



# National Security Law Report

Volume 21, Number 3    STANDING COMMITTEE ON LAW AND NATIONAL SECURITY    July 1999

## The Importance of Kosovo for NATO

by James P. Terry

The Kosovo crisis raises a number of interesting questions for the 19-member North Atlantic Treaty Organization (NATO), and individual nations concerned with crises in other areas of Europe such as western Turkey. Long-accepted legal principles have argued that intervention by a state or states into the territory of another state which offers no direct threat to the intervenor, absent Security Council authorization, violates Article 2(4) of the U.N. Charter. Article 2(4) condemns the threat or use of force by a state or states against the territorial integrity or political independence of any other state, except in individual or collective self-defense as authorized by international law and recognized by Article 51. The Russian and Chinese Permanent Representatives to the Security Council advised in early March 1999 that their nations would not support a Security Council resolution which would authorize the use of force to stop the Serb attacks in Kosovo. This after neither Russia nor China impeded passage of Security Council Resolutions 1199 and 1203. These Security Council Resolutions under Chapter VII of the U.N. Charter called on both Serb and Kosovo Liberation Army forces to end the fighting, called upon Serb forces to withdraw, called upon Serb forces to cooperate with investigators and prosecutors from the War Crimes Tribunal at the Hague, and endorsed the October 15 and 16, 1998 monitoring agreements brokered by U.S. Special Envoy Richard Holbrooke, the architect of the Dayton Peace Accords in Bosnia. When the Serbs then violated these obligations through renewed violence and refused to sign the follow-on Rambouillet Agreement in mid-March 1999 (calling for a cease fire, Kosovo autonomy, and a

*Continued on page 2*

### Inside

- 03 Margaret Peterlin on *Kosovo and its Refugees*
- 03 Gary Sharp on *A Short History of the Kosovo Crisis*

## Congress' Role in the Kosovo Crisis

by Stephen Dycus and Peter Raven-Hansen

A plain reading of the Constitution suggests that the President must go first to Congress for authority to conduct sustained military operations abroad. In the War Powers Resolution Congress directed the President to do just that, or else to bring the troops home after sixty days. Most scholars agree that at a minimum the President should share information and should consult with Congress whenever possible about the deployment of armed forces into hostilities. Most also agree with the Vietnam era cases holding that the Constitution requires "some mutual participation" by the political branches in a decision to use military force. And most believe that this requirement is important to insure political accountability for such operations. A few scholars have argued recently that what the Constitution really means is that Congress can only decide the juridical effects of war, or pull the financial plug if it disapproves of the President's unilateral use of force.

The interaction of the political branches in the Kosovo crisis does not clearly fit any of these models. Congress appears to have been better informed about developments than in earlier conflicts, yet there is no evidence in the public record that the President ever asked Congress for its advice. The President did not go to Congress earlier or later seeking approval. The air campaign against Serbia went on more than two weeks longer than the sixty days prescribed by the War Powers Resolution without any explicit Congressional approval.

Of course, Congress might have provided "some mutual participation" without waiting for the President to come to it. But when Congressman Tom Campbell (R-Cal.) offered a bill to declare war against Yugoslavia, it was overwhelmingly defeated in the House. The House voted to prohibit the use of DOD funds for sending U.S. ground forces into Yugoslavia unless the deployment was specifically authorized by Congress, although it had earlier approved sending U.S. troops to Kosovo as part of a NATO peace-

*Continued on page 4*

## Kosovo and NATO . . .

*Continued from page 1*

NATO peacekeeping force), and commenced an offensive designed to drive all Albanian resistance from Kosovo, NATO directed execution of Operation Allied Force against Serb aggression on March 24, 1999. U.N. Secretary-General Kofi Annan endorsed the NATO action on that same day.

The conflict in Kosovo was not the first crisis in which permanent members of the Security Council have refused to support military action necessary to preserve U.N. Charter principles. After a North Korean invasion of South Korea in 1950, and after the Security Council had demanded North Korean withdrawal in a resolution passed in the absence of the Russian ambassador to the Security Council, Russia stated in the Security Council that it would not support any military action in Korea. The General Assembly, using its residual authority in Articles 10, 11 and 14 of the U.N. Charter, then passed General Assembly Resolution 377V, the "Uniting for Peace Resolution." Under this precedent to prosecute military action, the United Nations force led by General Douglas MacArthur successfully drove the invaders from South Korea. In the Congo in 1960, after the Russian Ambassador to the United Nations raised questions concerning U.N. actions to restore the peace in that nation, the Secretary-General, Dag Hammarskjöld, relied upon his inherent authority under Article 99 of the U.N. Charter to direct a successful peace enforcement initiative. Similarly, in Kosovo, NATO has looked beyond the Article 39 mandate to seek approval from the Security Council and has relied upon authority claimed to arise from existing Security Council Resolutions 1199 and 1203 and its inherent authority as a regional organization to act in collective self-defense to prevent the ethnic cleansing and expulsion of an entire population, which could lead to a spread of violence into NATO states abutting the Balkans.

