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## **AN EXPLORATION OF JUST WAR AND JUST MEANS IN THE KOSOVO CAMPAIGN**

“In the calculus of the NATO democracies, the immediate possibility of saving thousands of Albanians from massacre and hundreds of thousands from deportations was obviously not worth the lives of a few pilots.”<sup>1</sup>

### **INTRODUCTION**

The Kosovo campaign has been the subject of public moral criticism. People have questioned whether the war should have been fought at all since it represented a clear interference in the sovereign internal affairs of Serbia, in other words, whether it was a “Just War”. Once launched, there was considerable concern over collateral damage, a classic issue of “Just Means”.

Characteristic of the public debate is the protagonists’ tendency to present only partial arguments, such as the fact that the war was fought without UN sanction or that Milosevic was carrying out massive ethnic cleansing. The aim of this paper is to review the moral and legal principles underlying the concepts of Just War (*jus ad bellum* in the literature) and Just Means (*jus in bello*) and to test the available evidence from the Kosovo campaign against the legal requirements for Just War and Just Means. It will be shown that this brings some objectivity to the debate, though it is not expected to settle the issue!

The Kosovo Campaign was fought almost exclusively with air power. The classi

e reviewed to assess the extent to which the Kosovo campaign conforms to

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<sup>1</sup> Luttwak, Edward N., *Give War a Chance*, (Foreign Affairs, July/August 1999).

traditional moral principles of employment of air forces. It will be argued that the Kosovo Campaign represents a new high point in the ethical application of air power.

Classical theory creates a moral distinction between the two aspects of Just War and Just Means. Political authorities are responsible for the decision to make war. Regardless of whether that decision leads to a Just War, military leaders are then responsible for the conduct of war according to Just Means. According to Grotius:

It does not fall within the province of the general to conduct negotiations with regard to the causes or the consequences of a war;...Even though the general has been placed in command with absolute power, that must be understood to apply only to the conduct of the war.<sup>2</sup>

Hence, a soldier must use Just Means without accepting responsibility for the decision to enter into what may or may not be a Just War. Alternatively, even in a Just War, the soldier who unjustly targets innocents will be responsible for violating the Law of Armed Conflict. In the Kosovo Campaign, the military authority was not entrusted to select military targets. The political level retained control over the detailed employment of air power thereby usurping the moral and ethical decisions normally made by the military in deciding which targets to engage. In the author's opinion, this has blurred traditional distinctions between the responsibilities of political and military authorities.

## **THE PRECEPTS OF JUST WAR**

Hugo Grotius (né Huig de Groot) developed tenets of international law and established principles and objective criteria for the determination of just wars and just means. According to Grotius, the decision to go to war can be considered just only if it meets all of the six following criteria: *just cause, proportionality, reasonable chance of success, publicly declared, legitimate authority, and last resort.*<sup>3</sup>

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<sup>2</sup> Christopher, Paul, *The Ethics of War & Peace: An Introduction to the Legal and Moral Issues. 2<sup>nd</sup> Ed.*, (Upper Saddle River, New Jersey, Prentice Hall, 1999), p 89.

<sup>3</sup> *Ibid.*, p 81.

The first of these principles is *just cause*. The justness of the cause requiring a state to go to war is measured in terms of the injury received, the rights violated, and the requirement of defense of self or property. It is interesting to note that the concept of humanitarian intervention in a sovereign jurisdiction was envisaged by Grotius as a legitimate reason for war: “when a ruler...inflicts upon his subjects such treatment as no one is warranted in inflicting...[to] punish or prevent humanitarian abuses for the good of mankind in general”.<sup>4</sup> It is also interesting to note the modern Canadian reluctance to kill people to protect property in the context of various interventions. Grotius’ key point is that it is morally acceptable to wage war only after the injury has been received, thereby ruling out wars of anticipation, security, or pre-emptive strikes.<sup>5</sup>

