



REVIEW ESSAY

Kosovo and the Remaking of International Relations

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The Kosovo Report: Conflict, International Response, Lessons Learned

Independent International Commission on Kosovo

Oxford University Press, 2000

HBK: ISBN: 0199243085 £35.00

PBK: ISBN: 0199243093 £11.99

pp. 372 (including: index, notes, bibliography, annexes, and map)

Alliance Politics, Kosovo, and NATO's War: Alliance Force or Forced Allies?

Pierre Martin and Mark R. Brawley (eds)

Palgrave, 2001

HBK: ISBN: 0312238177 £32.50

pp. 246 (including: index)

Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship

Albrecht Schnabel and Ramesh Thakur (eds)

United Nations University Press, 2000

PBK: ISBN: 9280810502 \$39.95

pp. 536 (including: index, tables and figures)

Kosovo: The Politics of Delusion

Michael Waller, Kyril Drezov and Bülent Gökay (eds)

Frank Cass, 2001

HBK: ISBN: 0714651575 £45.00

PBK: ISBN: 0714681768 £17.50 \$24.50

pp. 190 (including: index, documents and maps)

The Kosovo Crisis: The Last American War in Europe?

Tony Weymouth and Stanley Henig (eds)

Reuters/Pearson Education, 2001

HBK: ISBN: 0273651587 £19.99

pp. 316 (including: bibliography, index and maps)

Introduction

The books reviewed here argue that the international intervention in Kosovo lays down important markers or guideposts for the future of international relations. As the editors of *Kosovo: The Politics of Delusion* note: 'NATO's decision to launch air strikes against Yugoslavia in response to a perceived Serbian campaign of ethnic cleansing in Kosovo was a cardinal defining moment in the development of the international order since the end of the Cold War' (p. 145). UK Prime Minister Tony Blair famously declared the conflict to be a war 'fought not for territory but for values'. The edited collections under review all analyse the relative importance of 'ethical principles' in the policy-making of the states involved. Apart from being seen as the first post-modern 'humanitarian' war, NATO intervention bypassed the UN Security Council, indicating an important shift in the



structure of international security. The war over Kosovo has been generally recognised as a crucial point in the gradual evolution of a new set of international norms and accompanying reform of international security arrangements.

Most commentators agree that, overall, this development is a progressive and desirable one: the confusions, ambiguities and inevitable 'inconsistencies' surrounding the lessons of Kosovo are generally seen to be a necessary and unfortunate part of the process of change. As Alex Danchev argues, in *The Politics of Delusion*, the international commitment to Kosovo highlighted that international society was entering a 'healthier moral zone'; so, despite acknowledging that international action was 'selective, late, manipulative, erratic and, in many cases (too many cases) fatal', the final judgement has to be that Kosovo was, at least, 'a good place to start' (pp. 95-7). The assumption that the shortcomings of the Kosovo experience should be seen positively, as part of the 'learning curve' towards a more progressive and ethical international order, enables much of the discussion of the lessons of Kosovo to focus on future possibilities rather than dwelling on the more uncomfortable problems of the conflict itself.

This optimism makes a pleasing change from the rather gloomy prognoses that seem to dominate in most areas of international policy-analysis. However, beyond agreement on normative aspirations, there is little clear view of exactly how new institutional norms and practices can emerge following the direction taken over Kosovo. What is the role of the UN vis-à-vis 'coalitions of the willing' prepared to take unilateral action to uphold international norms? How are the right of intervention and the protection of individual human rights to be squared with the traditional concerns of state sovereignty and non-intervention. How can the strict international prohibitions on the use of force be enforced at the same time as recognizing the need to prevent widespread human rights abuses? As Patrick Thornberry notes, in the same volume:

We are in general terms witnessing a sea-change in the relations between sovereignty and human rights... but the precise contribution of the Kosovo imbroglio is as yet unclear. If Kosovo is a step on the voyage to somewhere, direction and destination are still shrouded in mist (p. 44).

This review essay considers the extent to which it is possible to match normative aspirations with new institutional structures and briefly considers three areas where the Kosovo crisis has raised new questions of international relations: the reform of the international security architecture, the changing nature of international law and, finally, the experiment with new forms of regulation in Kosovo and the wider Balkan region.