The determination by the United States to support a response by a regional organization under Chapter VIII of the U.N. Charter rather than seek a U.N.-led operation for Kosovo, possibly through a General Assembly authorizing resolution, was more pragmatic than political. Our recent experience in Bosnia with UNPROFOR suggests that UN-led operations may not be capable of undertaking Chapter VII ("all necessary means") missions. These peace enforcement missions require careful planning, experienced leadership, and highly integrated command and control arrangements. This combination is required to execute sophisticated air-ground coordination, as well as to implement robust rules of engagement which will protect the force and the civilian population. Most importantly, this cohesion is absolutely essential if forces with different experience levels and capabilities are to be successfully integrated to create force multiplication rather than force division. UN-led peace enforcement operations, unless directed by one of a handful

of states, will continue to have difficulty achieving this integration. It is this understanding which underlies the U.S. support for the recently concluded NATO-led Operation Allied Force and the present KFOR peace operation in Kosovo.

The adaptation of NATO to a role as a Regional Organization under Chapter VIII with a peace enforcement charter must be seen as part of a broad, long-term U.S. and Allied strategy that supports the evolution of a peaceful and democratic Europe. This strategy benefits U.S. security and builds on the bi-partisan premise that the security of Europe is a vital U.S. interest. Certainly, American sacrifices in two world wars and the Cold War have proven our commitment to the region as a community of shared values, and those U.S. sacrifices have more than established our interest in recognizing and encouraging the rapid settlement of disputes in Europe.

Adaptation of NATO's interest in a broader European strategy under the U.N. Charter's Chapter VIII began in 1990, soon after the fall of the Berlin Wall. In July 1990, under the active leadership of the Bush Administration, NATO's London Summit Declaration set out new goals for the Alliance, called for changes in its strategy and military structure, and declared that the Alliance no longer considered Russia an adversary. These efforts were reaffirmed by

*Continued on page 4*

### THE ABA NATIONAL SECURITY LAW REPORT

<<http://www.abanet.org/natsecurity/>>

**EDITOR-IN-CHIEF, Robert F. Turner**  
Professor, University of Virginia

**EXECUTIVE EDITOR, Walter Gary Sharp, Sr.**  
Adjunct Professor of Law, Georgetown University Law Center

**STAFF EDITOR, Holly Stewart McMahon**  
Staff Director, Standing Committee on Law and National Security

#### EDITORIAL BOARD

**Elizabeth R. Rindskopf Parker**, Chair, Standing Committee on Law and National Security

**Richard E. Friedman**, Rosenthal & Schanfield, Chicago

**Dale E. Bosley**, Marshal, Supreme Court of the United States

**Stephen Dycus**, Professor of Law, Vermont Law School

The *National Security Law Report* (N.S.L.R.) contains articles concerning the law relating to the security of our Nation and associated topics. The N.S.L.R. is sponsored by the ABA Standing Committee on Law and National Security. The views expressed in this publication are not necessarily those of the Standing Committee, the ABA, or any governmental agency or private enterprise.

To receive the N.S.L.R., contact Holly Stewart McMahon at 740 15th St., NW, Washington, DC 20005-1009; (202) 662-1035; FAX (202) 662-1032; or [natsecurity@abanet.org](mailto:natsecurity@abanet.org). Comments or original articles should be sent to: Gary Sharp, 28 Bridgeport Circle, Stafford, VA 22554-1776; or [WGSharp@aol.com](mailto:WGSharp@aol.com).

THREE OAKS CAPITAL, LLC is a private investment and merchant banker that specializes in high tech and information security firms as well as traditional investments.

Copyright © 1999 American Bar Association, ISSN 0736-2773.

## Crossing the International Status Line: Kosovo and its Refugees

by Margaret J. A. Peterlin

By most reports, 1.2 million persons have undergone a change in their international status as a result of the war in Kosovo. Whether it was fleeing Albanians before NATO's air campaign or fleeing Serbians after the cease-fire, these people are leaving behind not just their belongings, but their status under international law. These changes are associated with changes in rights.