The next principle is *proportionality* which states that the good that will be achieved by the conduct of the war must outweigh the evil and suffering that the war will cause. The good to be achieved is typically the reversal of the condition that gave rise to the just cause, such as the invasion of a neighbour or the violation of human rights. This principle implies that a political end to the war must be determined ahead of time. Then, if conduct of the war deviates from the stated aim, it may become unjust. Hence, we see a good reason for the current political sensitivity against mission creep. Finally wars of annihilation are always unjust and wars must only be fought until the “crimes” are “remedied and corrected”.<sup>6</sup> This point becomes pivotal in the ethical discussion of the use of strategic air bombardment against Japan in WWII. The air bombardment, and particularly the use of nuclear weapons, undoubtedly reduced the length of the war and the total numbers of people killed on both sides. The political aim of the unconditional surrender of Japan, however, must be examined in light of the principle of proportionality. With Japan willing to negotiate a peace agreement, the ethical question

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<sup>4</sup> Ibid., p 82.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid., p 84.

was whether the continued bombardment and eventual use of nuclear weapons aimed at achieving unconditional surrender met the criteria of proportionality.<sup>7</sup>

The third principle stated by Grotius is that the war, its political objective and the means used to prosecute the objective, must have a *reasonable chance of success*. In other words, a just cause must not be a lost cause.

The fourth principle is that the war must be *publicly declared*. This principle flows out of the principle of proportionality which implies that the political end must be established ahead of time. The public statement of the political end and of the willingness of the state or coalition to go to war to achieve the end, gives the offending party the opportunity to correct the wrong and avoid war. The public declaration also clarifies the fact that the war is to be waged by the conscious and public decision of both heads of state. This allows populations of both sides to see what is about to happen. The declaring side can ensure that they have public support for such drastic action and there is the opportunity, perhaps only briefly, for public debate. The offending side gets to know why they are being attacked and they are given the chance to correct the wrongs for which they are being held responsible and thus avoid a costly war.<sup>8</sup>

The declaration of the war must be by the *legitimate authority*. This is usually a straightforward issue, but it could be complicated in a situation such as that of the recent military coup in Pakistan or in the United States where the checks and balances between the President and the Congress are sometimes a question of constitutional debate.<sup>9</sup>

According to Grotius, all of the above conditions must be met in order for a war to be considered just. This leads to the sixth condition, that the war is undertaken as a *last resort*. This requirement does not take away the legitimate right to self defence nor does it preclude nations from acting together to protect a another nation which has been

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<sup>7</sup> Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (U.S.A, BasicBooks, 1977), p 267.

<sup>8</sup> Christopher, Paul, *The Ethics of War...* p 85-86.

<sup>9</sup> *Ibid.*, p 86-87.

invaded. The requirement of last resort, however, ties in all the other requirements. For example, is the cause truly just and is the political objective the minimum required to redress the original injury? Simple retaliation is clearly not permissible when other means are still available to resolve issues.<sup>10</sup>

Two additional conditions are discussed in various fora: *right intent* and *fought justly*. The condition of right intent states that it is not sufficient to have met the six conditions above. In addition, the individual actors must desire the positive results to be achieved by the war and not the negative effects. Grotius argued that the intent of the actors cannot be objectively measured, and therefore the condition of right intent could not be made a legal condition.<sup>11</sup> The condition of “*fought justly*” states that even if the war is just, when it is fought unjustly, the moral high ground is lost. Grotius intentionally left this condition out of just cause because the act of war itself concerns relationships between states while the employment of just means concerns conduct by individuals. Grotius’ approach leaves the two issues quite distinct, which allows the questions of just cause and just means to be dealt with independently.<sup>12</sup> However, “if unjust war conduct is systematic and pervasive, the very justice of the cause for which a belligerent is purportedly waging war will be tainted”<sup>13</sup>

## **THE WAR AGAINST SERBIA: JUST WAR?**

The 1990’s have seen four wars in the Balkans: Slovenia’s and Croatia’s wars of secession, the Bosnian civil war, and the N.A.T.O.-Serbia war over Kosovo. Masked behind media and official terms like “crisis” and humanitarian intervention, the fact remains that N.A.T.O. went to war against Serbia for what it believed was a “Just Cause”. This section will examine the Kosovo crisis and compare it to Grotius’ six conditions for just war.

