Killing Civilians in Order to Save Them: The Darkside of Humanitarian Intervention

Paper Presented at the FLACSO-ISA Joint International Conference

Buenos Aires

July 23 – 25, 2014

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The most fundamental precept in medicine is the principle, *primum non nocere*: first do no harm. Whatever the proposed medical intervention or procedure, the primary consideration in any case of sickness or injury must be the well-being of the patient. A competent physician is expected to forgo treatment if he or she reasonably believes that such treatment could make the condition worse. In international affairs, humanitarian intervention – the use of military force to prevent or stop widespread atrocities inflicted on a civilian population – has become the metaphoric equivalent of a treatment, and the civilian population is the counterpart of the patient. If one were to follow medicine’s most basic principle, the well-being of the population would be the first and foremost concern of any military operation justified on the basis of protecting civilians from mass abuses by their governments. Yet the practice of humanitarian intervention over the past two decades has raised serious questions about whether the protection of civilians is in fact the primary concern of the interveners, and whether the cure does in fact produce harm. Empirically these are more than questions. In virtually all cases, humanitarian intervention campaigns have left a significant number of civilians dead or injured, and their communities badly damaged.

The level of civilian casualties and damage to civilian objects during humanitarian operations is troubling. Although we will probably never know the precise numbers, reliable estimates of civilians killed or wounded by multinational forces seeking to protect food deliveries and humanitarian assistance in Somalia in 1993 run into the hundreds.¹ Between 500 and 1,500 civilians were killed and approximately 820 more were wounded by NATO air strikes during its two and a half-month campaign to protect the Kosovar Albanians from attacks by

Serbian security forces in 1999.”

NATO’s air operations to protect Libyan civilians from government attacks in 2011 left at least seventy-two civilians dead and at least that number injured. Investigators from human rights organizations, newspapers, and inter-governmental organizations point out that these numbers likely undercount the actual total, in some cases significantly. Moreover, none of these figures include the extensive destruction of civilian homes, businesses, and infrastructure vital to the survival of the civilian population that was produced as a direct result of the attacks by the protectors.

This paper will examine why military campaigns designed to protect civilians from widespread atrocities produce so many civilian casualties and end up destroying so many civilian objects. It will argue that this is the result of two closely related factors. First, the interveners treat the operations as classic military campaigns that employ overwhelming force against an adversary to secure victory. This is not only inappropriate for a protection mission – not to mention a violation of the conditions under which humanitarian intervention may occur – but by placing a greater value on achieving victory over the protection of the civilian protection, the interveners inevitably produce significant civilian casualties. Second, although the publicly-stated goals of recent campaigns had been humanitarian, other aims – such as regime change or altering the balance of power in a civil war – had dominated the intervener’s strategy. As a result, the interveners prioritized attacks on political institutions that had more to do with

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4 For example, Human Rights Watch only includes deaths and injuries that they can verify with the names and addresses of the victims, and acknowledge that the casualty tolls are likely to be much higher. See also C.J. Chivers & Eric Schmitt, “In Strikes on Libya by NATO, an Unspoken Civilian Toll,” New York Times, December 17, 2011.
supporting the government than repressing civilians. This required targeting facilities that were located within populated towns and cities, thereby increasing the risk to civilians.

The first section of the paper will review the strict standards regulating the use of force that scholars and practitioners have established as necessary to justify protection operations. These standards are derived from International Humanitarian Law and from various official and semi-official documents advancing the idea of a “responsibility to protect.” The next section will then examine how contemporary military strategies defy these standards by employing overwhelming force under conditions likely to produce civilian casualties. The last section will illustrate this practice by examining NATO’s air campaigns in Kosovo (1999) and Libya (2011).

**The Means and Methods of Humanitarian Intervention**

Most of the debate over humanitarian intervention has revolved around questions of sovereignty versus accountability (for the target governments) and values versus interests (for the interveners). On the one hand, many political leaders and international law scholars are skeptical of institutionalizing a responsibility to protect, fearing that sanctioning external intervention in the internal affairs of a state, even for the greater good, could fatally undermine one of the most important legal and diplomatic norms in international relations. In particular, some worry that it could provide an all-purpose justification for stronger powers to violate the sovereignty and independence of weaker ones. On the other side, some cite the equally strong norm prohibiting governments from committing gross violations of human rights, particularly

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when they rise to the level of genocide or crimes against humanity. Over the past two decades, political officials and legal scholars have tried to balance these conflicting principles by developing strict criteria to guide any form of external intervention that is initiated to protect populations from atrocities, criteria that would make it very difficult for intervening states to legitimately abuse the emerging norm of international protection.

