International humanitarian law and the Kosovo crisis: Lessons learned or to be learned

by
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The premise of this article is that the Kosovo crisis was a significant event in regard to the law of armed conflict. The event started off as a humanitarian crisis with refugees pouring out of Kosovo into neighbouring regions, especially Albania and the Former Yugoslav Republic of Macedonia. NATO initiated military action not specifically authorized by the UN, but consistent with and in support of previous UN decisions.[1] The legal basis for military intervention will not be addressed beyond relating it to the issue that is the focus of the following paper, namely the application of the law of armed conflict to the campaign in Kosovo. This article considers *jus in bello*, and not *jus ad bellum*. But the causation of the conflict must be taken into account in evaluating the military actions taken. In this regard the crisis was caused by a humanitarian situation which had important effects on neighbouring States and upon regional stability. Major human rights violations were taking place

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within Kosovo. There was a massive movement of refugees forced out of Kosovo. It was feared that the conflict would spread. NATO nations decided that they had a legitimate right to intervene by taking military action.[2]

The questions to be addressed in this article are: what was the application of the law of armed conflict to this crisis, how was it applied, and what can be learned from it? However, the application of appropriate rules, such as those that apply to targeting, the treatment of participants who fall into hostile hands and other victims of the conflict, cannot be adequately judged without consideration of the underlying causes and reasons for the action. Were the military actions appropriate and proportionate to the stated political objectives and results? The rules that apply to refugees, war crimes issues, and the authority to govern within the context of a military operation also depend upon the situation caused by the underlying crisis. Are the laws in existence appropriate for the needs of peace-keeping operations? I believe that the need to consider causation will be evident in the following analysis.

The air war and targeting issues

The first and probably the foremost question concerns application of the law of armed conflict to the air war.[3] The use of

1 Acting under Chapter VII of the UN Charter the UN Security Council called in its Resolution 1199 of 23 September 1998 for the withdrawal of Serbian security forces from Kosovo. It decided that there was "a threat to peace and security in the region", and called upon the participants to improve the situation and initiate negotiations to bring this about.

2 NATO Secretary General Javier Solana stated that Resolution 1199 gave the Alliance the right to use force: "We have the legitimacy to act to stop a humanitarian catastrophe". *Financial Times*, 10/8/98. See also Solana, "NATO's success in Kosovo", *Foreign Affairs*, Vol. 78, November/December 1999, pp. 114-120.

3 The question of the use of force in the Kosovo air campaign was submitted to the International Court of Justice by the Federal Republic of Yugoslavia, which complained about attacks against civilians, civilian objects, protected objects, etc. The Court declined to make a decision on jurisdictional grounds. See "Legality of use of force", *Yugoslavia v. United States of America, ICJ Press Communiqué* 99/33 of 2 June 1999. The same decision has been taken in the cases brought against other NATO nations involved in the air campaign.

force in the Kosovo crisis was largely through air power. Air power was openly announced as a means to stop the acts that were being perpetrated against the civilian population, and to force the Serbian government to agree to the settlement which had been accepted by the Kosovar Albanian delegation at Paris in March of 1999. If the Serbians would withdraw their forces, the air attack could be stopped. Suffice it to say here that the need to intervene to save lives and restore regional stability established the political objective for NATO's effort. There was a specific purpose for the military actions, and they must be judged at least in part on what the nations using the force were trying to achieve. The position of the NATO nations was that they were intervening to stop an ongoing crisis of international significance, and would use only so much force as was necessary to achieve the objective.