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<sup>10</sup> Ibid., p 88.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

Kosovo is a province of Serbia with a 90 percent Albanian majority. In 1990, Milosevic dissolved the Kosovo Provincial Assembly and Government, thereby effectively ending the province's semi-autonomous status. A militant Kosovo Albanian organization, the Kosovo Liberation Army (KLA), emerged. The KLA began attacking Serbian security forces and the Serbian government responded in kind.<sup>14</sup> On 24 March 1999, N.A.T.O. commenced air attacks on Serbia. The war lasted 78 days, ending with a negotiated agreement.<sup>15</sup>

The first condition for a just war is Just Cause. According to UK MoD, by "mid September 1998, an estimated 250,000 Kosovo Albanians had been driven from their homes".<sup>16</sup> N.A.T.O. leaders believed that as many as 50,000 of these might die in the oncoming winter. Despite various international efforts to return the Albanians to their homes, the violence in Kosovo intensified and Serbian forces deployed in and around Kosovo. On 19 March, a massive Serb offensive was underway, forcing the withdrawal of the monitors from the Organisation for Security and Cooperation in Europe. There were "good reasons to believe that he [Milosevic] would embark on a further onslaught that would cause yet more civilian casualties, destruction and displacement."<sup>17</sup> A covert Serbian plan was revealed on 9 April to expel the Kosovo Albanians from their homes."<sup>18</sup> Given Milosevic's history, it was reasonable to believe that he would carry out this plan which would result in massive suffering. To prevent this suffering would surely be judged by most people to be a Just Cause.

The second condition is proportionality. We must first assess proportionality by considering what was believed at the time of the start of the war, that a short, sharp air campaign would be sufficient to get Milosevic to back down.<sup>19</sup> "Originally, NATO

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<sup>13</sup> Regan, Richard J., *Just War: Principles and Cases*, (Washington, The Catholic University of America Press, 1996), p 98.

<sup>14</sup> UK MOD, "Kosovo, An Account of the Crisis", <<http://www.mod.uk/news/kosovo/account/historical.htm>>

<sup>15</sup> UK MOD, "Kosovo, An Account of the Crisis", <<http://www.mod.uk/news/kosovo/account/nato.htm>>

<sup>16</sup> UK MOD, "Kosovo, An Account of the Crisis", <http://www.mod.uk/news/kosovo/account/crisis.htm> , p 2.

<sup>17</sup> Ibid., p 4.

<sup>18</sup> Ibid., p 5.

<sup>19</sup> Walker, Air Marshal Sir John, "Air Power for Coercion", *RUSI Journal*, (Aug 1999), p 16.

planned for a bombing campaign that would last just two to four days until Milosevic gave in."<sup>20</sup> To save thousands of lives and to protect the homes of a quarter million people, a four day air campaign seems proportional. However, it soon became obvious that Milosevic was not going to back down after four days. Indeed, he stepped up his campaign of ethnic cleansing, which only raised the stakes of proportionality. Milosevic "drove well over a million people from their homes".<sup>21</sup> This had the ethical effect of reinforcing the just cause and the proportionality arguments that drove N.A.T.O. to war in the first place. In other words, not only was the criteria for proportionality of response met, but by raising the stakes, Milosevic made the argument for proportionality even stronger.

As stated in the preceding paragraph, the condition of *reasonable chance of success* was assessed as positive by N.A.T.O. which believed that a short, sharp air campaign would cause Milosevic to accept the Rambouillet framework. To be objective, it is easiest to assess the condition of *reasonable chance of success* in retrospect. The political objectives were:

“for President Milosevic to:

- Ensure a verifiable stop to all military action and the immediate ending of violence and repression in Kosovo
- Withdraw from Kosovo his military, police and paramilitary forces
- Agree to the stationing in Kosovo of an international military presence
- Agree to the unconditional and safe return of all refugees and displaced persons, and unhindered access to them by humanitarian aid organisations, and
- Provide credible assurance of his willingness to work for the establishment of a political framework agreement based on the Rambouillet accords.”<sup>22</sup>

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<sup>20</sup> Newman, Richard J., “The Bombs That Failed In Kosovo”, *U.S. News & World Report*, (20 Sept 99).