### *Definition of Refugee*

"Refugee" is a term of art, first formally defined in a United Nations Protocol Relating to the Status of Refugees. The term "refugee" was defined narrowly to cover those displaced by WWII, until its meaning was expanded in 1967. Status as a refugee is a conjunctive test that grants "protection" to anyone who:

- (1) owing to a well-founded fear of being persecuted for reasons of:
  - (a) race,
  - (b) religion,
  - (c) nationality,
  - (d) membership of a particular social group, or
  - (e) political opinion,
- (2) is outside of either his country of nationality or habitual residence, and
- (3) is unable or, owing to such fear, unwilling to return.

Basically then, if a person is persecuted or has fear of persecution because he has been targeted based on his status as one of the five specified characteristics, he can be classified as a refugee and lawfully offered protection by another state.

Despite WWII, Uganda, Vietnam, Rwanda, Bosnia, and even Kosovo, the definition of refugee has not become more precise over time. There is some consensus, however, that the phrase "well-founded fear of being persecuted" is the key phrase. "Well-founded" contains an objective and a subjective element. The objective element ensures that the applicant's statements will be considered in context. The subjective element is a foray into the personality and the credibility of the applicant. Neither consideration, however, is necessarily limited to the applicant's personal experience since the targeting of friends, relatives, or other members of his same racial group can be "his" experience.

*Continued on page 5*

## A Short History of the Kosovo Crisis

by Walter Gary Sharp, Sr.

Kosovo is a province of Serbia. In March of 1999, it had a population of approximately 1.8 million ethnic Albanians and two hundred thousand ethnic Serbs. Kosovo was given self-rule when Yugoslavia was established in 1945, but tensions remained high because of continuing Serbian control. Rioting ensued and peaked in 1968, and then Kosovo attained autonomy under the 1974 constitution. The Serbian government continued, however, to impose its authority over Kosovo and the ethnic Albanians of Kosovo continued to riot. After a decade of strife, Serbia reasserted its control over Kosovo, ending its autonomy in 1989. Immediately after he became President of Serbia, Slobodan Milosevic placed Kosovo under martial law and severely restricted the province's privileges and rights. The Albanian separatists responded to the imposition of martial law with occasional bombings. In 1991, the Albanian separatists proclaimed Kosovo an independent republic, but it was only recognized as such by the neighboring state of Albania. In 1996, a few hundred Albanian separatists formed the Kosovo Liberation Army (KLA).

Starting in 1996, the KLA and militant Albanian separatists increased their attacks on Serb policemen, leading to harsh reprisals by the Yugoslav army. In two short years the KLA grew to an estimated ten thousand soldiers. As it grew, the KLA increased the frequency of its attacks on the Serbian police, causing a crackdown in February 1998 when Yugoslav army and special police units attacked dozens of villages. During this crackdown, the Yugoslavs killed more than fifteen hundred civilians and displaced more than 250,000 civilians. On March 31, 1998, the U.N. Security Council [hereinafter Security Council] adopted Resolution 1160 that condemned the "use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo, as well as all acts of terrorism by the Kosovo Liberation Army." In September 1998, Serb forces attacked central Kosovo and twenty-two Albanians were found massacred. The Security Council responded by adopting Resolution 1199 on September 23, 1998 that demanded "all parties, groups and individuals immediately cease hostilities and maintain a cease-fire in Kosovo."

In October 1998, NATO conducted airstrikes against Serb military targets, and Milosevic agreed to withdraw Serb troops and allow two thousand unarmed monitors to verify compliance. On October 24, 1998, the Security Council adopted Resolution 1203 which endorsed the cease-fire

*Continued on page 6*

## Kosovo and NATO . . .

*Continued from page 2*

the Alliance's declaration in Copenhagen in June 1991, which stated that NATO's objective was "to help create a Europe whole and free." At NATO's Rome Summit in November 1991, the Alliance adopted a new strategic concept, which reaffirmed the continuing importance of collective defense, while orienting NATO toward new security challenges, such as out-of-area missions, crisis management, and peacekeeping operations.

Since then, NATO has taken further steps to advance its adaptation to a Chapter VIII role. At its January 1994 Summit in Brussels, the Alliance made important decisions related to its status as a Regional Organization. Initially, it launched the Partnership-for-Peace (PFP) to enable intensive political and military-to-military cooperation with Europe's new democracies as well as states which had considered themselves neutrals during the Cold War. PFP has proven to be an important and effective program for these states and for the Alliance: twenty-seven have joined PFP; a PFP Coordination Office has been established in Mons, Belgium; and more than 30 major PFP exercises have been held through June 1999 in addition to the numerous exercises with states "in the spirit" of PFP. The program is proving its merit in Bosnia-Herzegovina, where thirteen PFP partner states are making substantial contributions to the NATO-led peace enforcement operation in the Balkans.