The most popular and oft-cited document that outlines these restrictions was issued by the U.N.-commissioned International Commission on Intervention and State Sovereignty, titled, “The Responsibility to Protect.” Drawing from Just War Theory, the document specifies six criteria for a legitimate humanitarian intervention: just cause, right intention, last resort, proportionality, reasonable prospects and right authority. These criteria are designed to ensure that humanitarian intervention is not undertaken in an arbitrary and capricious manner on the basis of a parochial self-interest that is unrelated to protecting an abused population. Overriding the sovereignty norm by violating the territorial integrity and political independence of a state therefore carries with it a very high burden, and for that reason, humanitarian intervention can only be justified under strict rules of engagement.

Yet the problems associated with humanitarian intervention (or protection) go beyond the question of sovereignty versus responsibility. Equally important are the means and methods interveners may employ in enforcing the protection norm. It is in this area that contemporary practice falls far short of the requirements for legitimate protection operations.

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8 International Commission on Intervention and State Sovereignty (ICISS), The Responsibility to Protect.
On the one hand, the conduct of war is already loosely regulated by International Humanitarian Law (IHL), the body of customary practices, multilateral treaties, and normative principles that restrict the means and methods that combatants may employ during an armed conflict. The primary goal of IHL is to protect those who are not directly participating in hostilities either because they are not combatants (that is, civilians) or because they have been rendered *hors de combat* (incapable of performing any military activities as a result of being wounded, sick, or detained as prisoners of war). Its two most important principles are distinction (distinguishing between civilians and combatants when launching attacks) and military necessity (restricting targets to those that make an effective contribution to military action and whose neutralization provides a concrete military advantage).

IHL provides a common standard that is universally applicable to all armed conflicts regardless of the identity of the combatants, the nature or origin of the conflict, or the righteousness of the cause. Distinctions between just and unjust war, aggression and self-defense, or good and evil are all irrelevant in determining the means through which combatants may prosecute a conflict. The rules are binding on all sides, and they remain in force even if one of the belligerents violates them. Thus, while there is some room for interpretation of a particular rule or its application in a specific circumstance, the provisions that provide for the protection of non-combatants is not subject to differing conceptions of morality, philosophy, political orientation, necessity, or culture. International law is a common language for all states and their military organizations.

At the same time, so long as combatants adhere to the principles of distinction and military necessity, they are not held legally liable for “incidental” or “inadvertent” civilian
casualties or the unintentional destruction of civilian objects. Under IHL, such casualties are considered inadvertent if they are the result of: (1) an attack on a legitimate target that unintentionally produces effects beyond the radius of the target; (2) a weapons malfunction or accident; (3) faulty information regarding the location of a legitimate target or the presence of civilians; (4) the location of civilians in an officially-designated combat zone; or (5) human error.\textsuperscript{10} These losses are referred to (rather coldly) as “collateral damage,” and are not considered to be violations of IHL. The primary criteria for determining whether casualties are classified as such is whether the objects of the attack are civilians or military and whether the attacker took all reasonable precaution to prevent the loss of civilian life and property. Thus, an attack on an arms factory that kills civilian workers inside is legal because the facility was a legitimate military target and the civilians were not the object of the attack, but attacking factory workers in their homes is a violation of IHL because they were.

This “collateral damage exception,” however, is not absolute. Combatants must still weigh military advantage against the bedrock principle of civilian immunity, a tension that is mediated by the third key principle of IHL, proportionality. Proportionality holds that in all circumstances, the anticipated military advantage of an attack or action must be balanced against probable civilian losses; the expected civilian casualties or damage to civilian property from an attack cannot be “excessive” in relation to said advantage gained from the attack.\textsuperscript{11} Thus, combatants may not attack even a legitimate military target if the collateral damage to civilians is


\textsuperscript{11} Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, Articles 5, June 8, 1977, 1125 U.N. Treaty Series, 3.
likely to be disproportionate to the specific military gain from the attack.\textsuperscript{12} In other words, a
target may be legal but the effects of an attack on it disproportionate.

In the case of humanitarian intervention, these principles constitute only the \textit{minimal}
restrictions on the means and methods that the interveners may employ. They are necessary, but
not sufficient, criteria when engaging in a protection campaign. In any given armed conflict,
even military organizations that are committed to the principles of IHL will likely produce
civilian casualties, sometime massively. The collateral damage exemption discussed above
enables them to do so without legal consequences.\textsuperscript{13} However the higher standard for
legitimizing humanitarian intervention carries with it a greater burden on the intervening forces
that further restricts the range of military operations. It is the failure of interveners to adhere to
these restrictions that best explains the level of civilian casualties produced during international
protection campaigns. In this vein, two of the six criteria stipulating the conditions under which
a humanitarian intervention can be undertaken are particularly important in minimizing civilian
casualties: right intention and proportionality.

In the context of humanitarian intervention, right intention refers to waging an operation
that is focused on protecting the civilian population or at least some segment thereof. In the
words of the International Commission on Intervention and State Sovereignty (ICISS), the
primary purpose of such an intervention must be to halt or avert human suffering, whatever other
motives intervening states may have.\textsuperscript{14} While there is debate over the degree to which security,

\textsuperscript{12} International Court of Justice, “Legality of the Threat or Use of Nuclear Weapons,” Advisory Opinion of 8 July
1996, General List No. 95, Opinion of Judge Higgins, p. 587.