Targeting must always be judged primarily upon whether the targets were valid military objectives.[4] In this regard the targeting process in Kosovo was not secret. It was well covered on the television and in newspapers. Initial targets hit were Serbian surface-to-air missile sites, military installations and troop concentrations. These clearly were military objects. Other targets used for both civilian and military purposes, such as bridges, roads and communications facilities, also were attacked. The law of armed conflict provides that attacks may be made only against objectives which:

> "... by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."[5]

Bridges and roads were used to send military forces into Kosovo, whereas communications facilities were used to send orders to military forces and receive their reports, spread Serbian propaganda,

4 Protocol I additional to the Geneva Conventions of 12 August 1949, Art. 48 (Basic rule): "Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

5 Protocol I, Art. 52.2.

and generally prolong the war. Their damage or destruction was consistent with the definition of "military objective".

Attack on a military objective also must take into account principles of the law of armed conflict that impose limits on collateral injury to civilians not taking part in hostilities and collateral damage to civilian objects, including cultural property. Collateral damage is unintended damage to property that is not itself part of a valid military objective, but is incidental to attack of that objective. The law of armed conflict establishes a duty to take reasonable precautions, consistent with mission accomplishment and force protection, to minimize incidental loss of life or injury to civilians and damage to civilian objects.[6] Attacks that may be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian objects must not cause damage "excessive in relation to the concrete and direct military advantage anticipated".[7] "Military advantage" is not restricted to tactical gains. One must take into account the full context of a war strategy.

This obligation was taken into consideration by planners when targeting military objectives in Serbian cities. In those cases, an effort was made to limit risk to the civilian population and civilian objects though the use of precision-guided munitions, or by scheduling attacks at times, such as at night, when civilians were less likely to be present. Precision-guided munitions, the so-called "smart bombs", and cruise missiles made famous in the 1991 Gulf War[8] and used again in Yugoslavia, were the weapons of choice and used wherever possible. The law of armed conflict prohibition on indiscriminate attacks[9] was

6 Protocol I, Art. 57.2(a)(ii): Those who plan or decide upon an attack must "take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians, and damage to civilian objects."

7 Protocol I, Art. 57.2(a)(iii).

8 For a description of law of war issues in the 1991 Coalition effort to liberate Kuwait, see U.S. Department of Defense, *Final Report to Congress: Conduct of the Persian Gulf War*, April 1992, pp. 605-632.

9 Protocol I, Art. 51.4, provides: "Indiscriminate attacks are prohibited. Indiscriminate attacks are: (a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol ..."

implemented through command guidance to call off an attack if weather or other circumstances prevented an aircrew from identifying and accurately targeting the military objective assigned to it for attack.

Collateral damage, however, cannot be completely excluded. Nor can mistakes in targeting, such as the bombing of the Chinese Embassy in Belgrade, which was the most obvious example during the Kosovo campaign.[10] The inquiry into the cause of the incident indicated that it was brought about by a mistake in intelligence. The wrong building was identified in the targeting process. While there was some scepticism that such a mistake could be made, mistakes in conflict, though regrettable, are inevitable. The law of armed conflict prohibits the intentional targeting of civilian objects not being used for military purposes. It requires a good faith effort in planning an attack to take "feasible" precautions to minimize injury to the civilian population or civilian objects. "Feasible precautions" are defined as those measures that are "practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations".[11]

A particularly difficult issue during the conflict was the decision to attack "dual use facilities" such as power plants, oil and petroleum depots, and buildings or building complexes used for civilian and military purposes. When a civilian object is put to military use, it loses its protected status.[12] The law of armed conflict does not permit the presence of the civilian population to render an otherwise valid military objective immune from attack. Parties to a conflict are

10 Embassies must be protected as civilian objects.

11 Protocol I, Art. 57.2(ii) and (iii), and definition given in the declaration made by Italy on ratification of the 1977 Protocol I additional to the Geneva Conventions of 1949. This definition was subsequently incorporated into Article 1.5 of the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons.

12 The rule is that civilian objects are protected, but if, "by their nature, location, purpose or use" in the circumstances ruling at the time, they meet the definition of a military objective, they lose their status as civilian objects and become legitimate targets. See Protocol I, Art. 52, paras 1 and 2.

forbidden to make use of civilians to shield military objectives from attack.[13] Their use for that purpose is itself a violation of the law of armed conflict.