Security Architecture

Ramesh Thakur and Albrecht Schnabel, the editors of *Kosovo and the Challenge of Humanitarian Intervention*, argue: 'Military action outside the UN framework was not NATO's preferred option of choice. Rather its resort to force was a critical comment on the institutional hurdles to effective and timely action by the United Nations' (p. 501). In the foreword to *Alliance Politics*, Stanley Hoffman asserts that the Kosovo crisis highlighted the central flaw of the current architecture of world governance, that 'it is the Security Council that is the legitimate authority and that regional bodies can only act with the Security Council's consent' (p. ix). With the power of veto, Russia and China can limit or prevent humanitarian intervention, which 'explains why Washington and London have favoured "coalitions of the willing"' (ibid.).

Many contributors to these works wish to preserve the international authority of the UN. Thakur and Schanbel making the questionable claim that: 'The recourse to force by NATO was an effort to restore UN authority in the Balkans, which was crumbling under the sustained challenge from Serbia' (p. 501). However, it appears that the only way of preserving the UN is to remove its authority as the final arbiter of the use of force while preserving its legitimising function. In practice this was done, as Patrick Thornberry notes, the conflict 'ended' with a UN resolution, 'which appears to wash over any NATO illegalities like a wave on the beach' (p. 55). He adds that: 'There is a bitter irony in resolution 1244's "reaffirmation" of "the commitment of all member states to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia" – after its "degradation" by NATO action'.(ibid.) The *Kosovo Report* suggests that, to avoid such an obviously artificial face-saving device, the UN should be reformed along two lines. Firstly, the UN Charter could be amended to privilege the protection of human rights alongside the existing priority of international peace and security, thereby legitimising international intervention on humanitarian grounds, secondly, the right of veto should be removed from members of the Security Council, allowing intervention where there is no international consensus (pp. 195-8).

These proposals would give formal legitimacy to military intervention, where there is no Security Council consensus, but in doing so remove any international sanction against unilateral action declared to be in aid of human rights. It, in fact, seems unlikely that the final authorising authority for international intervention will ever return to the United Nations as the 'institutional hurdles' to Western activism stretch well beyond Russian and Chinese recalcitrance at the level of the Security Council. As the *Kosovo Report* notes, the NATO states did not seek legitimacy by bypassing the Security Council and putting the question to the General Assembly, under the Uniting for Peace Resolution, because it would have been unlikely to pass by the required two-thirds majority (p. 174). The United Nations' legitimacy is based on international diplomatic consensus rather than on military coercion. Stanley Henig states, in the concluding essay of *The Kosovo Crisis*: 'The UN has a proven, if limited, capacity to broker agreements and maintain peace: it is very rarely an organization capable of going to war' (p. 285). As long as there is no international consensus on intervention it seems inevitable that decision-making will be increasingly restricted to self-selecting 'coalitions of the willing'.

Both *Alliance Politics* and *The Kosovo Crisis* present collections of essays which study the motivation of the governments involved in the pre-eminent 'coalition of the willing' – NATO. Kosovo was a catalyst in transforming NATO from a defensive alliance, focusing attention on traditional security threats against its members, into a 'security community', overtly concerned with questions of shared values and identity. Essays, in *Alliance Politics* by Stephen M. Walt, S. Neil MacFarlane and David G. Haglund consider the 'constructivist' case, forwarded, for example, by Alexander Wendt and Thomas Risse, that NATO represents more than a 'realist' concern with national interest or an 'institutionalist' concern with consultation and coordination, and is a projection of a new collective democratic civic identity rather than a set of power relations.

Both collections indicate that while some states, such as France, Canada and the UK, may have seen themselves as 'norm entrepreneurs', keen to support NATO action, as a show of both individual and collective moral commitment to a new normative framework of policy-making, others such as Italy and Germany were keen to demonstrate their international credibility as part of the NATO alliance, despite domestic difficulties.



However, contributors to *The Kosovo Crisis*, for example, Christopher Williams, are perhaps too optimistic in the claim that NATO action strengthened the collective security system (p. 31). As Andrew Fear notes, in *The Politics of Delusion*:

NATO's marginalization of the UN is an act in defiance of, not in accordance with, the will of the international community, the majority of whom are opposed to its actions. It has set back immeasurably any chance that a distinct international forum will emerge, in particular one that could make binding decisions against the self-perceived interests of the USA (p. 94).