\textsuperscript{13} See, for example, Bruce Cronin, “Reckless Endangerment Warfare: Civilian Casualties and the Collateral Damage

\textsuperscript{14} International Commission on Intervention and State Sovereignty, \textit{The Responsibility to Protect}, International
Development Research Centre, Ottawa, Canada, 2001, Part (2)A.
economic, or other state interests may be a factor in motivating a state or states to engage in humanitarian intervention, most scholars agree that for an intervention to be humanitarian, at least one of the primary goals of the action must be the protection of a threatened population.\textsuperscript{15} This concept of “right intent” does not require state officials’ motives must be pure. As Nicholas Wheeler observes, even if a state is not actually motivated by humanitarian principles, once it invokes these principles, it is expected to abide by them. Thus, when states claim humanitarian motivations, they must act in a manner consistent with humanitarian principles and refrain from military actions that cannot be justified on humanitarian grounds.\textsuperscript{16}

If the primary purpose of a humanitarian intervention is to protect a population from current or future atrocities, the intervening state must accept additional limitations, and demonstrate through their actions that the operation is not a war to defeat an enemy but rather an operation to protect populations from being persecuted or killed.\textsuperscript{17} This means that protection operations are significantly different from both the traditional operational concepts for waging war and for UN peacekeeping operations.\textsuperscript{18} In a practical sense it also means that humanitarian intervention cannot seek to punish an abusive government for past transgressions, regardless of how serious that may have been, but rather only to stop current abuses or prevent future ones.\textsuperscript{19} Moreover, an international protection operation cannot legitimately seek to change the balance of military forces among conflicting groups within the country or remove the ruling government or

\textsuperscript{15} See, for example, J. L Holzgreve and Robert O. Keohane, eds, \textit{Humanitarian Intervention}


\textsuperscript{17} ICISS, \textit{The Responsibility to Protect}, p. 63.

\textsuperscript{18} ICISS, \textit{The Responsibility to Protect}, p.66.

\textsuperscript{19} This doesn’t mean that a parallel judicial process, such as one initiated through the International Criminal Court or some other tribunal, cannot simultaneously occur.
regime from power. This is particularly important since in most cases, government atrocities against civilians occur within the context of a domestic conflict, often a civil war. While the interveners will most likely make judgments on the relative behavior of the warring parties, they must remain neutral in terms of determining the outcome of the conflict.

This often poses a problem for the political leadership of the interveners, since they rarely detach the protection of civilians from their other goals that often involve defeating the government forces and empowering their armed opponents. This attitude is captured by Samuel Huntington, who argues that "it is morally unjustifiable and politically indefensible that members of the Armed Forces should be killed to prevent (foreign populations) from killing one another… The military should only be given military missions which involve possible combat when they advance national security interests and are directed against a foreign enemy of the United States."20 However, the more the interveners prioritize their political goals over protecting the population from specific and immediate threats, the greater the likelihood that they will engage in military actions that threaten civilians. This is because it will very likely lead them to adopt military strategies that result in higher levels of civilian casualties and damage to civilian objects.

The other one of the six criteria that directly affects the level of civilian casualties is proportionality. Proportionality is a tricky concept inasmuch as it requires actors to weigh the incompatible values of military advantage and civilian immunity. In the context of a humanitarian intervention, the proportionality equation is expected to lean more heavily toward minimizing harm to both the society at large and its population, even at the expense of military advantage. This means that military organizations engaged in humanitarian intervention must adopt a doctrine and training program that is relevant to the task when preparing to carry out humanitarian tasks. Specifically, rather than seeking to defeat an army or government through

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overwhelming force, the ideal goal of a humanitarian intervention is to establish a defensive perimeter to shield potential victims from attacks by government forces. This could include a combination of the following activities: disarming individuals threatening the civilian population; establishing buffer zones between combatants; establishing safe areas with adequate military protection though, for example, no-fly zones and frequent patrols; and evacuating populations from danger zones to safe areas. While none of these activities will guarantee that civilians will not be harmed during protection operations, the possibility would be dramatically reduced given the way Western militaries traditionally wage armed conflict.

The problem in implementing these policies is that most modern military forces are equipped for and trained to fight high-technology wars with the aim of securing a quick victory through the use of overwhelming force. Military power has its own logic, and the armed forces develop their operations on the basis of military strategy, which tends to place the security of their own soldiers as the first priority. This is exacerbated by the strategies adopted by technologically advanced states. Despite the efforts of most Western military organizations to generally comply with the laws of armed conflict, its war-fighting strategies inevitably lead to significant civilian casualties and long-term effects that threaten the lives and well-being of the civilian population. Such strategies are the result of the way it employs its dominant military technology and the political factors that underlie what Martin Shaw calls the new “Western way of war.”