There are circumstances when targeted facilities by their nature serve both military and civilian purposes. For example, communications facilities or power plants necessarily have a dual use.[14] There may be no intention to disregard the rules, but these facilities cannot be considered protected from attack if they are being used for military purposes. In the Kosovo air campaign, in acknowledgement of the limited political objectives, an effort was made to distinguish as much as possible the military from the civilian aspects of these dual use targets. Planners endeavoured to strike targets in such a way that the military purpose for their attack would be obtained while minimizing, as far as practicable, the impact on the civilian nature of the target. Examples were the destruction, in a large building, of that part that was being used for military purposes. Another was cutting off power or communications lines, but doing so in such a way as to allow restoration as soon as possible for civilian uses once hostilities had ended.

The Kosovo air campaign witnessed an unprecedented review of targeting.[15] Reviews were conducted at NATO headquarters among the member States, and also by individual States participating in the air campaign.[16] There were military, political and legal reviews. Legal officers advising on operational law matters at each major command headquarters, at NATO headquarters in Brussels, military headquarters at SHAPE in Mons, Belgium, and in the NATO and national commands participating in NATO military actions, were involved in targeting decisions. There was recognition both of the

13 Protocol I, Art. 51. 7.

14 Note that this is not a question here of works or installations containing dangerous forces which are protected under Protocol I, Art. 56. The latter, e.g. dams and nuclear power plants, are objects the destruction of which could release dangerous forces and cause widespread injury among civilians.

15 The standards for review are clearly set out in Protocol I, Art. 57.2 (i), (ii) and (iii): Precautions in attack.

16 Today's laws of armed conflict clearly require a legal review of military actions. There must be legal advisors, and commanders must take legal rules into consideration. Protocol I, Art. 82.

obligation to follow the rules and of the fact that by limiting civilian damage the political and military objectives were better served.

Great effort was made to limit attacks to military targets, and to limit the extent of collateral injury to the civilian population and damage to civilian objects. In many cases targets were rejected because of their location in the vicinity of civilian housing or other civilian objects such as churches or hospitals,[17] or if collateral damage might be expected to be politically if not legally excessive.[18] Accurate aerial photography and sophisticated weaponry made this possible. In those cases where dual use targets had been designated for attack, attack approval was given at highest levels, often with strict strike parameters (such as previously described) so as to minimize the risk of collateral civilian injury or damage to civilian objects. In all cases there had to be a military connection, and the targets were determined to be military objectives.

Prisoners of war

A significant issue arose with the capture of three American soldiers in the Former Yugoslav Republic of Macedonia by Serbian forces. At first there was some confusion over the status of these personnel. They had been part of the UN preventive deployment force (UNPREDEP) in Macedonia, but the mandate for this force had just expired. They were not in Macedonia for the purpose of the conflict, but they were soldiers of a State participating in an international armed conflict who were taken prisoner on the territory of a neutral State. The Third Geneva Convention relative to the Treatment of Prisoners of War provides that prisoners of war include:

> "Members of the armed forces of a Party to the conflict as well as members of militias or volunteer [civilian] corps forming part of such armed forces."[19]

17 Protocol I, Art. 53: Protection of cultural objects and places of worship.

18 *Loc. cit.* (note 6).

19 1949 Geneva Convention relative to the Treatment of Prisoners of War, Art. 4.A(1). Members of the armed forces of a party to an international armed conflict who fall into the power of the enemy are prisoners of war. There is no distinction made as to where or how they are taken prisoner.

