

KOSOVO: HOW MYTHS AND TRUTHS STARTED A WAR. By Julie A. Mertus.

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The war in Kosovo presented a crisis of conscience for the human rights community specifically and the world community generally. No aspect of the crisis could be neatly categorized, classified, or characterized. Was Kosovo simply part of Yugoslavia, or was it autonomous? Was NATO's campaign authorized in any way by the Security Council, or not? Was it regional enforcement action, or collective humanitarian intervention? Was there a humanitarian crisis, or did the bombing campaign create one? Was Milošević's campaign against the ethnic Albanians a response to the bombing, or a premeditated program? Is it genocide if the predominant intent is removal of an ethnic population rather than its destruction? Is humanitarian intervention without U.N. authorization even lawful? At what point is it unlawful for a state to minimize its own casualties at the expense of the civilian population? Have "smart bombs" made "collateral damage" illegal under international law? In ethnic conflicts, are critical communicators of propaganda, such as radio stations, legitimate military targets? If humanitarian intervention is lawful, what is its goal and how can that goal be met without restructuring an entire social and political structure within a state? Is humanitarian intervention least effective in the situations in which it is needed the most?

On June 12, 1999, the eleven-week bombing campaign by NATO ended, and Yugoslavian forces began to leave Kosovo.¹ The U.N. Security Council adopted Resolution 1244, setting out the political and legal structure for administration of Kosovo for an

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¹ See Lori Montgomery, *Milošević Touts Sham Recovery in Yugoslavia: Yugo Auto Plant Supposedly Working After Heavy Damage from NATO Raids*, SEATTLE TIMES, Oct. 26, 1999, at A2.

undetermined transition period.² With little reliable information on casualties or consequences, it was nevertheless clear that the effects on Yugoslavia's infrastructure and economy were devastating, that hundreds of thousands of Kosovar Albanians had been displaced, and that in turn tens of thousands of Serbs had fled Kosovo.³ On May 27, the International Criminal Tribunal for the former Yugoslavia indicted President Milošević and four of his political supporters for war crimes and crimes against humanity in Kosovo in 1999.⁴ The Kosovo Liberation Army (KLA) began establishing its own de facto governmental and administrative structure for Kosovo, forcing the U.N. and NATO troops to take measures to disarm the KLA and reign in their apparent attempt to assume control during the transitional period.⁵ In Yugoslavian towns, which had substantial opposition to Milošević, graffiti on the walls asked, "Clinton in the air. Milošević on the ground. Where is God?"⁶

Many scholars have struggled to define the origins of the conflict in Kosovo. Any conflict in the Balkans immediately lends itself to the easy conclusion that the seed of the conflict is long-standing ethnic hatred that cannot be erased. Noel Malcolm, among others, presents a strong case that Kosovo itself is a relatively recent construct and that ethnic or religious hatred as the cause seems less significant than ideological and political manipulation.⁷ This conclusion is amply supported by Julie A. Mertus's book, *Kosovo: How Myths and Truths Started a War*.⁸ Rather than focus on the high level decision makers in the conflict, Professor Mertus examines the grass roots beliefs of Kosovar Albanians and Serbians to determine how

² S.C. Res. 1244, U.N. SCOR, 4011th mtg., U.N. Doc. S/RES/1244 (1999).

³ See International Criminal Tribunal for the Former Yugoslavia, *Press Release*, (visited Mar. 25, 2000) <<http://www.un.org/icty/pressreal/p403-e.htm>>.

⁴ See *id.*

⁵ See Julius Strauss, *KLA Signs Deal to Disband After NATO Pressure*, DAILY TELEGRAPH, Sept. 21, 1999, at 20.

⁶ Comment from Yugoslavian student to Professor Malone, April 1999.

⁷ See NOEL MALCOLM, *KOSOVO: A SHORT HISTORY* xxvii-xxviii (1998).

⁸ See JULIE A. MERTUS, *KOSOVO: HOW MYTHS AND TRUTHS STARTED A WAR* (1999).

neighbors learn to hate each other to the point of pursuing war and extermination. As an experienced human rights consultant who has worked on Kosovo since 1993,⁹ she includes interviews with Serbians and Albanians in the region to compare and contrast their “true” accounts of what led to the 1998 conflict. Mertus asserts that “experience and myth are far more persuasive and influential than factual truth.”¹⁰ Certainly that must be the case when conflicts are concocted and promoted for political advantage or to fulfill a politician’s desire for power. The author makes explicit what Malcolm suggests: “[T]he war in Kosovo cannot be attributed to ancient hatreds. Rather, the conflict is the result of recent hatreds fueled by recent propaganda campaigns.”¹¹

In 1989, when Kosovo was stripped of its autonomous status and became merely a province of Yugoslavia, the stage was set for Milošević to use Kosovo in his pursuit of power.¹² The human rights violations during this period, as much as or more than the loss of autonomy, led to the inevitable rise of the KLA, which in turn provided Milošević with identifiable Albanian “terrorists” to demonize.¹³ The terrorist label attached directly to the KLA, indirectly to the Albanian unrest, and as Professor Mertus convincingly demonstrates, discouraged the international community from seeking to rectify the human rights deprivations leading to the political unrest.¹⁴ In that sense, the 1998 conflict in Kosovo was not only predictable, but almost preordained.

