legitimacy of the intervention.

The number of civilian deaths and the mass-displacement of both Albanian and Serb Kosovars which occurred as a result of the bombing campaign also makes it harder to label the intervention as just. Between the 23rd of March and the 10th of June 1999, it is estimated that weapons deployed by NATO inadvertently killed hundreds of civilians (Fisk, 1999), whilst 800,000 refugees fled Kosovo (Chesterman, 2001: 224) and into neighbouring states, creating a humanitarian crisis of displaced peoples. Also unsettling (and yet hardly touched upon in the literature) is that many of the Serbs displaced from Kosovo never returned to their homes in the region (Fisk, 1999), which means that NATO is responsible, in part, for the permanent removal of Kosovo's Serb population.

If the condition of proportionality states that an action must do more good than harm, it clearly cannot apply in the case of Kosovo. NATO commanders were fully aware of the probable consequences of using a bombing campaign (Chesterman, 2001: 225), and yet still chose not to use a less risky (to civilians) land invasion, as remote warfare posed fewer risks for NATO troops, and therefore reduced the chances of domestic casualties. This weighing of risk that ultimately places higher value on the lives of Western troops than local civilians is, according to Walzer himself, 'not a possible moral position', as '*you can't kill unless you are prepared to die*' (2004:101).

Finally, there is a principle of *jus ad bellum* which is not included in frameworks of *jus ad humanitarianism* due to the controversial nature of its application. However, in the case of Kosovo the principle of right authority is critically applicable, and contributes to the debate about the interventions justness.

In Wheeler's criteria of *jus ad humanitarianism* he argues that in cases of supreme humanitarian emergency it is unnecessary to wait for authorization within the existing legal systems (2000: 41), due to the pressing need for action. In the case of Kosovo, NATO failed to gain the authorization of the United Nations Security Council (which is the most relevant right authority in the case of humanitarian intervention), yet proceeded to intervene regardless. Due to this lack of UNSC consent, the Kosovo Report commission declared that the intervention was illegal (IICK, 2008: 4).

However, Holzgrefe states that to truly determine the justness of an intervention, one cannot separate moral and legal qualifications of legitimacy (2003:49), as the two are mutually important. In fact, it can be argued that any cases of intervention which dismiss the need for legitimacy using existing international law, demonstrate total failure of the whole legal system to serve its judicial purpose. The theory that any violation of the existing legal restrictions discredits the moral right of the interveners to act is a further argument to question the justness of Operation Allied Force.

To conclude, NATO's intervention in Kosovo in 1999 was welcomed by many for addressing the plight of Kosovar Albanians, and is deemed successful by many Western states. However, this essay has critically examined the justifications given to defend the intervention, and applied principles of *jus ad humanitarianism* and *jus ad bellum* to question whether in fact Operation Allied Force was as just as NATO would have us believe. Although there was undoubtedly a humanitarian crisis, the methods chosen by NATO to solve this were highly flawed (due to the lack of priority for humanitarianism over other self-interests as motive for action), and did not meet the criteria of proportionality by doing more harm than good. NATO's decision to use remote bombing rather than land invasions endangered civilian populations, contributed to a mass exodus of refugees, and the selectivity of targeting the FRY rather than Turkey or Indonesia further questions NATO's moral judgement. Therefore NATO's intervention in Kosovo in 1999 was not a just intervention, and the contribution that this intervention has made to the developing norm of Responsibility to Protect (Evans and Sahnoun, 2001) is highly concerning.

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Written by: Laura Wise

Written at: Aberystwyth University

Written for: Professor Toni Erskine

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