Shaw argues that governments of technologically advanced countries, particularly democracies, have difficulty mobilizing public support for armed conflicts in the absence of

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clearly defined security threats. The demands made upon Western armies by politicians and constituents at home therefore favor for quick fixes and low casualties.\textsuperscript{22} Drawing on its superior technology and the strategic advantage of not having to defend its own territory or population, Western approaches therefore rely heavy on the employment of highly-concentrated and overwhelming military power against a wide variety of political, economic, and military targets. This leads to significant civilian casualties and damage to civilian objects in several ways:

First, contemporary Western armies have adopted an approach to warfare that centers on what military theories refer to as “effects-based operations.” Such operations employ military force to undermine the political and economic foundations of the adversary’s base of power; they define success by the degree to which they can destabilize the systems on which the enemy relies. In doing so, they eschew the traditional military objectives of damaging or eroding the enemy’s military forces, instead targeting all of the applicable elements of national power: diplomatic, economic, military, and information.\textsuperscript{23} Thus, the sought-after effects of armed force by Western armies are primarily political rather than military.

These effects are also the result of what Robert Pape calls a strategy of “risk coercion,” an approach whose purpose is to degrade civilian and economic targets in order to convince the leadership that more severe damage will follow if they fail to make the demanded concessions.\textsuperscript{24} This involves targeting government institutions, political leadership, supporting infrastructure, and “system essentials” such the national economy. This type of warfare is virtually guaranteed


\textsuperscript{24} Robert Pope refers to this as “risk coercion.” See, Robert Pape, \textit{Bombing to Win}.
to result in significant civilian casualties, either by directly threatening their lives or indirectly threatening their livelihood and survival. This is because infrastructure, government ministries, economic institutions, and communications and transportation systems are usually located in heavily populated areas, and because these “system essentials” are often necessary to the survival of the civilian population.

Equally problematic is that this type of strategy relies heavily on targeting dual-use facilities, without placing the operation of these facilities within any kind of specific context. A dual-use object is one that can have either a military or civilian function. Such objects often fulfill these functions simultaneously. Military planners will often designate a primarily civilian dual-use facility (such as an electrical power plant) to be a military target if it could be theoretically used by the armed forces at some future point. For example, military lawyer Colonel W. Hays Parks argues that the following dual-use facilities are “always military objectives” regardless of the circumstances: power sources, communications networks and equipment, industry (not only military, but also those that are geared toward export), railroads, waterways, and highways that are known or suspected enemy avenues of approach or withdrawal.25

It is not only the choice of targets that leads to high rates of collateral damage. The “Western way of war” relies on the massive use of airpower against government facilities and infrastructure usually located in towns and cities, many of them heavily populated. Under these conditions, the rate of collateral damage can increase quickly regardless of how high-tech and precise the delivery systems are.

In fact, this problem is actually aggravated by the use of precision or “smart” weapons. Unlike conventional bombs that use gravity to deliver their munitions, precision weaponry employs some type of guidance system to increase the accuracy of the bomb. Military officials argue that this allows them to attack targets deep in populated areas without inadvertently affecting civilians or civilian objects. As Michael Schmitt bragged in 1999, “in the conflict of tomorrow, technologically-advanced states will be able to strike with near one hundred per cent accuracy using techniques in which significant collateral damage and incidental injury will be the exception, not the rule.”

The problem, of course, is that this encourages commanders to increase their target sets to include objects that are deeply embedded in civilian areas, greatly increasing the risk to non-combatants. A sustained bombing campaign that targets objects located in populated areas requires a level of perfection that has never existed and will likely never exist even with the most sophisticated technology. As war journalist Michael Ignatieff suggests, “what separates a successful strike from a catastrophe is small – even tiny – requiring a prodigious faith in technological systems and aviators three miles up, who have to distinguish between a military and civilian target separated only be a dirt track.”

Regardless of how accurate a delivery system may appear, under these conditions, small miscalculations or mishaps can have great consequences for civilians. For example, Western militaries typically employ 500-2000 pound bombs during aerial attacks, although the U.S. military also has in its arsenal a 21,000 pound explosive known as GBU-43/B Massive Ordnance Air Blast Bomb. Generally, everything within 20 meters of a 500-pound bomb and 35 meters of

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a 2000 pound munition will be severely damaged, destroyed, injured, or killed. The safe
distance for unprotected individuals are approximately 1,000 meters for 2000 pound bombs and
500 meters for 500-pound ones, assuming that the bomb strikes precisely on its target without
deviation.\textsuperscript{28} Moreover, although highly-accurate rockets such as cruise missiles may be able to
better pinpoint a particular target, they do not provide imagery of the attack and therefore cannot
adjust to last minute changes in circumstances, such as the presence of civilians at the target
point.\textsuperscript{29} This is equally the case for pilots flying 15,000 feet above ground. As a result, the use
of such weapons – particularly in large numbers against infrastructure or targets near population
centers – can cause high levels of unintended damage.