<sup>21</sup> UK MOD, “Kosovo, An Account of the Crisis”, <http://www.mod.uk/news/kosovo/account/response.htm>, p 1.

<sup>22</sup> UK MOD, “Kosovo, An Account of the Crisis”, <http://www.mod.uk/news/kosovo/account/objectives.htm>.

These conditions were agreed by Milosevic on 3 June 1999. Since the political objectives were achieved, they were achievable. One could discuss whether N.A.T.O. had a clear idea of which military, political and diplomatic means would be required at the outset of the war, or of its expected length, but these issues deal with the means and not the justice of beginning the war in the first place.

The fourth condition is that the war must be publicly declared. On 30 January 1999, N.A.T.O. issued a statement “reaffirming its demands, and delegating to the N.A.T.O. Secretary General, Javier Solana, authority to commence air strikes against targets on FRY territory.”<sup>23</sup> On 23 March, the Prime Minister of the United Kingdom announced to the House of Commons that the UK stood ready with the rest of N.A.T.O. to take military action.<sup>24</sup> Since the word “war” was not used, some will argue that war was not declared. This is sophistry. N.A.T.O. announced its intention to use violent military means against a sovereign country if certain conditions were not met. Ergo, war was publicly declared, at least from an ethical point of view. It is also clear that the leaders of the N.A.T.O. nations and the Secretary General were the legal authorities for their constituencies, hence the public declaration condition has been met as well.

The condition of last resort is the most controversial. Milosevic’s contempt for world opinion, as demonstrated in the Slovene and Croatian wars of secession and the civil war in Bosnia, clearly indicate that he would be unlikely to respond to the most extreme diplomatic pressure.

From late 1997, the U.N., N.A.T.O., the E.U., the O.S.C.E. and the Contact Group, comprising France, Germany, Italy, Russia, the U.K. and the U.S., focused...diplomatic efforts to find a peaceful, negotiated solution<sup>25</sup>

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<sup>23</sup> UK MOD, “Kosovo, An Account of the Crisis”, <http://www.mod.uk/news/kosovo/account/crisis.htm>, p 3.

<sup>24</sup> Ibid. p 4.

<sup>25</sup> Ibid. p 1.

However, as indicated elsewhere in this paper, sometimes we must consider whether the political ends being sought are the minimum required to meet right the wrong. Kosovo was and still is sovereign territory of Yugoslavia. What nation would agree to allowing enemy troops on their soil, the withdrawal of its own troops from a “sacred” territory and the commencement of a political process designed to allow the effective secession of one of its provinces? If these conditions were indeed necessary to ensure the survival and prevent the displacement of the Kosovar Albanians, then war was indeed inevitable. But N.A.T.O. could have also used a carrot in its negotiation, a “Marshall Plan Two”<sup>26</sup> to persuade the Serbs to relent, instead of using coercion. At best, then, we can say that the condition of last resort as only partly satisfied.

In conclusion, the war against Serbia does meet most of the conditions for Just War. It met *just cause*, *proportionality*, *reasonable chance of success*, *publicly declared*, and *legitimate authority*, but *last resort* was not satisfied.

## **THE PRINCIPLES OF JUST MEANS**

There are only two conditions to be met in the determination of Just Means: the principle of *discrimination* and the *principle of proportionality*. The first is quite simple: it is wrong to target non-combatants. The second principle appears simple, but is actually quite complex. The principle of proportionality recognizes that when targeting enemy combatants, there is always a risk of damaging protected property or injuring innocent people. This is the principle of double effect. In selecting a target, the militarily “good” effect of neutralizing an enemy must be balanced against the ethically “bad” effect of damaging property or injuring non-combatants. The bad must be proportional to the good, that is, the bad must not outweigh the good. Calculating the relative value of good and bad effects of military action is very difficult.