In fact, the lesson of Kosovo was not just that the UN was not a viable instrument for organising coercive international intervention. NATO too, came under sustained criticism for being bound by diplomatic and political consensus-building. The criticisms of the military tactics and the hesitancy to commit ground troops stem from a belief that the need to maintain alliance unity meant action around the 'lowest common denominator'. For Ray Funnell, writing in *Kosovo and the Challenge of Humanitarian Intervention*, the humanitarian aims of minimising casualties were undermined by diplomacy, he argues that: 'What should have been promised was that air attacks would be relentless, and that is precisely what should have been delivered – no bombing pauses, no hint that the attacks would ease if Milosevic did anything other than fully accept NATO's terms' (p. 445). In the same volume, Jean-Marc Coicaud draws out the 'dilemmas of international democratic culture' which meant that the NATO alliance pursued 'half-hearted measures' as the political leaders were held back by the need for consensus between themselves and for domestic support (p. 474). In *The Kosovo Crisis*, Peter J. Anderson similarly bemoans the fact that 'the extent to which NATO could be "aggressive" was limited clearly by the domestic political agendas of such Alliance members as Germany..., Italy and Greece' (p. 184).

The status of particular institutional forums is increasingly put to question. Rather than the creation of new security structures it seems likely that Kosovo highlights the shift away from formal mechanisms towards a much more ad-hoc set of security arrangements. *Alliance Politics* usefully goes beyond constructivist v realist debates over the success of NATO in the post-Cold War world and highlights the fragmentary nature of 'postmodern' policy-making of 'coalitions of the willing'. As Anne Deighton notes, rather than NATO *per se* usurping the UN 'of most importance was the informal group, the so-called Quint' a transatlantic steering group of political directors from the US, UK, France, Germany and Italy, meeting privately and 'effectively making Western policy on the hoof' (p. 61). Just as the UN Security Council failed to meet the needs of co-ordinating 'effective and timely' military intervention, so to did the NATO structures and other earlier ad-hoc forums, involved in Balkan policy-making, such as the Contact Group.

Rather than giving credence to conservative 'institutionalist' views which suggest that existing collective bodies, such as the UN and NATO, are set to remain unchanged, or radical 'constructivist' conceptions of new security-communities of post-material values and identity, it would seem that we are witnessing a much more ad-hoc process of security structure formation, which 'realists' would recognise as based on US dominance. The reluctance of US policy-makers to be restrained by the formal mechanisms of NATO, let alone those of the UN, was demonstrated in the 'war on terror' against Afghanistan where the US took direct control of the military aspects. It seems likely that international security structures will increasingly rely on self-selecting and informal 'coalitions of the

willing', where US power will be less restrained by the opinions of other, less powerful states, like Russia or states from African and Asia.

International Law

Just as the security architecture was put to question by the Kosovo crisis so was the basic framework of international law. *Kosovo and the Challenge of International Intervention* attempts to clarify the legal ambiguity of the post-Kosovo world. As G. John Ikenberry notes:

In past historical eras, the end of major wars culminated in peace settlements that allowed the great powers to promulgate new rules and institutions of post-war international order. Power, interests, and norms were brought together and international order was recreated. For example, 1648, 1713, 1815, 1919, and 1945 were each a defining moment when basic principles, understandings, and institutional mechanisms for governance were fashioned. The end of the Cold War did not culminate in such an order-building moment (p. 86).

James Mayall's chapter, 'The Concept of Humanitarian Intervention Revisited', notes that law is a product of politics and power. Post-1945 international society was reconstructed under the influence of two central factors, which were no longer relevant in the 1990s – firstly, the discrediting of colonial rule and ideas of great power superiority and, secondly, the need to contain Cold War confrontation. These factors were reflected in the institutionalisation of legal and political equality of sovereign states and in the restriction on the use of force to instances where a consensus could be achieved in the Security Council (p. 323). Alan James' essay, 'The Concept of Sovereignty Revisited', highlights that the post-Cold War balance of politics and power necessitates a new legal framework. Today, in the forums of the United Nations, the formal political equality of respect between former colonies and their old colonial masters, despite their vast political, economic, social, and military distinctions, seems anachronistic. James argues: 'As politics customarily works, such inequality would express itself in the weaker entities having to defer, to one degree or another, to the stronger. To a largish extent, this is what tends to happen. But, as the outcome of legal and political developments since 1919, the ultimate sanction of force has been more or less ruled out' (p. 339).