The contribution of member states to European security through their participation in the NATO-led Implementation Force (IFOR), and its successor Stabilization Force (SFOR), in Bosnia is critical to successful implementation of the military aspects of the Dayton Peace Accords. It is clear from these Bosnian missions that NATO members are already restructuring their forces so they can participate in the full spectrum of current and new Alliance demands, including both Article V (self-defense) missions under the 1949 North Atlantic Treaty and peace enforcement missions such as Kosovo.

The key issue remains, however. Can NATO exercise its regional prerogative under Chapter VIII of the U.N. Charter, using all necessary means under Chapter VII, without Security Council authorization? A case can be made that state practice and customary international law have developed sufficiently to condone humanitarian intervention to prevent genocide and other widespread arbitrary deprivations of human life in violation of international law. In Kosovo, based upon the fear of the conflict spreading into NATO and other European states, the case can also be made that it was patently rational for NATO to use reasonable and proportional force in collective self-defense to prevent the civil war from spreading beyond Serbia-Montenegro. We may rightly conclude that existing law and state practice

permit a state or collective of states in a regional organization like NATO to use armed force to prevent genocide and other widespread abuses of human life within its regional boundaries, whether Security Council authorization is present or not.

---

*Jim Terry is a Judge in the Office of Hearings and Appeals of the U.S. Department of the Interior. A retired U.S. Marine Colonel, he previously served as the Legal Counsel to the Chairman of the Joint Chiefs of Staff. ABA*

---

## Congress' Role . . .

*Continued from page 1*

keeping force. When the Senate voted to authorize air operations and missile strikes in cooperation with NATO allies (the bombing campaign began on March 24), the House rejected the bill in a dramatic tie vote on April 28. A number of other conflicting measures have either been defeated or languish in committee. Thus, Congress as a whole has neither explicitly approved the use of force in Yugoslavia nor pulled the financial plug to stop it.

What Congress did in May was approve an Emergency Supplemental Appropriations Act which expressly took note of U.S. participation in Operation Allied Force and authorized funds through September 30 to replace those used for "military operations in and around Kosovo." Although the Supreme Court has cautioned against inferring authorization from general appropriations, this measure strongly suggests that Congress belatedly approved at least the air campaign against Yugoslavia. And the approval was voluntary (if grudging): the congressional vote was not compelled by fear that a fund cut-off would leave U.S. forces exposed in a combat zone.

But if Congress can be said to have participated in the decision to use force, is it visibly accountable for the results? In an opinion denying standing to several members of Congress who sought to challenge the legality of the air campaign, U.S. District Court Judge Paul Friedman remarked dryly that "Congress has not sent a clear, consistent, message" concerning military operations in Yugoslavia. Many, if not most, of its members may have preferred not to send a clear message. Following the House vote rejecting authorization for the air campaign, Congressman Ray LaHood (R.-Ill.) explained that "[t]his is Clinton's war. And we have not had a hand in it."

The conflicting message from Congress is surely part of the legacy of Vietnam: a profound reluctance to commit to an extended military campaign without a general agreement on goals and strategy. It may also reflect the

complexity of the moral, legal, and political issues in the Balkan conflict, as well as public confusion about their significance. For some members it may be the product of continuing hostility toward the President personally, or the fact that elections are just around the corner.

Whatever the reasons, Congress's inability to reach a broad consensus on U.S. military involvement may be less important than the fact that it did, however reluctantly, "have a hand in it." But its refusal to respond decisively to the President's initiative—relying instead on a belated, backdoor appropriation to approve the use of force—surely came at a price. Congress not only forfeited much of its ability to influence events in the Balkans, but it also added to the growing list of precedents for future presidents to act alone in committing U.S. troops to hostilities. Thus, Congress has once again ignored Justice Jackson's admonition that "[o]nly Congress itself can prevent power from slipping through its fingers."

---

*Stephen Dycus is a Professor of Law at the Vermont Law School and a member of the Editorial Board of the National Security Law Report. Peter Raven-Hansen is the Glen Earl Weston Research Professor of Law at the George Washington University. ABA*

---

## Kosovo and its Refugees . . .

*Continued from page 3*

The second challenge is to determine what qualifies as "persecution." There is more contention than consensus surrounding this inquiry. Agreement begins to emerge where the actions are a threat to life or freedom on account of one of the five factors. Agreement diverges dramatically when the applicant is seeking refugee status on the basis of "cumulative grounds," *i.e.*, various measures, not in themselves amounting to persecution, which can be combined in a way that produces the requisite "fear of persecution" in the mind of the applicant. In either case, persecution is understood to depend on the particular geographical, historical and ethnological context of the person's life. This definition thus ensures that there is a personal-comparative element to the test, *i.e.*, is the person being made worse off because of his race, nationality, religion, or membership in a social or political group?