Professor Mertus examines the critical period of 1981 to 1990 through the prism of four events: the 1981 student demonstrations, the Martinovic case, the Paracin Massacre, and the

⁹ *See id.* at xxi, 379.

¹⁰ *Id.* at 2–3 (*citing* PAUL A. COHEN, *HISTORY IN THREE KEYS: THE BOXERS AS EVENT, EXPERIENCE AND MYTH* 3 (1997)).

¹¹ *Id.* at 4.

¹² *See id.* at xvii.

¹³ *See id.* at 6–9, 228–29.

¹⁴ *See id.* at xi, 7–8, 278–79.

alleged poisoning of Albanian schoolchildren. The 1981 student demonstrations at the University of Pristina sparked Serbian fears of an Albanian revolt in Kosovo.¹⁵ The Martinovic case involved a Serbian peasant who suffered either a self-inflicted anal injury or impalement with a bottle at the hands of Albanian nationalists, depending upon the “truth” one accepts.¹⁶ Likewise, the Paracin massacre in 1987 was either the apolitical act of a disturbed soldier in the Yugoslav army or a politically motivated massacre of four soldiers (one Serb, two Bosnian Muslims, one Slovene and Croat) by an Albanian terrorist.¹⁷ In March of 1990, press reports of Albanian school children becoming mysteriously ill *en masse* led to rumors that Serbians were poisoning the Albanian children.¹⁸ Without minimizing the need to investigate and determine what actually occurred in each of these situations, Professor Mertus contends that the perceptions of each side are equally important to an understanding of how the crisis in Kosovo developed.¹⁹ The interviews she includes are compelling in demonstrating the escalating frenzy of fear, then paranoia, and ultimately hatred, these myths and truths engendered.

It is no coincidence that Milošević’s political power increased as the Kosovo confrontation intensified.²⁰ Milošević consolidated his power within the communist party while appealing to the nationalists with his call for Serbian unity.²¹ His emblem was Kosovo, which he proclaimed in 1998 to be “a love that eternally warms [the] heart” of the Serbian nation.²² From

¹⁵ *See id.* at 32.

¹⁶ *See id.* at 106.

¹⁷ *See id.* at 153.

¹⁸ *See id.* at 187–91.

¹⁹ *See id.* at 252.

²⁰ *See id.* at 176.

²¹ *See id.*

²² *Id.* at 178–179 (*citing* LAURA SILBER & ALLAN LITTLE, *THE DEATH OF YUGOSLAVIA*, 66 (1995) (quoting Milošević)).

there, the Kosovar Albanians became an inevitable target of his campaign of hatred.²³ One of the more interesting and useful aspects of Mertus's book is the chapter devoted to the lessons non-governmental organizations (NGOs), particularly human rights organizations, can draw from how the Kosovo conflict arose.²⁴ There are two aspects of this guidance: how to rectify the distrust and hatred engendered by these truths and myths, and how to prevent future conflicts when public perception is being manipulated precisely for the purpose of creating intrastate strife. To some extent, her message is a strikingly simple one: Human rights workers on the scene and decision makers in their often extensive supra-structure must listen to the voices of the groups in conflict before structuring any mechanisms for support or relief.²⁵ When distrust is being promoted by any individual or entity for political purposes, NGOs may be the only intermediaries who can communicate effectively with the manipulated groups during or after the conflict. Reconstruction of a civil society cannot be accomplished until the rhetoric of hatred is extinguished, or more probably, counteracted. Only when effective methods are found for countering the rhetoric is there any hope of preventing such conflicts before they even occur.

Professor Mertus's book was published before the NATO bombing campaign began.²⁶ The intelligent analysis and thoughtful insights in her book as to the causes of the conflict beg the unanswered question of how she would evaluate the remedy of a bombing campaign for the human rights violations and Milošević's abuse of power. For many human rights advocates, the bombing campaign brought to mind the idiom that warns "be careful what you wish for—you just might get it."

For many years, the legality of humanitarian intervention by force under international law was largely an academic debate, exemplified by the competing articles of Richard Lillich and Ian

²³ *See id.* at 178–81.

²⁴ *See id.* at 253–61.

²⁵ *See id.*

²⁶ *See id.* at xi.

Brownlie.²⁷ The historical precedents, critical to the determination of whether custom recognized such intervention, were murky and complicated by the difficulty of assessing a state's true motivation in situations of clearly mixed justifications. However, with the Security Council's resolutions and intervention to protect the Kurds in Iraq²⁸ and deliver humanitarian relief in Somalia,²⁹ the precedents for humanitarian intervention by the Council premised on a "threat to the peace"³⁰ were clearly established under Chapter VII of the United Nations Charter.³¹ As the Security Council was reactivated, the numerous questions concerning the legality of and criteria for humanitarian intervention by a state or group of states without Security Council authorization were eclipsed by defining the limits of peace-building as opposed to peacemaking.