This realignment between international law and political power was partially achieved through international responses to the Kosovo conflict. As Coral Bell notes, in the same volume, Kosovo demonstrated the clash between the old norms of international society, based on the political balance of 1945 and enshrined in the international law of the UN Charter, and 'newer norms' appealed to by the NATO powers, which asserted that the restriction on the use of force and presumption of equal rights of sovereignty were a barrier to effective international regulation (p. 451). The question that is left open, however, is whether the new 'norm driven' action of the NATO powers is capable of fully-fashioning a new institutional and legal framework. Andrew Linklater's chapter, 'The Good International Citizen and the Crisis in Kosovo', argues that rather than international law being based on a 'statist' conception of legal rights it should be based on a 'solidarist' conception of international society 'that argues that individuals are the ultimate members of that society, and states are obliged to protect their interests' (p. 486). In order to protect the rights of individuals from abuse:



good international citizens should be prepared to use force. As custodians of the global human rights culture they should take action to ensure that war criminals are prosecuted, and they should be prepared to reconfigure political systems that violate fundamental moral principles. Establishing international protectorates, partitioning societies, and promoting the establishment of federal or confederal arrangements are three possibilities available to the good international citizen (p. 486).

At present, international law is based on 'statist' principles, putting 'good international citizens' in the awkward position where they 'respect existing international legal principles' but also 'apply pressure to them' and 'challenge the status quo'. Linklater argues that Kosovo may well constitute a catalyst in the creation of a new legal framework:

Significantly, many who supported NATO's actions – albeit with reservations – did so not only because of a belief that a humanitarian catastrophe was possible but also because they believed that Kosovo might be a catalyst that introduces a new era of 'cosmopolitan law-enforcement'... Whether Kosovo will give rise to a new legality that removes the moral dilemma of the good international citizen is unclear ... but one of the fundamental responsibilities of the good international citizen is to strive to resolve the tension between legalism and progressivism in a new legal order (p. 493).

However, it would seem that the tension between legal universalism and progressive 'solidarist' aspirations cannot be resolved. The *Kosovo Report* argues that the doctrine of humanitarian intervention is unlikely to take the universalist form of modern law, situating its interpretation: 'in a gray zone of ambiguity between an extension of international law and a proposal for an international moral consensus. In essence, this gray zone goes beyond strict ideas of *legality* to incorporate more flexible views of *legitimacy* (p. 164). It seems that the 'moral imperative' of 'good citizenship' can only be hamstrung by 'adopting a legalistic view', the Independent Commission therefore argues that 'the effectiveness of rescue initiatives would seem to take precedence over legal niceties' (p. 176). The Commission stresses that 'the NATO campaign was illegal, yet legitimate' and that the gap between legality and legitimacy is inevitable without a new international consensus (p. 186).

Peter J. Anderson, contributing to *The Kosovo Crisis*, stresses that 'law and specific systems of ethics, of course, often do not coincide' (p. 199). Anderson argues that 'whatever views we take of NATO's real motives... it could be said to be justified ethically in terms of its results' (ibid.). The Commission also asserts that, unlike legality, ethical legitimacy can operate retrospectively and clearly places the 'moral imperative' above law and diplomacy:

[I]t must be acknowledged that even a negotiated outcome attained by NATO diplomacy would still have consigned over 90% of the Kosovo population to oppressive and discriminatory rule under the FRY. The NATO military campaign... liberat[ed] the majority of the population... Such a favourable set of circumstances for Kosovo Albanians would not have been achieved even if the restoration of pre-1989 style autonomy had been agreed to by Belgrade (p. 176).

Whereas international law was based on sovereign equality and international consensus, ethical 'human rights' intervention presupposes the acceptance of sovereign inequality and the need for coercion. In effect, international law can no longer take a form analogous to domestic law, of equality of treatment, the power to coerce and intervene to force a 'favourable' outcome, remains the prerogative of the rich and powerful.

Kosovo and the Balkan Region

The Independent Commission does not favour the current 'transitional' protectorate solution for Kosovo, where, despite elected bodies at local and provincial levels, the UN Special Representative holds the highest level of civilian authority, capable of dismissing elected representatives and imposing legislation by decree (along similar lines to the indefinite international protectorate powers held over Bosnia). The Commission regards the current settlement as too 'statist' and argues that more ambiguity over sovereignty would be a positive step: 'It might be better to leave questions about the future in limbo, since a constructive ambiguity about the political future of the province might make it easier for all sides to overcome their reluctance to work together' (p. 261).

The Commission argues for a new principle to be openly established in Kosovo – the principle of conditional sovereignty: 'While conditional independence would effectively end FRY sovereignty over Kosovo, it would not immediately confer the full international legal personality of statehood either' (p. 274). The key reason for the solution of 'conditional independence' is that it is seen to create an important precedent. It would:

commit the international community to the... principle that states can lose their sovereign rights... Indeed, one of the central messages of the whole Kosovo tragedy is that by defending its sovereignty in Kosovo at all costs and by rejecting every attempt to internationalise the human rights problem in Kosovo, Serbia ended up accelerating its loss of the province (pp. 277-8).