For purposes of refugee status under international law, only a country's "authorities" can commit acts of persecution. Traditional state and military leaders are the easiest to categorize as authorities. Persecution can also be found, however, when a government knowingly tolerates or proves unable to offer effective protection from acts by the local populace.

## *Displaced persons*

Often confused in news reports is the difference between refugees and "displaced" persons under international law. Displaced persons are those who are forced to flee their homes (as the result of internal strife or conflict, or even a natural disaster) but remain within their country of citizenship. There are no treaties that adequately address the problems of internally displaced persons, creating an incentive for persons to cross a border to benefit from refugee status. This incentive may help explain the balance of 800,000 refugees and 200,000 displaced persons during the peak of the Kosovo conflict.

## *Kosovo and the U.N. Charter*

The Kosovo conflict also provides one of the clearest examples since WWII of the incompleteness of international agreements regarding refugees. Traditionally, countries adjudicated refugee status on a case-by-case basis. With Kosovo, nations like Germany, instead confronted a deluge of war-weary foreigners and had to either post guards or provide material support for the hundreds of thousands who crossed their border. There was even less to be done to aid displaced persons still within Kosovo, short of air-dropping humanitarian supplies amid the fighting.

At the end of the 78-day war, the multinational Kosovo Force (KFOR) began to clear mines and count bodies. Those Kosovars who chose to return to Kosovo lost their international refugee status. Although their new status was not clear, they were either reinstated as citizens or became displaced persons. The status of fleeing Serbians is even less clear. While retreating soldiers are not a sympathetic group, there were non-combatant Serbians fleeing from the arrival of embittered and homeless ethnic Albanians. There is a realistic fear of retaliation, so some Serbians may now qualify as displaced persons.

Kosovo has demonstrated that the law continues to remain vague in the face of increased mass refugee movements, and that this uncertainty can lead to hostilities. While ad-hoc responses may be efficient in some limited circumstances, they may also cause problems when confronting the 'aggressive' use of refugees by a state. It may be novel to think of a mass of refugees as a potential weapon, but even if the flow of refugees across a border were below the U.N. Charter's Article 2(4) threshold, it could still reach the level of being a threat to, or breach of the peace, and be labeled as such by the U.N. Security Council in an Article 39 determination. This could lead to a Security Council mandate, under Article 41, for the peaceful neighbors of the offending nation to disengage all diplomatic and commercial ties with the offending regime. Conceivably, the threat posed by a tide of refugees, particularly into small, poor neighboring countries (as was the case in the Balkans), could also rise to the

equivalent of an "armed attack" under Article 51, and permit a proportionate and necessary response. This question, however, is not academic, in that a nation small enough to be threatened by a wave of refugees could collectively exercise self-defense with the help of other states. One key to conflict resolution which may prevent a unilateral hostile response would be the prompt granting of refugee status by the international community, if necessary en masse, followed immediately by the provision of humanitarian support. However, the actual deterrence of democidal leaders remains far beyond the scope of immigration law.

---

*Margaret Peterlin is a third-year law student at the University of Chicago School of Law and the founding Editor-in-Chief of the new Chicago Journal of International Law. Upon graduation, she will be clerking for The Honorable Jerry Smith of the Fifth Circuit Court of Appeals. ABA*

---

## A Short History . . .

*Continued from page 3*

agreement and further condemned all acts of violence and terrorism. The Serbs, however, failed to live up to the terms of the cease-fire agreement. Scattered violence continued to endanger the truce, and on January 15, 1999, forty-five ethnic Albanians were slain by the Serbs. International efforts attempted to bring the Albanian separatists and the Serbs together in Rambouillet, France for peace talks in February 1999 – but hostilities continued.

On March 18, 1999 the Kosovar Albanians signed a peace agreement calling for interim autonomy of Kosovo and 28,000 NATO troops to implement the agreement, but Milosevic refused to sign because he objected to the deployment of NATO forces in Serbia. The United States warned Milosevic on March 22, 1999 of NATO airstrikes if he did not sign the Rambouillet Accords. In defiance, Milosevic launched a massive new offensive in Kosovo in an apparent attempt to crush the Albanian guerrillas during peace negotiations so he could then call off the Serb offensive to avoid NATO airstrikes. In the face of over 240,000 refugees fleeing from Kosovo, all of NATO's nineteen member countries fully supported military action. On March 23, 1999, NATO authorized airstrikes against Yugoslavia.