The NATO bombing campaign thrust all those questions to the forefront of political, legal, and social discourse. With the possible exception of an Entebbe-like rescue operation, is humanitarian intervention inevitably a disproportionate use of force? In measuring proportionality, how can the destruction from bombs or the intrusion of troops be balanced against a mass exodus of refugees or the effects of apartheid? On April 29, 1999 the Federal Republic of Yugoslavia filed a petition against the United States and nine other NATO members in the International Court of Justice.³² In every way possible, the Court expressed concern over this use of force, but dismissed the petition for lack of jurisdiction.³³ Submissions by individuals

²⁷ See Ian Brownlie, *Humanitarian Intervention in LAW AND CIVIL WAR IN THE MODERN WORLD* 217 (John Norton Moore ed. 1974); Richard Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives in LAW AND CIVIL WAR IN THE MODERN WORLD* 229 (John Norton Moore ed. 1974).

²⁸ S.C. Res. 688, U.N. SCOR, 46th Sess., 2982d mtg., U.N. Doc. S/RES/688 (1991).

²⁹ S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/RES/794 (1992).

³⁰ U.N. CHARTER art. 39.

³¹ See *id.*

³² See International Court of Justice, *Press Communiqués* (visited Mar. 25, 2000) <<http://www.u-paris2.fr/cij/icjwww/ipresscom/iprpenyall.html>>.

³³ See generally International Court of Justice, *List of All Decisions and Advisory Opinions Brought Before the Court Since 1946* (visited Mar. 25, 2000) <<http://www.u-paris2.fr/cij/icjwww/idecisions.htm>>. The court held that it had no basis for jurisdiction over Spain and the United States. See International Court of Justice, *Press Communiqué 99/33*, (visited Mar. 25, 2000) <<http://www.u-paris2.fr/cij/icjwww/idocket/iyus/iyusframe.htm>>. For the remaining

and groups to Louise Arbour, prosecutor for the International Criminal Tribunal for the former Yugoslavia, are not as easily dismissed.³⁴ If the humanitarian warriors had spent \$500 million a day on relief efforts instead of bombs, there would have been a very different solution to the Kosovo crisis, although not necessarily a better one. The lives of the Kosovar Albanians would be better, but they would in all likelihood be living their lives outside of Kosovo.

Ultimately, the strongest justification for humanitarian intervention is the moral imperative that certain humanitarian crises mandate that something be done by someone. If the Security Council, whatever its potential powers may be, fails to act, the moral *crise de la conscience* cannot be avoided. Without forceful intervention, the atrocities in Ljubljana, Vukovar, Dubrovnik, Sarajevo, Srebrenica, and Kosovo seemed certain to continue. The hopefully good intentions behind humanitarian intervention, however, do not serve as legal justifications. There are legal justifications for limiting humanitarian intervention to the U.N. Charter mechanisms, which are grounded in curbing the excesses and abuses that often accompany intervention by force. Limiting humanitarian intervention to that authorized by the Security Council could very well be the legal and moral outcome, even if it means that some serious human rights violations will not be rectified. The human rights community (in the broadest sense) must engage in serious self-examination. Human rights advocacy and abhorrence of violence are natural corollaries. Ironically, the hawks of humanitarian intervention today looking outside the Charter for legal justification include many of the doves of earlier interstate conflicts who urged strict adherence to the terms of the Charter for justification of the use of armed force. Human rights advocates cannot afford the appearance of hypocrisy. As the bombing and so-called collateral damage escalated during the campaign, the oxymoron of humanitarian war made the humanitarian warriors look less like humanitarians and more like warriors. By June 18, 1999, when NATO troops entered Kosovo, the most immediate beneficiaries of their presence were the KLA

eight states it concluded it lacked prima facie jurisdiction but remained seized of those cases.

³⁴ See International Criminal Tribunal for the Former Yugoslavia, *Statement by Justice Louise Arbour, Prosecutor ICTY* (visited Mar. 25, 2000) <<http://www.un.org/icty/pressreal/p404-e.htm>>.

leaders.

If the war merely substitutes one group of ethnic nationalists for another, it will be a humanitarian failure, if it is not already one. NATO soon found itself presented with a new set of myths designed to ensure that there would be no return to a mixed society. Fictitious lists of suspected Serbian war criminals were being circulated in Kosovo, some issued under the name of the KLA and local self-declared ethnic Albanian police units.³⁵ A NATO spokesman said the lists seemed designed to heighten the Serbian population's fears and encourage violence from the Albanians.³⁶ The episode seemed a quintessential example of the dangers of manipulative myth-making by political demagogues.

Professor Mertus's book is a cautionary tale for the future of Kosovo. If there is any chance that Serbians will coexist with Albanians in Kosovo, their perceptions of each other will determine what happens to Kosovo more than anything else. If they cannot trust each other, the monumental task of building trust will fall on the shoulders of the human rights community, the moral authority of which has been badly shaken by the bombing campaign. Lawyers and academics can continue to debate the legal ambiguities of humanitarian intervention, but human rights workers must explain to the people how destroying a society was necessary to save it.

³⁵See *NATO Fears New Kosovo Violence*, MILWAUKEE J. SENTINEL, Oct. 21, 1999, at 15.

³⁶See *id.*