Some persons thought initially that it would be better to assert that the captured soldiers were illegal detainees, allowing the United States to demand their immediate release, rather than waiting until the end of active hostilities, as is the customary practice and the obligation for release or repatriation under the Third Convention.[20]

It was clear that the nation taking the prisoners and the nation to whom the soldiers belonged were participating in hostilities. It was an international armed conflict between States. The laws of international armed conflict applied, and so did the Geneva Prisoner of War Convention. The United States correctly took the position that they were prisoners of war, and quickly announced this publicly. The prisoners were visited by delegates of the ICRC, and subsequently were released as fighting continued, even though under the Third Convention they could have been held until the cessation of active hostilities. The U.S. decision proved to be the right decision, because the soldiers were better protected under the clear rules provided by the Third Convention than under any vague human rights rules which could be applied to persons otherwise detained.

Another question of interest was the status of Kosovar Albanians who were taken into detention by Serbian forces, or Serbians who were taken as prisoners by the KLA (Kosovar Liberation Army). At issue was whether the conflict between the Serbian forces and the KLA had risen to the level of a non-international armed conflict covered by Article 3 common to the four Geneva Conventions of 12 August 1949[21] or by the provisions of Protocol II additional to the 1949 Geneva Conventions and pertaining to non-international conflicts.[22] I believe that both treaties were applicable in the circumstances that existed. Those are the exact type of persons Article 3 of the

20 *Ibid.*, Art. 118. The release must take place "without delay" after active hostilities have ended.

21 Art. 3 common to each of the four 1949 Geneva Conventions provides basic protection for non-international armed conflicts. Protocol II provides more detailed protection, including protection under Art. 5 thereof, for detained persons.

22 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Conflicts (Protocol II).

Conventions and Protocol II were designed to protect. Once the hostilities became an international armed conflict (with the commencement of the air campaign), the rules of the Third Geneva Convention clearly applied between the States participating in the conflict. This included the potential situation in which the NATO forces might receive a Serbian prisoner from the Kosovar forces. The rules could have been applied by and in regard to Kosovar participants, if the KLA or the Serbian forces had announced that they would be bound by such rules.

KFOR and rebuilding the civilian structure

After the military conflict ended, the United Nations Security Council authorized the deployment of KFOR (Kosovo Force),[23] which was established by NATO. It was premised upon an agreement of the Serbians and upon negotiation of a separate agreement with the Kosovar Albanians. These agreements, based on principles established at Rambouillet and Paris in February and March 1999, included conditions for the complete withdrawal of all Serbian forces from Kosovo, and the demilitarization and transformation of the KLA. The UN Security Council ratified the peace plan and established a separate UN civilian organization, the United Nations mission in Kosovo (UNMIK), to deal with the civilian issues.[24] This raises the question whether the laws of armed conflict are applicable to the military force in a peace operation, and what rules apply to protect the civilian population. The provisions of the Fourth Geneva Convention on belligerent occupation apply during an armed conflict. With the cessation of open hostilities, KFOR was not an occupying force.[25] Its authority was not based on the imposition of military control by a State upon another State, but on the authorization by the United

23 UN Security Council Resolution 1244 of 10 June 1999.

24 *Ibid.*

25 Art. 6 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 provides that application of its provisions ceases upon the close of military activities, but that they may continue to apply during a regime of occupation.

Nations to keep the peace. In this regard a decided effort is under way to fully implement the civilian part of the UN regime as soon as possible.

If the law of armed conflict does not apply, what rules do apply? What rules are relevant as a template for protection of the civilian population? The basis for KFOR and UNMIK is UN Security Council Resolution 1244 (1999). It authorized KFOR to do all that was necessary militarily to keep the peace, and UNMIK to do all that was necessary to restore civilian order and government. This situation no longer required an application of rules of armed conflict, but of civilian control authorized by the UN and supported by a military peace-keeping force. One of the objectives of the United Nations regime was to re-establish all of the civil rights that must be provided by a legitimate democratic government, thus also including those laid down in generally accepted human rights conventions.[26] It must, however, be recognized that this is an interim situation where a conflict has been ended, but civilian control has not yet been restored. There are a multitude of general human rights rules which apply in any situation, but those which apply to a regime of belligerent occupation are not appropriate. There are very difficult problems in Kosovo. A clear example is the difficulty to proceed with judicial actions when there is no agreement on the national laws that apply. Kosovo is still part of Yugoslavia, but the majority ethnic Albanian population will not accept Yugoslav laws.