NATO member countries did not recognize the province of Kosovo as an independent state, and they specifically opposed the formation of an independent Kosovar state; they only desired to see the bloodbath and humanitarian disaster caused by the civil war to come to an end. Ironically, Milosevic's failure to compromise and accept some measure of political autonomy for the Serb province of Kosovo ultimately forced NATO to take military action that may likely set the stage for an independent Kosovar state.

Milosevic called the two rounds of talks at Rambouillet a fraud, complaining that the agreement was dictated by NATO before the start of the negotiations and without consulting Yugoslavia. Milosevic also believed that Albanian separatism is nothing more than centuries-old terrorism aimed at forming a "Great Albania" that is an ethnically-cleansed state for all Albanians. He alleged that the Albanian peoples have murdered, persecuted, and ill-treated the Serbian and Montenegrin peoples since the Ottoman Empire. In 1992, Milosevic documented that the Albanian separatists of Kosovo revived their use of terrorism, which increased in intensity from 12 acts of terrorism against the Serbs in 1992 to 1,885 acts of terrorism in 1998. Milosevic reported that these 1,885 acts included the brutal murder of 115 Serb police officers and 142 civilians. Milosevic also alleged that NATO had previously supported acts of aggression against the Socialist Federal Republic of Yugoslavia that caused it to splinter into five states, and charged that NATO was supporting Albania's aggression against Serbia-Montenegro by supporting the Albanian separatists in Kosovo. The Yugoslav government had a number of other perspectives and equities that were not fairly reported in the press.

Perhaps when the truth of both sides is revealed, the international community will see that some of the Albanian separatists are not completely blameless for the plight of the ethnic Albanians in Kosovo. However, even the legitimacy of some of Milosevic's claims does not justify his widespread and systematic slaughter of the ethnic Albanian population in Kosovo. The U.S. Department of State reported that over three hundred thousand people were displaced by the fighting during the summer of 1998. During Milosevic's defiant offensive in late March 1999, the Serbs forcibly displaced over seventy thousand ethnic Albanians in one weekend. The Serbs were reported to have looted and burned thirteen towns and countless villages throughout Kosovo, detained as many as thirty thousand Albanian men, and summarily executed thousands of Albanian men, women, and children in at least twenty towns and villages throughout Kosovo. The United States position is that Milosevic's forces were clearly engaging in crimes against humanity in Kosovo and were likely engaged in genocide, and it publicly warned the Yugoslav commanding officers and political leaders that they will be held responsible for their crimes and the crimes of their military forces. One of the Yugoslav warlords was been indicted by the International Criminal Tribunal for the Former Yugoslavia for war crimes committed in Kosovo.

NATO airstrikes in Serbia-Montenegro began on March 24, 1999. NATO forces targeted the Yugoslav government's integrated air defense system, military and security police command and control elements, and military and security police facilities and infrastructure. On March 29, 1999, President Clinton announced that the NATO airstrikes had three objectives:

First, to demonstrate the seriousness of NATO's opposition to aggression and its support for peace; second, to deter President Milosevic from continuing and escalating his attacks on helpless civilians by imposing a price for those attacks; and third, if necessary, to damage Serbia's capacity to wage war against Kosovo in the future by seriously diminishing its military capabilities.

In response to the NATO airstrikes, Yugoslav security forces intensified their attacks by burning down Kosovar Albanian villages and murdering civilians. Nevertheless, NATO airstrikes did not initially target the Yugoslav ground forces responsible for the continuing attacks on civilians in Kosovo out of a fear that pilot casualties would weaken NATO's will to continue in the airstrikes against Yugoslavia, thus jeopardizing the entire NATO operation. At the end of the first two weeks of bombing, no ground forces had been deployed. President Clinton vowed that the air campaign would be "unceasing and unrelenting" and that NATO would "persist until we prevail." Senior U.S. and NATO authorities, however, were at a loss during the beginning of the air campaign for much evidence that the air strikes were having their intended effect of slowing, let alone stopping, the Yugoslav crackdown.

