

Executive Summary

The crisis and war in Kosovo (1998-1999) involved three discrete sides, each with its own objectives: (1) The Belgrade regime of Slobodan Milosevic was determined to maintain the political status quo in Kosovo that had obtained since the removal of autonomy in 1989-90. In achieving this objective, it was entitled to exercise its sovereign right to enforce public order and security by countering an armed insurgency by the Kosovo Liberation Army (KLA), seeking international independent personality. But, in the context of past responsibility for campaigns in Croatia and Bosnia characterised by war crimes and international crimes, as well as earlier action in Kosovo. (2) The Kosovo Albanians sought independence. Following a period characterised by passive resistance under the leadership of Ibrahim Rugova, the KLA emerged in the second half of the 1990s, using terrorist and, later, insurgent political violence to seek their aims. Part of this strategy was to provoke Belgrade and to engender international support, particularly from the West. (3) The West, as far as possible with wider international support, aimed to get a diplomatic agreement on Kosovo in talks at Rambouillet, in France, that would provide the political mission for a NATO-led international military force on the ground, which would make an ethnic cleansing campaign by Belgrade forces impossible. There was little desire to use destructive armed force if this could be avoided. However, Milosevic would not accept terms. NATO members then undertook an air campaign that was characterised by political and operational difficulties. Those difficulties meant that the ostensibly humanitarian purpose of the mission was compromised. This meant that eventual success, in conjunction with other factors contributing to stopping Belgrade's ethnic cleansing in Kosovo, was qualified and somewhat tarnished. However, that success created the opportunity for the NATO-led international military force to be deployed, while Belgrade forces were withdrawn completely from the province.

What motivated the US and its NATO Allies?

The West was motivated by three factors: the experience of Serbian conduct in Bosnia during the early 1990s; the direct evidence of Serbian action in Kosovo during 1998 and the first months of 1999; and the clear belief that Belgrade intended an new and

extensive campaign of ethnic cleansing in its southern province, based on intelligence about Belgrade's operational planning. The West therefore sought to prevent what it believed to be an intended Serbian campaign. Eventually, it sought to do this through armed air action, which aimed to denude the Belgrade security forces' capability strategically and ultimately persuade Milosevic to change his policy – Milosevic and his regime were seen as the source of the problem and constituted the main target, politically. Before resorting to the use of air power, the West tried to avoid its use while attempting to prevent the Serbian campaign of ethnic cleansing that it believed had previously begun and was due to start over in accelerated form, by gaining agreement through negotiations that would permit a ground force, led by NATO, to be deployed on the ground, without any use of force and blocking any use of force by others.

What happens in Kosovo without NATO intervention?

There can be no complete answer to this question. Comprehensive international intervention, including NATO involvement, had been underway since the Yugoslav War, of which the Kosovo campaigns were one part, had already begun in 1991, and any consideration of the Kosovo phase in 1998-1999 must take account of this. Regarding Kosovo *per se*, it is clear that NATO believed that extensive ethnic cleansing by Belgrade forces was imminent. Belgrade's record during the 1990s in Croatia, Bosnia and Kosovo appeared to support this view, as, even more, did the onset of operations in March 1999, as the attempt to find a negotiated outcome in Paris failed and the Serbian campaign began, four or five days before NATO action began. To this extent, it seems reasonable to conclude that ethnic cleansing would have occurred.

It also seems reasonable to conclude that, without the NATO intervention, the KLA would not have made significant progress, as the record of both 1998 prior and even 1999 during the NATO engagement indicates that it was weak, relatively unformed and incapable of mounting sustained operations, while Belgrade forces had shown themselves to have the measure of the KLA – notwithstanding the strategy of atrocity that accompanied the majority of their actions – and to be able to beat the KLA comfortable in direct combat. However, given the nature of the KLA and its political agenda, supported by the majority of the Kosovo Albanians, it seems

unlikely that repeated military defeats would have wiped out the movement. Thus, the asymmetric struggle would have continued for many years, despite the extensive ethnic cleansing by Belgrade's forces.

Did NATO violate international law?