If the peace does not hold and conflict breaks out anew, the rules of international armed conflict would again apply. This was the solution in respect to the law of armed conflict used by NATO forces both in Bosnia and in Kosovo. The law of armed conflict was applied to situations where the circumstances made them applicable. Recently the UN Secretary-General has issued instructions to UN peace-keeping forces that they are to observe the rules of international armed conflict in their operations. The text states:

26 In the Dayton Peace Agreement the parties specifically agreed to observe the International Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, etc. See Annex I to the Dayton General Framework Agreement of December 1995.

"They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defense."[27]

In this regard it is noted that the instructions in the Secretary-General's Bulletin may be overly broad in that not all participants in peace-keeping operations are party to Protocols I and II or to some of the other agreements referenced in the bulletin. However, the principle is clear that the laws of armed conflict should apply to peace-keeping forces in the appropriate circumstances.[28]

Provision of civilian relief

The immediate problem for KFOR and UNMIK was entering to restore order in Kosovo so that the civilian population could return, and then to enable relief to be provided to those who remained and to those who were returning. So many homes had been destroyed by the end of the conflict that many were without shelter, and winter was soon to come. Homes and living areas had to be made safe from mines placed during the war. But the legal responsibility of military forces is limited under the Fourth Geneva Convention and the Additional Protocols of 1977.[29] Articles 68 to 71 of Protocol I lay down some detailed rules in regard to providing relief to civilians, such as the duty to provide food and medical supplies and to allow the provision of such relief. However, this is an obligation which applies to armed conflict or military occupation, and not to a peace-keeping force.[30]

27 Observance by United Nations forces of international humanitarian law, UN Secretary-General's Bulletin of 6 August 1999, ST/SGB/1999/13. See also *IRRC*, No. 836, December 1999, pp. 812-817.

28 For example, the U.S. Chairman of the Joint Chiefs of Staff Instruction 5810.01 (12 August 1966), which preceded the Secretary-General's Bulletin, declares as a matter of policy (para. 4a): "The Armed Forces of the United States will comply with the law of war during the conduct of all military operations and related activities in armed conflict, however such conflicts are characterized, and unless otherwise directed by competent authorities, will apply law of war principles during all operations that are characterized as Military Operations Other Than War."

29 See, e. g., *loc. cit.* (note 25).

30 Protocol I, Art. 69, provides for basic needs in occupied territories to be met, such as food, shelter and medical relief, and Art. 75 provides for fundamental guarantees for persons "in the power" of a party to a conflict.

The provision of relief to civilians outside military conflict situations properly remains a State obligation that may be tasked to military forces, but it is not an obligation imposed by international law upon military forces. The United Nations in Kosovo has taken upon itself to rebuild a civilian structure that had been completely destroyed. It also has taken upon itself the task of providing relief to a population devastated by the recent conflict. There has to be a civilian police authority to keep order, but there also must be food, shelter and medical supplies. A working government and a system of laws have to be re-established. The NATO military authorities rightly wished to leave this task as much as possible in the hands of the UN, and to provide the security to allow the civilian authorities to do what was necessary. But to a great extent the function of policing and civilian relief has been taken on by the military forces until the civilian structure can be re-established. Their task is difficult, and it is made more difficult because the applicable rules are not always entirely clear or appropriate for the problems that need to be addressed.