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<sup>26</sup> Walker, Air Marshal Sir John, “Air Power...” p18.

## DISCRIMINATION

The reasoning behind the principle of *discrimination* is that the enemy's wrongdoing justifies war in the first place and enemy personnel engaged in the wrongdoing must be stopped. Once war is declared, it is normally only possible to stop enemy personnel by the use of military force.<sup>27</sup> Combat personnel occasionally need sleep, rest and recreation, and they go off-duty, but always with the intent of returning to combat, therefore off-duty combat personnel are included amongst permissible targets.<sup>28</sup>

While the issue of who is a non-combatant appears simple at first, the issue can present several ethical problems. The decent treatment of prisoners of war is well accepted and medical personnel are clearly protected. Spies and military personnel acting out of uniform (e.g. special forces) are also participants and legitimate targets, but once captured are no longer participants and should be accorded the same treatment as prisoners of war. However, many countries allow for the execution of enemy spies, based on the argument that by functioning out of uniform, they waive the protection accorded to prisoners of war and are subject to criminal prosecution in the country in which they are captured. If the act of spying is criminal in these countries, we would expect the same countries not to engage in state sanctioned spying, yet, this does not seem to be the case. Unfortunately, the application of ethics in war is sometimes self-serving and uneven.<sup>29</sup>

The argument that supports strategic air bombardment is that war production, such as arms factories, and necessary war infrastructure, including rail, supporting industries, communications, and power are legitimate targets since they comprise the means of the country to wage war. Hence civilian personnel working at these industries are legitimate targets as part of this infrastructure, but not when off duty.<sup>30</sup> There is some argument about the targeting of ordinary civilians not employed in war industry. They

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<sup>27</sup> Ibid., p 87.

<sup>28</sup> Ibid., p 89.

<sup>29</sup> Ibid., p 88.

<sup>30</sup> Ibid., p 90.

may indirectly support the war effort, but the consensus is that they are not legitimate targets.<sup>31</sup> By extension, terrorism would also not be legitimate, since it targets innocent civilians.<sup>32</sup>

It does not seem morally just however to bomb a boot factory just because the boots are going to be issued to the soldiers and are therefore part of the war effort. The “military” nature of the target is insufficient unless it can be showed that its destruction will lead to the desired political and operational result. The author has seen Bosnian soldiers in combat wearing running shoes, it would therefore be difficult to argue that a boot factory was essential to their war effort. The principle of discrimination requires more than just an assessment of a target’s role in the war, the essentiality of destroying the target must also be assessed.

Ethically, one would consider enemy political leadership as legitimate targets, since they are responsible for the country’s decision to commit the wrongdoing that lead to war in the first place. Assassination might seem an ethical course of action since it is the leaders that order the soldiers, sailors and airmen into combat, and it is the leaders who have the power to order the military to stop fighting, but it is not seen as practical. It is usually argued that political assassination might stiffen a population’s resolve and there are old European traditions against assassinating one’s cousins in the hereditary aristocracy. It would also be difficult to eventually engage the diplomatic process at the end of the war after one or both sides had suffered a round of assassinations. More to the point, the politicians quite justifiably fear being personally involved in the conflict since assassination would invite reprisals.<sup>33</sup> One wonders if wars might not be more frequently avoided and brought more swiftly to a close if the responsible politicians were at risk of spilling their own blood.

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<sup>31</sup> Ibid., p 91.

<sup>32</sup> Ibid., p 94.

<sup>33</sup> Ibid., pp 88-89.