There are two aspects to the issue of international law and the NATO engagement. The first concerns the lawfulness of NATO's intervention. The evidence is not absolutely clear. In an evolving area of international humanitarian law, there are different interpretations of the lawfulness of the action, which support it, including interpretations that rely on compounding the various different elements. The record is that each member of the Alliance assessed the action to be justified and had its own legal interpretation. However, that record is also that there was not one single interpretation on which the allies agreed. Thus, although there was a clear belief that the action was legal, it was not clear-cut, even among those carrying out the action. This gave strength to those who criticised the NATO action, whether in Belgrade, or elsewhere, asserting that it was an unlawful campaign. However, the decision by three prominent states, which charged that the action was illegal, to propose a Security Council resolution to condemn the action and declare it to be unlawful backfired. A vote on it was held and lost 12-3. This gave backhanded legitimacy to NATO intervention in international law, reinforcing claims to lawfulness, if not complete and unquestioned legality, by NATO states.

The second aspect of legality concerns the conduct of NATO operations and the issues of war crimes. While some questions were raised regarding suspected war crimes, most of these were addressed and dismissed with appropriate care by the Prosecutor at the ICTY. However, in one area, that of cluster munitions, the evidence was not thoroughly weighed by the Prosecutor, either in general or in detail. The general basis on which potential charges relating to cluster munitions were dismissed does not appear to be comprehensive. In addition, there were elements in NATO's use of cluster bombs, particularly relating to the attack on the airfield located within the city of Nis, that might suggest a *prima facie* case to investigate, in terms of specifics. This is not to prejudge the outcome of such an investigation, merely to indicate that perhaps not all the questions that might have been posed in this respect appear to have been addressed.

What was the extent of war crimes committed by the Yugoslav military, Serbian Special Police, paramilitaries? Did anyone flee NATO bombs?

There can be no doubt that a relatively small number of people were seeking shelter from NATO bombs in Kosovo and elsewhere in Serbia – this is inevitable and human nature. There is also absolutely no doubt that some Kosovo Serb civilians fled KLA action, some of which warranted charges of war crimes and crimes against humanity against their personnel. But most of all, there can be little doubt that Belgrade's forces – the VJ, MUP special police, and assorted paramilitaries -- carried out a systematic campaign of ethnic cleansing, a strategy marked by diverse atrocities, which led not only to indictments against a variety of individuals associated with the actual operations, but also the Belgrade leadership, including Slobodan Milosevic.

Was the Rambouillet 'diktat' justified?

Although the term *diktat* may be too strong and prejudicial in tone, there can be little doubt that there was a Western ultimatum to Belgrade. This was predicated on agreement by the Kosovo Albanians, which was not as easily achieved as Western actors had assumed prior to the Rambouillet negotiations. Once that agreement was achieved, then it was clear that Belgrade was isolated and faced a clear choice between negotiating in good faith, including meaningfully accepting key aspects of the proposed agreement, or face coercive NATO aerial bombardment. Western motivation is confirmed by subsequent conduct, including ill-preparedness seriously to sustain armed action and both political and strategic differences over how to prosecute the campaign successfully once it had begun. The evidence suggests that NATO's bluff was called by Belgrade and that the desire to avoid or at least limit action indicates that the real aim was to get a ground force deployed to make ethnic cleansing impossible, but to accomplish this via agreement. This can be taken to confirm that the West's intention at Rambouillet was to secure an agreement, rather than to have a pretext for air bombardment, no matter what. In this context, it is vital to note two things. First, that political agreement had nearly been achieved at Rambouillet, it seemed, while the much discussed military annex was always open to negotiation – and Western representatives in their desperation to avoid having to undertake air strikes made this clear to Milosevic personally and tried to get him to

engage in discussion on this aspect. The second is that despite NATO's potentially humiliating attempts to bring Milosevic round and last minute visits in the hope of a last minute change of mind, when the Belgrade delegation returned to France for the resumption of talks, it brought a counter proposal that was far away from the draft political terms that it had seemed ready to agree two weeks previously. This must be judged to have been a gesture not at gaining some form of reconciliation, but another wilful provocation aimed at calling the West's bluff. A series of factors – the shape of events prior to NATO's action, as well as the evidence of motivations in the West and Belgrade, the conduct of both in military operations, and the approaches to the talks in France - all suggest that the NATO ultimatum was more justified than not.