War crimes

Lastly, to what extent are the acts committed against civilians by Serbian forces or their agents in Kosovo war crimes? In the situation that preceded the international armed conflict, actions by the Serbian military forces led to the massive movement of refugees out of the country. Atrocities were committed which precipitated the conflict. It was recently estimated by a U.S. State Department report to the U.S. Congress that there may have been as many as 10,000 deaths brought about by the Serbian military operations in Kosovo.[31] One of the most flagrant was the killing of 45 villagers in the town of Rajak. The bodies of the victims were found with their eyes gouged out, bound, and some decapitated. It might be debated whether the law of armed conflict applied to these acts, and whether they took place during a situation of non-international armed conflict under common

31 "Report to Congress", *New York Times*, 10 December 1999, p. 12.

Article 3 of the Geneva Conventions or after the conflict became international. This question was rendered moot, however, when the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted Milosevic and other Serbian officials for the war crimes committed in Kosovo.[32] ICTY asserted jurisdiction over all alleged war crimes in Kosovo.

More recently ICTY announced that it was looking into reports that NATO pilots had committed war crimes by bombing civilian targets. At the same time the Chief Prosecutor announced that these reports were not at the top of her priorities, and that she had more important things to look at.[33] ICTY subsequently announced that NATO actions were not being investigated, but merely that the prosecutor met with and received information from a variety of individuals and groups urging investigation.[34] In this regard, the above discussion that targets were selected because they were military in nature, and that great care was taken to consider the legal rules applicable, are appropriate considerations. Nations and their military commanders listened to their legal experts, and were well aware that their actions would be critically appraised.

Both IFOR/SFOR and then KFOR were given their supporting role for the International Criminal Tribunal for the former Yugoslavia by the North Atlantic Council. ICTY has the authority to investigate and to prosecute war crimes, and its authority applied equally to Kosovo as it did to Bosnia.[35] The types of support provided include security for ICTY personnel, intelligence information pertaining to security or their mission, some logistics support, and most sensitive assistance in detaining persons indicted for war crimes. Unlike in Bosnia, investigations in Kosovo were quickly started. There

32 Besides President Milosevic, also indicted were Milan Milutinovic (President of Serbia), Nikola Sainovic (Deputy Prime Minister, FRY), Dragoljub Ojdanic (Chief of Staff of the FRY Army) and Vlajko Stojiljkovic (Minister of Internal Affairs of Serbia). See ICTY press release JL/PIU/403-E, 27 May 1999.

33 AP press release, 28 December 1999, and "UN Tribunal Plays Down Scrutiny of NATO Acts", *New York Times*, 30 December 1999.

34 ICTY press statement, 30 December 1999.

35 The authority of ICTY is based on the UN Security Council resolution under which it was set up, and applies to all of former Yugoslavia.

was no argument over whether KFOR should be involved in making detentions. In this regard there was no danger of dealing with a still existing military threat, as had been the case in the early days of IFOR. Also, rules for detention had already been established by IFOR and SFOR and served as a point of departure for similar procedures in KFOR.

The rule which I participated in formulating as Legal Advisor to the IFOR Commander was that the NATO forces would not hunt out war criminals, but they would detain indicted war criminals if they came across them in the course of their normal military operations, and hand them over to the ICTY authorities. ICTY and the military authorities are more used to each other's missions and to working together. But it is still a problem that the responsibility to make the detentions falls, out of necessity, upon military rather than civilian authorities. KFOR can make detentions based upon ICTY indictments, or it can act under general rules of the laws of armed conflict or its own rules of engagement to stop crimes committed in its presence, but not based on mere suspicion of criminal activities.[36] Military authorities neither can nor should replace civilian authority to arrest civilian offenders, including war criminals.