Third, civilian casualties are also the outcome of the way technologically-advanced
militaries define the locus of conflict. During their armed disputes over the past few decades,
Western states have declined to identify a battlefield; indeed they have often declared extended
parts of specific territories – sometimes even an entire country – to be conflict zones, including
those regions that were populated primarily by civilians. This reflects a shift from “battlefield”
(which is limited and territorial) to “battlespace” (which is a virtual, non-linear loci of combat).
This increases the vulnerability of civilians, since in many cases, the combatants do not
acknowledge any purely civilian areas.\textsuperscript{30}

Finally, civilian casualties are often the result of “risk transfer,” whereby a belligerent
minimizes the risk to its soldiers by increasing the dangers to the civilian population. Certainly
soldiers are expected to protect themselves and minimize their risk when engaging with other

\textsuperscript{28} Vernon Loeb, “An Unlikely Super-Warrior Emerges in Afghan War: U.S. Combat Controllers Guide Bombers to


combatants, but the principles of distinction and proportionality clearly prohibit them from trading the lives of soldiers for those of civilians. Risk-transfer inverts the rights of civilians vis-à-vis those of soldiers, thereby violating the basic norm that combatants are to assume greater risks than non-combatants.  

Yet over the past two decades, the interveners in Bosnia, Kosovo, and Libya did not lose a single soldier in combat when engaged in what were ostensibly humanitarian operations, although more than a thousand civilians died as a direct consequence of their attacks during these operations.

INTERVENTION FROM 20,000 FEET

Two recent campaigns initiated by major powers under the guise of humanitarian protection illustrate the points made above: NATO’s attacks on Serbia in support of the Kosovar Albanians in 1999, and the alliance’s campaign a decade later (2011) against the government of Muammar al-Gaddafi in Libya to protect civilians from attacks by the regime.

The conflict between NATO and Serbia over the treatment of ethnic Albanians in the Serbian province of Kosovo was the second act of a drama that began with Western efforts to stem the political upheavals and violent clashes accompanying the breakup of Yugoslavia, from 1991-1995. Unlike the wars accompanying the breakup of the Yugoslav federation in the early 1990s, however, the crisis in Kosovo – which sparked the 1999 conflict – occurred solely within the territory of Serbia. The Serbian province of Kosovo was dominated by an ethnic Albanian majority, many of whom sought independence or at least substantial autonomy from the central government. Although they had enjoyed such autonomy during much of Yugoslavia’s existence,

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32 There is a large literature on the breakup of Yugoslavia. Josip Glaurdić’s monograph draws on the most recent documentary materials that have been released (The Hour of Europe: Western Powers and the Breakup of Yugoslavia, (Yale University Press, New Haven, 2011)). See also Misha Glenny, The Fall of Yugoslavia: The Third Balkan War (New York: Penguin Books, 1996); Richard Holbrooke, To End a War (Modern Library, 1999).
the rise of Slobodan Milošević as the President of Federal Republic of Yugoslavia (Serbia and Montenegro) in 1989 saw a considerable reduction in their self-rule, accompanied by increasing repression from the government in Belgrade (Serbia’s capital). In 1996, the ethnic Albanian-based Kosovar Liberation Army (KLA) began launching a series of armed attacks against Serbian government institutions, sparking a retaliatory military response by Serbian security forces. Fighting between the KLA and the military forces from the Federal Republic of Yugoslavia escalated in 1998, leading to a massive movement of up to 250,000 residents, some of whom were expelled at gunpoint by Serbian troops.\(^{33}\) The failure of these initiatives and an increase in violent attacks against Kosovar Albanians by Serbian forces led the NATO governments to consider taking military action against Serbia.

The refusal of Serbia to sign the Rambouillet Peace Accords (which, among other things, would have allowed NATO forces unrestricted access to all of Serbia) provided the alliance with the impetus for launching the planned attack. Political leaders from NATO framed their proposed air war in humanitarian terms. At its April 12, 1999 meeting, NATO officials outlined the following goals for a planned bombing campaign: (1) an end to Serbian attacks against civilians in Kosovo; (2) the creation of an international military presence in the province; (3) a return of Kosovar refugees who had been displaced by Serbian attacks and ethnic cleansing; and (4) the development of a political framework based on the Rambouillet Accords. The U.S. Department of Defense also cited as key goals: (1) demonstrating the seriousness of NATO’s opposition to Serbia’s aggression in Kosovo; (2) deterring the Serbian government from continuing its attacks on civilians; (3) damaging Serbia’s capacity to wage war against Kosovo.\(^{34}\)

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These statements reveal a mix of humanitarian (protect the population of Kosovo), political (protect NATO’s credibility), and military (reduce Serbia’s capabilities) goals.