## PROPORTIONALITY AND THE PRINCIPLE OF DOUBLE EFFECT

The principle of *proportionality* simply states that the good effect of a military action must outweigh the bad effects. The ethical considerations are usually studied under the principle of “double effect”. Double effect recognizes that any military action, particularly air bombardment, is likely to have undesired effects, termed collateral damage. The principle states that for the action to be considered ethically “good”, four conditions must be satisfied. First, the main effect of the military action must be morally good or neutral. Secondly, the actor must desire the morally good outcome. The morally bad effect must not be the means to achieve the morally good effect. The fourth condition, which ties in the concept of proportionality, is that the good must equal or outweigh the bad.<sup>34</sup>

There is not enough room here to thoroughly discuss the principle of double effect, but a few observations are in order. Michael Walzer argues that the principle of proportionality is not sufficiently rigorous to prevent a military commander from needlessly killing non-combatants. We

have to worry, I think, about all those unintended but foreseeable deaths, for their number can be large; and subject only to the proportionality rule--a weak constraint--double effect provides a blanket justification<sup>35</sup>

and

Double effect is defensible, I want to argue, only when the two outcomes are the product of *a double intention*: first, that the “good” be achieved; second, that the foreseeable evil be reduced as far as possible<sup>36</sup>

and

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<sup>34</sup> Ibid., p 96.

<sup>35</sup> Walzer, Michael, *Just and Unjust Wars...*, p 153.

<sup>36</sup> Ibid., p 155.

The intention of the actor is good, that is, he aims narrowly at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends, and, aware of the evil involved, he seeks to minimize it, accepting costs to himself.<sup>37</sup>

Finally, the point of double effect can be summarized as: “How many casualties is bombing a military target likely to inflict on enemy civilians unconnected with the enemy’s war efforts? How important is the military target?”<sup>38</sup> This military-ethical assessment must be made each time a target is considered.

### **JUST MEANS IN AIR BOMBARDMENT**

We look to history to examine the ethical questions of air bombardment. Prior to World War II, there was much discussion about the use of strategic air bombardment. Sir Basil Liddel Hart searched for an alternative to “the mindless slaughter of the trenches in World War I.”<sup>39</sup> In some circles, it was believed that “the spirit and will of societies as a whole” were fragile in wartime.<sup>40</sup> General Giulio Douhet suggested that a massive air campaign against civilian targets at the outset of a war would be decisive:

A complete breakdown of the social structure cannot but take place in a country subjected to this kind of merciless pounding from the air. The time would soon come when, to put an end to horror and suffering, the people themselves, driven by the instinct of self-preservation, would rise up and demand an end to the war—this before their army and navy had time to mobilize at all!<sup>41</sup>

And yet,

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<sup>37</sup> Ibid.

<sup>38</sup> Regan, Richard J., *Just War*, p 98.

<sup>39</sup> Garret, Stephen A. *Ethics and Airpower in World War II*. (New York, St Martin’s Press, 1993), p 5.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid., p 6.

Prime Minister Neville Chamberlain issued the following guidelines to Bomber Command in June 1938:

1. It is against international law to bomb civilians as such and to make deliberate attacks on the civilian population.
2. Targets which are aimed at from the air must be legitimate military objectives and must be capable of identification.
3. Reasonable care must be taken in attacking those military objectives so that by carelessness a civilian population in the neighbourhood is not bombed.<sup>42</sup>

By 1940, these ethical considerations were largely put aside. Following the stunning successes of Germany in the early months of the war, England found herself the target of an indiscriminate bombing campaign, facing the same fate as Poland and France, and unable to strike back except with air power.<sup>43</sup> In addition, there was pressure to use this new capability in which they had invested considerable resources. This seems to have created a sort of moral vacuum that allowed them to accept the notion of bombing innocent civilians as the only recourse to surrender. The deadly accuracy of German anti-aircraft defences forced bombers to work at high altitude and at night, with the result that it became impossible to strike munitions factories or other military targets with any accuracy.<sup>44</sup> These limitations meant that a large number of civilian casualties were inevitable, with little hope of actually destroying targets of military value. Air bombardment clearly could not be considered “just means” in these circumstances.

While these conditions did not hold until the end of the war, it seems that having crossed the moral line, it was difficult to cross back. By 1944, momentum had built up in the form of massive construction of bombers and training of aircrews, and the bombing of Germany continued despite the effectiveness of land campaigns throughout Europe. Retroactively, Colonel Meilinger attempts to argue that air power is no more inhumane

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<sup>42</sup> Ibid., p 28.