Conclusion

Important lessons can be learned from the conflict in Kosovo. The special problems in targeting are a consequence of modern war and society. As has been the experience of all wars of the past century and a half, the fact that military and civilian targets are intermixed is part of modern industrialized society. Dual use does not preclude attack of a military objective, but the increased precision of weapons also makes it possible to limit and distinguish between the two aspects of targets, and to make a special effort to limit civilian casualties and collateral damage. The existence of modern weapons

36 "Rules of Engagement for open publication", reprinted in Appendix 5 to the KFOR ROE, a NATO document dated 7 June 1999.

which permit soldiers to distinguish between civilian objects and military objectives provides not only a military advantage, but also added opportunities for those who are planning the targeting in order to comply with national or alliance policy objectives, with military campaign objectives (as determined by policy objectives), and with the laws of armed conflict. In Kosovo the extent to which legal advice was sought and considered in planning and targeting was an extremely important aspect of the conduct of the conflict. While there may be disagreement over the application of the rules by commentators who write about it after the event, there can be no doubt that full consideration was given, as required by the laws of armed conflict, to the advice of legal counsel and the application of the rules.[37] This is an important lesson to be learned from the Kosovo conflict as regards applying the rules to actual conflict situations.

However, it would be wrong to assume that these are the only lessons. Other significant issues included the determination of who were prisoners of war, the rules applicable to the investigation and prosecution of war crimes, and, perhaps most importantly, determination of the extent of application of the law of armed conflict to a situation that changed from conflict to peace-keeping. Even where the law of armed conflict technically does not apply, it serves as an indispensable template for military conduct. As I observed earlier, the conflict was precipitated by a humanitarian crisis of huge dimensions. It presented the problem of how the world community can deal with such a crisis. Bringing relief to victims of a conflict is as much a responsibility under the laws of armed conflict as is the responsibility to limit the use of force and make discriminating decisions in choosing targets. But once the UN or nations acting in a peace-keeping capacity decide to intervene in a crisis situation, what rules will apply? Are there sufficient rules to provide guidance to rebuild the civilian structure, bring war criminals to justice, and bring the hostile parties together? Indeed there are. And this too is one of the lessons learned from the Kosovo crisis.

37 Protocol I, Art. 82 requires that parties to that treaty "ensure that legal advisers are available, when necessary, to advise military commanders".

There is a very significant issue in the Kosovo experience of how well the laws of armed conflict do apply to peace-keeping missions. One aspect is the status of the rules to be followed by the forces themselves, and I have noted in this regard the UN Secretary-General's Directive of 6 August 1999. There is no question that the forces should be trained in and ready to apply the rules in appropriate situations. But the bigger question is to know what rules apply to the broader humanitarian situation. The laws of armed conflict may specifically not apply, but there is a need to apply forms of protection to victims in a peace-keeping situation similar to those provided for in a conflict situation. There is a period after the conflict ceases and before peace is truly re-established that must be considered as well. Much of the responsibility necessarily belongs to the civilian authority in the peace-keeping mission, and the military forces take on a supporting role. Responsibilities and rules must be studied in this light. This might be the most important lesson learned from the Kosovo conflict.

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Résumé

Le droit international humanitaire et la crise du Kosovo — Une leçon pour l'avenir

par JAMES A. BURGER

L'auteur passe en revue quelques problèmes importants qui se sont posés pendant l'intervention des troupes de l'OTAN au Kosovo et intéressant sur le plan du droit international humanitaire. La première question est évidemment celle de savoir si le droit des conflits armés était applicable à la campagne militaire ou non, question à laquelle l'auteur répond par l'affirmative. Vue sous l'angle juridique, la situation prévalant au Kosovo après la fin des hostilités actives est cependant moins claire. L'auteur analyse ensuite, entre autres, les règles juridiques relatives à la conduite des hostilités, telles que codifiées par le Protocole I de 1977, ainsi que la question du statut des combattants (appartenant aux différentes forces armées) tombés aux mains de l'adversaire. En conclusion, Burger souligne le rôle important que les juristes militaires et experts en droit international humanitaire ont joué dans ce conflit, notamment comme conseillers des officiers chargés de désigner les objectifs des attaques aériennes. L'action militaire au Kosovo aurait selon lui permis de faire des expériences précieuses quant à la mise en œuvre du droit international humanitaire en vigueur.