As Peter J. Anderson argues, the principle of 'conditional sovereignty' was already implicit in international intervention. NATO 'accepted Serbia's continued legal right to exercise sovereignty over Kosovo, *but only after it had gained its credentials as a civilized, even handed, and competent authority to do so*' (*The Kosovo Crisis*, p. 199; emphasis in original). While the FRY would lose its sovereign rights over Kosovo, the gaining of sovereign rights for Kosovo would be dependent on conditions laid down by the international community. The concept of the 'gray zone' of conditional statehood highlights the shift in international approaches to the Balkan region as international involvement has been extended.

The Commission judges that 'conditional statehood' is preferable to 'full, unlimited and unconditional independence' because Kosovo lacks the external and internal preconditions necessary for recognition (p. 272). Firstly, it lacks the means to defend itself against attack from its more powerful neighbour and therefore is dependent on a NATO presence. Secondly, the Commission claims Kosovo 'lacks the other capacities of statehood: the ability to guarantee internal order, domestic safety and inter-ethnic peace' (p. 272). Because of the necessity of international community supervision of both its external security and internal human rights regimes, Kosovo can only aspire to conditional independence.



The judgement that statehood depends on a set of international prerequisites has a wider importance for sovereignty in the Balkan region. As Mathew Wyman notes, in *The Politics of Delusion*, this is a 'most positive development', praising President Clinton's 'entirely appropriate parallel with the process of child-rearing' where the kindest response to misbehaviour is to take action rather than ignore the child (p. 108). It appears that once it is accepted that the people of Kosovo are incapable and 'child-like' it is a short step to seeing other small states in the region as being equally in need of acts of kind intervention. The significance of this precedent is drawn out by the Commission:

Conditional independence for Kosovo is only a viable proposition within the context of a stability pact for all the small states in the region so that they can develop their infrastructure, trading ties, political and strategic partnerships within an enduring framework of peace. The European Stability Pact is a crucial step towards creating such a framework, but the Commission believes that the pact must acquire a political dimension as well as an economic one (p. 274).

The Balkan region is the test-bed for new experiments with 'conditional sovereignty' as the regulatory power of the EU expands in to the area without the Balkan states being treated as equal partners in the policy-making process. As Juan Diego Ramirez and Manuel Szapiro note, in *The Kosovo Crisis*, the result of military intervention has been the extension of both formal and informal EU regulatory structures in the region (pp. 128-33). In May 1999, in the wake of the conflict, the EU transformed its policy towards the region, offering the Balkan states the 'carrot' of future membership, through the Stabilisation and Association process. This process is described by the EU General Affairs Council as 'both pedagogical and political', whereby, in exchange for financial assistance, the Balkan states are forced into accepting EU conditionality tying aid to political and economic reforms laid down by Brussels. In July 1999, the EU pushed the process of external interference further through the launch of the Stability Pact which, unlike the formal EU accession process, has no formal constitution restricting the EU's coordination of international measures for security, economic relations and institution-building in the region.

Conclusion

Schnabel and Thakur, in the concluding chapter of *Kosovo and the Challenge of Humanitarian Intervention*, suggest that new, more 'complex', conflicts are the cause of current ambiguities in international codes of conduct, whether these concern security mechanisms, international norms of behaviour or the question of rights of sovereignty. They highlight, in particular, the problem of humanitarian intervention, which is seen to pit two international principles against each other – upholding international law and protecting human rights – the dilemma of intervention meaning 'being damned if we do and damned if we don't' (p. 497).

The experience of Kosovo suggests that the lack of certainty in international relations does not stem from the 'complexity' of events on the ground as much as the dissolution of an international order established, after the Second World War, on the basis of sovereign equality. The reassertion of great power authority and the importance of economic and military inequalities at the expense of the purely formal 'legalism' of political equality means that there is no basis for recreating a new institutional order based on the universals of law and equal sovereignty. While the advocates of 'progress' lead the challenge to 'statism' and 'legalism', and are happy to see the undermining of

the UN Charter framework, the 'ambiguity' and 'gray area', which appears to be the only replacement available, recalls an earlier, less progressive, era of 'gun-boat diplomacy' and 'might makes right'.