On April 6, 1999, it was reported that over 400,000 ethnic Albanians had fled Kosovo and at least 2,000 had been killed over the last thirteen months. U.N. officials estimate that 1.1 million of the 1.8 million ethnic Albanians of prewar Kosovo were displaced to neighboring Balkan countries. Milosevic defied the NATO offensive and almost achieved the ethnic cleansing of Kosovo. He offered a unilateral cease-fire, to mark Orthodox Easter, which was to begin on April 6, 1999. Milosevic also pledged to work with the United Nations for the return of ethnic Albanian refugees and offered to forge an agreement that would serve as the basis

for a Kosovo province within Serbia and Yugoslavia. NATO quickly rejected the offer as a move clearly aimed at staving off further NATO attacks and a ploy to present Milosevic as interested in resolving the crisis without capitulating. It was also unclear whether the unilateral cease-fire was permanent, or just intended to last through the Easter holiday.

President Clinton dismissed the Serb's cease-fire offer by saying that half-measures are not enough, that Milosevic must withdraw his military police and paramilitary forces, allow the displaced Kosovar Albanians to return to their homes, and accept the deployment of an international security force. The U.S. Secretary of Defense called Milosevic's offer absurd, and other analysts saw Milosevic's announcement as a sign he had accomplished his main goal in Kosovo despite the NATO bombing campaign. The United States announced on April 6 that NATO operations would continue until these conditions are met.

As a conciliatory gesture likely aimed to sway international public opinion, the Yugoslav government abruptly halted the expulsion of the ethnic Albanians from Kosovo on April 7, 1999. The NATO Secretary-General believed that a more likely motive is to exploit the refugees by using them as human shields to discourage NATO attacks against Yugoslav ground forces. This policy pushed the refugees back into a wasteland where there was no food, very little water or medical supplies, and where everything had been looted. Interviews of refugees confirmed that Yugoslav forces continued to commit atrocities with impunity despite the NATO attacks. With no political or military solution in sight, NATO reported on April 9, 1999 that it has stepped up its attacks on Yugoslav ground forces. NATO also reported that its airstrikes had almost completely cut off Kosovo from the rest of Serbia, the dominant republic of Yugoslavia, by destroying all rail lines into the province from the north and damaging most of the roads and bridges. NATO's bombing

### ***Standing Committee on Law and National Security***

*Chair:* Elizabeth Rindskopf Parker

*Members:* E. E. Anderson, Dale E. Bosley,  
Willie Curtis, Robert N. Davis, Pamela Jimenez Parizek,  
Ann C. Petersen, Michael K. Powell, Suzanne Spaulding, Paul Schott Stevens, Diane P. Wood

*Advisory Committee Chair:* Richard E. Friedman

*ABA Board of Governors Liaison:* James E. McDaniel

*Staff Director:* Holly Stewart McMahon

740 15th St., NW

Washington, D.C. 20005-1009

(202) 662-1035

FAX: (202) 662-1032

*E-mail:* natsecurity@abanet.org

*Web page:* <<http://www.abanet.org/natsecurity>>

of bridges in Belgrade blocked the 1,750-mile long Danube, stranding vessels and interrupting all of the shipping along the Danube for nine European countries. NATO's bombing also unified the Yugoslav peoples' support for Milosevic and completely alienated them against NATO and the United States. Milosevic announced on April 9, 1999 that the 14-month Yugoslav crackdown in Kosovo was over.

On June 9, 1999 the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia signed an agreement for the cessation of hostilities entitled the Military Technical Agreement (MTA). The MTA approved the deployment of an effective international civil and security presence in Kosovo under U.N. auspices. The North Atlantic Council also approved the Operation Plan for KFOR and the Activation Order for the pre-deployment of KFOR on June 9. NATO's seventy-eight day air campaign ended on June 10, 1999 and Operation Joint Guardian, the peace implementation mission for Kosovo, began on June 11, 1999.

---

### Bibliography

Charles Babington & Dana Priest, *Truce Rejected as Allies Press Bombing Effort*, WASH. POST, Apr. 7, 1999, at A1.

Dan Balz, *U.S. Consensus Grows to Send Ground Troops*, WASH. POST, Apr. 6, 1999, at A1.

Michael Dobbs, *Milosevic Shifts to Softer Strategy*, WASH. POST, Apr. 8, 1999, at A1.

Michael Dobbs, *Serb's Bull's-Eyes Defy, Mock NATO*, WASH. POST, Apr. 9, 1999, at A1.

William Drozdiak, *NATO Chief Fears More Exploitation of Kosovo Albanians*, WASH. POST, Apr. 9, 1999, at A32.

Alex Efty, *Yugoslavia Says Crackdown Over*, ASSOCIATED PRESS electronic news release, Apr. 9, 1999 (visited Apr. 9, 1999) <<http://wire.ap.org/gotoap.cgi>>.

Barton Gellman, *In the End, Allies See No Credible Alternative*, WASH. POST, Mar. 23, 1999, at A12.