<sup>43</sup> Meilinger, Phillip S., “Winged Defense: Airwar, The Law, and Morality.” *Armed Forces & Society*. (Vol. 20, No. 1, Fall 1993), pp.103-123.

<sup>44</sup> Ibid.

than other forms of war by saying that “less than 5 percent” of the 30 million who died in WWII, or 1 ½ million, “were victims of aerial bombing.”<sup>45</sup>

A calculus of death has also been applied in the air campaign against Japan. In the landings at Iwo Jima 20,000 US and 173,000 Japanese soldiers were killed. In Okinawa there were 80,000 American casualties and 120,000 Japanese. The Tokyo firebombing of 10 March 1945 killed 88,000 people, most of whom were presumably innocent, and destroyed 21 military targets. In all, 330,000 Japanese were killed by the air campaign.<sup>46</sup> The argument has been made that the air campaign, and the atomic bombs in particular, saved the lives of over 1,000,000 Americans and at least that many Japanese. Unfortunately, the flaw in that argument is that even before the bombings of Hiroshima and Nagasaki, the Japanese were ready to sue for peace. Therefore, all the lives, including the ones sacrificed to the bombing, could have been saved by negotiating a peace with Japan.<sup>47</sup> The U.S. continued the war because they believed that the only acceptable political solution was the unconditional surrender of Japan. The continued bombing of Japan clearly did not meet the condition of proportionality since victory was already assured and the political objective went beyond the requirements of a just war.

The use of air power during WWII seems to have followed the philosophy of General William Tecumseh Sherman: “War is Hell”. He believed that the moral questions ended once the war was initiated. To those charged with the conduct of war, their only responsibility was to win it as quickly and efficiently as possible. “War is cruelty and you cannot refine it.”<sup>48</sup>

Since WWII, air forces have been trying to bring their doctrine in line with the ethical practices of the other services. Current USAF regulations state that attacks cannot be made if the civilian casualties incurred would be “excessive in relation to the concrete

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Walzer, Michael, *Just and Unjust Wars...* p 267.

<sup>48</sup> Garret, Stephen A. *Ethics and Airpower...*, p 133.

and direct military advantage anticipated.”<sup>49</sup> The Geneva meetings of 1974 to 1977 devised some new rules to enshrine the safety of innocent civilians. Third world countries, however, seemed to dominate the agenda and wished to restrict any possible future use of air power against them. Some of the rules were seen by the first world countries who had air power as too restrictive and intentionally vexatious. The resulting Protocol was formally rejected by the US in 1987.<sup>50</sup>

## **HUMANITARIAN BOMBARDMENT AND THE CONDUCT OF THE KOSOVO AIR CAMPAIGN**

The issue of Just Means was arguably the central issue in the conduct of the Kosovo Air Campaign. In complaining about excessive political control, the Air Component Commander, Lt. Gen. Michael C. Short, stated:

I think we were constrained in this particular conflict to an extraordinary degree and were prevented from conducting an air campaign as professional airmen would have wanted to conduct it.

and

Toward the end of the air effort, we were restricted by enormous concern for collateral damage and unintended loss of civilian life.<sup>51</sup>

Given the history of air campaigns, these constraints were perhaps understandable. And yet, a huge mass of ordinance was dropped on Yugoslavia. N.A.T.O. flew 10, 484 strike sorties dropping 23,614 bombs.<sup>52</sup> Lt. Gen. Short was initially ordered to attack the Serb 3<sup>rd</sup> Army in the field as it was believed that the 3<sup>rd</sup> Army were “the instruments of ethnic

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<sup>49</sup> U.S. Air Force, AFP 110-31, *International Law—The Conduct of Armed Conflict and Air Operations* (Nov. 1976), 5-7 through 5-13.

<sup>50</sup> Meilinger, Phillip S., “Winged Defense...”.