NATO’s political leaders decided from the outset that they would not seek to directly protect the Kosovar Albanians from attack by introducing ground troops into the theater of conflict. Rather, they would rely solely on the use of air strikes against Serbian targets to coerce the Milošević government into accepting the Rambouillet accords. NATO leaders were largely responding to domestic pressures to keep their own military casualties to a minimum, especially since none of their countries were directly threatened by the Balkan conflict. Indeed, there was a widespread expectation among the leadership that the military would suffer few, if any, casualties.\textsuperscript{35} As British Air Chief Marshal Sir Richard Johns Johns assured the public, modern air force technology is able to provide “pinpoint delivery accuracy to achieve maximum strategic effect, with minimum collateral damage and minimum risk to the weapon carrier and launcher.”\textsuperscript{36}

At the same time, the decision to rely solely on air power precluded any direct confrontation with Serbian troops, thereby making it difficult, if not impossible, for NATO to protect the civilian population of Kosovo. There was no battlefield in Kosovo, and Serbian security forces were highly disbursed, rarely emerging as easy targets for planes flying 15,000 feet above ground. Thus, from the beginning, NATO had no clear plan to either stop the expulsion of Kosovar Albanians from their homes or defeat the Yugoslav army in the field. Their military plan would instead focus mostly on destroying targets that were either indirectly, tangentially, or even unrelated to Serbia’s military forces. As a result, NATO planners blurred


the distinction between their political and military objectives in selecting targets, with significant implications in the way the NATO would come to define military necessity and military advantage, often to the detriment of civilians.

At first NATO limited its attacks to air defense systems and airfields. Using a combination of cruise missiles and piloted aircraft, NATO quickly succeeded in all but eliminating or disabling both sets of objectives. However, over the next week it became clear that the Serbian government would not quickly capitulate, leading NATO to begin what they dubbed as Phase II, which focused on Serbian troops and military equipment in Kosovo. The Serbian government responded to this shift by dramatically escalating its campaign to drive the ethnic Albanians out of Kosovo; based on its strategy to rely solely on air attacks, NATO could do little to prevent this. Ironically, then, NATO’s intervention had not only failed to stop ethnic cleansing, it accelerated it.

After several weeks of heavy bombing, it became clear that NATO’s effort to inflict damage to Serbian troops operating in Kosovo through air strikes was completely ineffective; according to a number of reports, the NATO attacks in Kosovo did relatively little damage to the Serbian ground forces. Even General Wesley Clark, NATO’s chief commander, acknowledged that after six weeks of bombing there were more Serb forces inside Kosovo than when the bombing began. In the absence of ground forces, NATO officials determined that forcing Serbia to capitulate would require destroying or at least disrupting objects of value to the civilian population and to the political and economic elites supporting the Milošević government. Moreover, after a month of non-stop bombing, the NATO command had begun to run out of


targets that had a low risk of collateral damage. As a result, despite his initial reluctance to attack infrastructure and other dual-use facilities, Supreme Allied Commander Wesley Clark began to pressure the alliance’s political leaders to authorize a broader range of targets that involved higher risk to civilians.\(^{39}\)

On April 23, alliance leaders met at a NATO summit in Washington, D.C. and decided to expand their target list to include a wide variety of objects deep inside Serbia, such as political party headquarters, bridges, industrial centers, oil refining plants, infrastructure, telephone exchanges, and media outlets.\(^{40}\) This would involve striking “Phase III” targets that affected a large number of civilians by disrupting transportation, water, and electricity.\(^{41}\) Such attacks would be launched around the clock and would continue until the Serbian government accepted all of NATO’s conditions.\(^{42}\) Between April 24 and May 9, NATO more than doubled the number of targets. Of these only 40% of them focused on the Serbian military or air defenses; the majority included factories, infrastructure, oil and petroleum refineries, roads, bridges, railways and dual-use communications (70% of which were primarily civilian).\(^{43}\) In another ironic twist, after justifying its attack on Serbia as necessary to halt ethnic cleansing, NATO found itself conducting air operations largely irrelevant to that purpose.

This decision reflected a shift in strategy that would punish Serbia’s political and military elites, shock the government leadership, disrupt the functioning of the state, and weaken

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\(^{43}\) Anthony Cordesman, *The Lessons and Non-Lessons*, p. 130.
President Milošević’s “four pillars” of power: his political institutions, the communications media, the military and security forces, and the national economy.\textsuperscript{44} Although NATO warplanes continued to launch some attacks on Serbian tanks, military vehicles and ground forces, the target list shifted mainly toward political and leadership sites that had little to do with the war effort, such as factories owned by government supporters.\textsuperscript{45} The idea, according to senior NATO and Pentagon officials was to undermine the Milošević government by “chipping away at his system of political and economic patronage.” In other words, the attacks were designed to turn loyal supporters against Milošević by destroying their own sources of wealth and power.\textsuperscript{46} Thus the blurring of military and political objectives had now become alliance policy.