Bradley Graham, *Yugoslav Troops Elude Aerial Scan, Allies Report*, WASH. POST, Apr. 6, 1999, at A1.

George Jahn, *Yugoslavia Declares Kosovo Truce*, ASSOCIATED PRESS electronic news release, Apr. 6, 1999 (visited Apr. 6, 1999) <<http://wire.ap.org/gotoap.cgi>>.

K. Kratovac, *'On the brink:' NATO Poised to Attack Serb Forces*, FREE LANCE-STAR Fredericksburg, VA), Mar. 23, 1999, at A1.

Thomas W. Lippman, *New Serbian Backlash Feared*, WASH. POST, Mar. 25, 1999, at A32.

Thomas W. Lippman & Dana Priest, *Attacks Largely Cut Kosovo From Rest of Serbia, U.S. Says*, WASH. POST, Apr. 9, 1999, at A1.

Dimitri Messinis, *Allied Planes Target Yugoslav Sites*, ASSOCIATED PRESS electronic news release, Apr. 6, 1999 (visited Apr. 6, 1999) <<http://wire.ap.org/gotoap.cgi>>.

Dana Priest, *NATO Delays Action to Protect Kosovars*, WASH. POST, Mar. 26, 1999, at A1.

Barry Schweid, *US Won't Match Yugoslav Truce*, ASSOCIATED PRESS electronic news release, Apr. 6, 1999 (visited Apr. 6, 1999) <<http://wire.ap.org/gotoap.cgi>>.

R. Jeffrey Smith, *Belgrade Rebuffs Final U.S. Warning: NATO Aerial Assault Could Begin This Week*, WASH. POST, Mar. 23, 1999, at A1.

R. Jeffrey Smith & Daniel Williams, *Serbs Cease Expulsions From Kosovo*, WASH. POST, Apr. 8, 1999, at A1.

Anne Thompson, *NATO-Bombed Bridges Clutter Danube*, ASSOCIATED PRESS electronic news release, Apr. 8, 1999 (visited Apr. 9, 1999) <<http://wire.ap.org/gotoap.cgi>>.

Daniel Williams, *Refugees Tell of Use as Human Shields*, WASH. POST, Apr. 8, 1999, at A1.

*Background on The Kosovo Crisis*, WASH. POST, Mar. 23, 1999, at A13.

Bureau of European Affairs, U.S. Department of State, *Ethnic Cleansing in Kosovo*, Mar. 31, 1999 (visited Apr. 4, 1999) <<http://www.state.gov/www/regions/eur/>>.

*Chronology of Kosovo Conflict*, ASSOCIATED PRESS electronic news release, Apr. 2, 1999 (visited Apr. 4, 1999) <<http://wire.ap.org/gotoap.cgi>>.

*Law and Right, When They Don't Fit Together*, THE ECONOMIST, Apr. 3, 1999, at 19, 20.

Letter to Congressional Leaders Reporting on Airstrikes Against Serbian Targets in the Federal Republic of Yugoslavia (Serbia and Montenegro), 35 WEEKLY COMP. PRES. DOC. 527 (Mar. 29, 1999).

NATO Office of Information and Press, NATO HANDBOOK 231-34 (1995).

Office of the Spokesman, U.S. Department of State, *Statement by James P. Rubin, Spokesman: Belgrade's Cease-fire Insufficient*, Apr. 6, 1999 (visited Apr. 7, 1999) <<http://secretary.state.gov/www/briefings/statements/1999/ps990406.html>>.

President's Remarks Announcing Airstrikes Against Serbian Targets In the Federal Republic of Yugo. (Serbia and Montenegro), 35 WEEKLY COMP. PRES. DOC. 513, 514 (Mar. 29, 1999).

The Federal Republic of Yugoslavia Ministry of Foreign Affairs, *The Albanian Separatists' Terrorism in Kosovo and Metohija*, Feb. 1999 (visited Apr. 3, 1999) <<http://ourworld.compuserve.com/homepages/yuembassy/terror.htm>>.

The Federal Republic of Yugo. Website (visited Apr. 3, 1999) <<http://ourworld.compuserve.com/homepages/yuembassy/>>.

U.S. Department of Defense website at (visited Dec. 8, 1999) <<http://www.defenselink.mil>>.

*Yugoslavia*, MICROSOFT ENCARTA '95 (CD-ROM Multimedia Encyclopedia, 1994).

---

*Gary Sharp is an Adjunct Professor of Law at Georgetown University Law Center and a member of the Standing Committee's Advisory Committee.* **ABA**