<sup>51</sup> Tirpak, John A., “Short’s View of the Air Campaign”, *Air Force Magazine*, (September 1999), p 45.

cleansing”.<sup>53</sup> The campaign of attacking ground forces turned out to be spectacularly unsuccessful in slowing Milosevic’s ethnic cleansing, and “ ‘The end result,’ wrote Anthony Cordesman of the Center for Strategic and International Studies in a study for the Air Force, ‘was thousands of dead and over 1.5 million refugees.’”<sup>54</sup> Post-war damage assessment has become controversial, but it is clear that N.A.T.O. destroyed far fewer tanks than they believed.<sup>55</sup> It is not surprising, therefore, this phase of the air campaign had little effect.

N.A.T.O. then adjusted fire, shifting to lines of communications, power grids, petroleum stocks and refining capabilities. Each target was subjected to military and political analysis to balance target value against collateral damage. Each target was documented in a target folder, “with aerial reconnaissance pictures, assessments of its military significance, and gradings of possible collateral damage.”<sup>56</sup> Lawyers would then assess the targets in terms of the Geneva conventions and apply the “reasonable person standard” to distinguish between military and civilian targets.<sup>57</sup> The statistics are not yet available, and casualty figures from the Balkans are notoriously suspect, but it would be reasonable to expect a level of collateral damage comparable to that of the Gulf War, where civilian casualties from the air campaign in the Gulf War were approximately 3000 persons.<sup>58</sup>

With the information available, it is concluded that the principle of discrimination was met in that innocents were not directly targeted. The initial target set was against Serbian military forces in the field. Later the targets switched to legitimate strategic targets. Bridges over the Danube are clearly acceptable since they have a direct impact on Serbia’s ability to re-enforce and resupply its troops, and the bridges can always be re-constructed after the war to restore vital economic links.

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<sup>52</sup> UK MOD, “Kosovo, An Account of the Crisis”, <http://www.mod.uk/news/kosovo/account/stats.htm>, p 2.

<sup>53</sup> Tirpak, John A., “Short’s View...”, p 45.

<sup>54</sup> Newman, Richard J., “The Bombs That Failed In Kosovo”, *U.S. News & World Report*, (20 Sept 99).

<sup>55</sup> Ibid.

<sup>56</sup> Ignatief, Michael, “The Virtual Commander”, *The New Yorker*, (August 2, 1999), p 33.

<sup>57</sup> Ibid., p 33-34.

Proportionality is more difficult to assess. Despite incomplete information however, it seems clear that the Kosovo Air Campaign was considerably more successful in meeting the criterion of proportionality than any comparably large air campaign in history, with the possible exception of the Gulf War. The combination of close political control and precision guided munitions have ensured the most careful calculation of cost versus benefits, on a target by target basis, than ever before, particularly when compared with the experience of World War II.

## CONCLUSION

In the opening quote, Edward Luttwak suggests that the lives of thousands of Albanians were not considered by the N.A.T.O. polity to be worth the lives of a few pilots. The fate of the Albanians was obviously thought to be worth the lives of many Serbians. Starting with this apparent ethical paradox, we have argued that the decision to go to war in Kosovo meets the requirements of a Just Cause, and was certainly fought with Just Means.

We tested the war against Serbia against the six criteria of a Just Cause: *just cause, proportionality, reasonable chance of success, publicly declared, legitimate authority, and last resort*. We found that N.A.T.O.'s campaign met the first five criteria. On the issue of *last resort*, however, it is possible that other means may have been more effective than the declaration of war against an antagonist who had previously shown himself to be very resilient even against the most extreme pressure.

In comparing the air campaign against Serbia with historic air campaigns, it was striking to see the restraint exercised by N.A.T.O. and the extraordinary measures taken to ensure *discrimination* and *proportionality*. While this paper does not attempt an exhaustive historical study, it is clear that the means used against Serbia were more just than those used against Germany and Japan in World War II.

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<sup>58</sup> Meilinger, Phillip S., "Winged Defense...".

We conclude that the war against Serbia comes close to meeting the criteria for a Just Cause and clearly meets the criteria for Just Means. We agree with Sherman that “War is Hell”, but we have come a long way to mitigating the horrors of war by being selective about our causes and discriminatory about our means.

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