At the same time, NATO was also trying to disrupt the daily lives of the Serbian population in an effort to turn them against Milošević. Human Rights Watch concluded after its extensive post-war examination of Serbia that the around the clock bombing campaign was part of a psychological warfare strategy of harassment undertaken without regard to the greater risk to the civilian population.\textsuperscript{47} The Defense Select Committee in the U.K. House of Commons concluded that attacks were launched for the purpose of influencing the perceptions of the population and that “there was a belief – or hope – in the UK and the wider Alliance that Serbian morale would ‘crack’ and the Serbian population would be encouraged by the air campaign to protest the policies of the Milosevic government.”\textsuperscript{48}

\textsuperscript{44} Rebecca Grant, “The Kosovo Campaign,” p. 17.


\textsuperscript{46} Eric Schmitt and Steven Lee Myers, “Crisis in the Balkans.”


\textsuperscript{48} House of Commons, Defense Select Committee, 14\textsuperscript{th} Report, 23 October 2000, paragraph 99.
The connection between NATO’s strategy and the scale of civilian casualties is suggested by an analysis of casualties produced by the NATO bombing. According to the International Committee of the Red Cross (ICRC), during the first week or two of the bombings – when NATO was focused on Phase I and II targets – the number of civilian casualties appeared to be low. As the campaign intensified, however, the ICRC observed both a corresponding rise in the number of Serbian civilian victims and increased damage to civilian objects.\textsuperscript{49} This observation was verified by an in-depth on-site examination of the damage caused by the air attacks, conducted by Human Rights Watch (HRW). HRW documented ninety separate incidents involving NATO attacks that killed or injured civilians. Of these, thirty-three occurred as a result of attacks on densely-populated urban areas.\textsuperscript{50} Six incidents occurred each in the major cities of Belgrade, Nis, and Vranje and two or three incidents each in Aleksinac, Cacak, Novi Sad, Surdulica, and Valjevo. Nine involved attacks on infrastructure and installations that HRW considered to be of questionable military value.\textsuperscript{51} Only two incidents involved pilot error or intelligence failure and none as a verified result of Serbian authorities using civilians as human shields.\textsuperscript{52}

Attacks on infrastructure and political/economic targets unrelated to protecting civilians in Kosovo not only accounted for a large number of civilians deaths and injuries, but also for the


\textsuperscript{50} William Arkin, “Civilian Deaths in the NATO Air Campaign,” p. 5. In his testimony before the House Select Committee on Intelligence, Deputy Secretary of Defense John Hamre claimed that there were only 30 incidents of collateral damage, however he failed to produce any studies or data to back up this claim. See Statement of the Honorable John J. Hamre, U.S. Deputy Secretary of Defense, before the U.S. House Permanent Select Committee on Intelligence, July 22, 1999.

\textsuperscript{51} William Arkin, “Civilian Deaths in the NATO Air Campaign,” p. 30.

\textsuperscript{52} William Arkin, “Civilian Deaths in the NATO Air Campaign,” p. 25.
destruction of numerous civilian objects necessary to the survival of the population. As Rebecca Grant of the Air Force Association’s Aerospace Education Foundation observed, the air strikes “knocked out” roads, rail lines, and bridges across Yugoslavia, halting the normal flow of the civilian economy. By the time Allied Force had reached its halfway point, the bombing of infrastructure targets had halved Yugoslavia’s economic output and deprived more than one hundred thousand civilians of jobs. This produced an “economic catastrophe” in which its “industrial base (was) destroyed and the size of the economy cut in half.” Two-thirds of the main industrial plants were destroyed.

Probably the most devastating effects were produced by the systematic attacks on Serbia’s electrical grid and component generation plants. In the early days of the campaign, the initial attacks on the grid were designed to cause only temporary outages using CBU102 munitions (which disable rather than destroy the facilities). In late May, however, NATO began launching more direct attacks against Serbia’s five major power stations, long distance power lines, transformers and distribution nodes using high-explosive bombs. This not only eliminated electrical power to 80% of the country; it cut power to water pumps, leaving 60% of Belgrade without any water service at all and shutting down most hospitals, schools, and other public facilities for extended periods of time.

The other main aspect of NATO’s civilian infrastructure targeting was the systematic destruction of Serbia’s main bridges, most of which were in urban areas far from the fighting. At least fifty civilians were killed and sixty two wounded as a result of attacks on seven bridges,

54 Benjamine Lambert, NATO’s Airwar for Kosovo, p. 42.
55 The Independent International Commission on Kosovo, The Kosovo Report, p. 93
all of which were primarily civilian thoroughfares within urban settings, and none of which were major routes of communication. A missile strike on a bridge over the Južna Morava river at the Grdelica gorge destroyed a passenger train that was crossing the river, killing fourteen people and wounding sixteen others. At least twenty-three civilians died when a NATO missile aimed at the Luzane bridge hit a passenger bus that was crossing over. At least eleven civilians were killed and 40 injured when NATO bombers mounted a raid on a bridge in Varvarin.

Most of the civilian dead during the 78-day campaign can be attributed to NATO’s failure to take feasible precaution, as required by international humanitarian law and the alliance’s stated military policy. For example, during an attack intended for an ammunition dump in Surdulica, a missile struck the Special Hospital for Lung Diseases killing twenty-three and injuring twenty-six. On April 5 fighter jets launched twenty missiles on the Aleksinac military barracks, killing ten civilians and injuring thirty; sixteen private houses and more than 400 apartments were damaged or destroyed. An attack on convoy of Kosavar refugees over a 12-mile stretch of road in Djakovica in Western Kosovo killed seventy-three civilians and injured thirty-six.

The largest single collateral damage incident occurred on May 14, when NATO aircraft dropped ten bombs on the village of Korisa, killing eighty-seven civilians, mostly Kosovar refugees.

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57 William Arkin, “Civilian Deaths in the NATO Air Campaign,” Appendix A.
60 William Arkin, “Civilian Deaths in the NATO Air Campaign,” p. 34.
The use of precision weapons did improve the accuracy of NATO’s attacks, and this in turn may have reduced the incidence of collateral damage. At the same time, with a massive bombing campaign that included 900 targets and 9800 aimpoints, even small deviations from their targets had significant effects on the safety of civilians, as the Korisa incident (above) demonstrated. Since NATO’s weapons hit their aimpoints only approximately 58% of the time, 62 collateral damage was an inevitable outcome of the around-the-clock bombing strategy.

This problem was exacerbated by NATO’s decision to transfer the risk from their pilots to the civilians on the ground by flying attack aircraft at 15,000 feet. At such an altitude, visual discrimination between civilian and military objects was difficult at best, resulting in multiple target identification errors. In reference to the Djakovica incident, for example, the International Court for the Former Yugoslavia report stated, while there is nothing unlawful about operating at a height above Yugoslav air defenses, it is difficult for any aircrew flying at several hundred miles an hour at a substantial height to distinguish between military and civilian vehicles in a convoy. 63 The same problem of visual identification led to the destruction of the passenger train during the attack on the railway bridge in Leskovac and the bus on the Luzane bridge (above).

Finally, between ninety and 150 civilians were killed as a result of 7-12 separate cluster bomb attacks. 64 In one of the most lethal incidents, a mid-day attack on the Nis airfield sent bomb sub-munitions into the Nis Medical Center, the downtown area, the bus station, and the 12 February Health Center. However, the collateral damage produced by the use of these weapons extended beyond the immediate effects. According to the British Guardian newspaper, between

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June 1999 and March 2000, fifty-four people were killed and 250 maimed in Kosovo by previously unexploded cluster munitions and landmines. Indeed, according to a study sponsored by the Norwegian Foreign Ministry, 2500 unexploded munitions from cluster bombs remained ten years after the war ended, placing thousands of Serbian civilians at risk. This could have been avoided, at least minimized, however the United States command refused to permit their troops to remove the bomblets for fear of casualties to their forces.

About a decade later NATO dusted off their playbook and engaged in a similar campaign aimed at protecting civilians in Libya. Unlike the Kosovo operation, the Libya campaign was endorsed by the U.N. Security Council, although five members abstained from the vote. NATO was responding to increasing attacks by government forces against towns and cities held by rebels seeking to overthrow the regime of long-time authoritarian leader, Muammar al-Gaddafi. The conflict began as a popular uprising as part of the “Arab Spring,” but soon evolved into a civil war between the Gaddafi forces and a collection of heavily-armed militias which had seized large parts of the country, including the major gulf city of Bengahzi. By early March, the conflict had escalated into an all-out civil war, with the rebel National Transitional Council declaring itself to be the government of Libya, backed by about a half dozen armed militias.

The key impetus for the Security Council’s action was a report issued in February 2011 by the U.N. High Commissioner for Human Rights, Navi Phllay, who declared that the "widespread and systematic attacks against the civilian population may amount to crimes against

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On March 17 Security Council voted to authorize “all necessary measures” “to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya.” Two days later French, British, and U.S. forces began attacks on government targets, and within a week NATO implemented its plans to launch a full-scale campaign.

Like the 1999 campaign, NATO decided to prosecute the war using air power alone, and cited the protection of civilians as the primary justification for the operation. Over a seven month period, NATO launched 17,939 armed sorties, striking thousands of targets. An inquiry launched by the United Nations Human Rights Council concluded that NATO conducted “a high precise campaign with a demonstrable determination to avoid civilian casualties.” NATO itself said that it had establish a standard of “zero expectation” of deaths or injury to civilians and that no targets were struck if there was any reason to believe that civilians would be killed or injured in a strike. Toward this end, they instituted two major changes from the Kosovo war: they did not attack electrical grids or any generation facilities, and they decided not to use cluster bombs or ordnance containing depleted uranium. As a result, the number of civilian casualties was considerably lower in the Libyan campaign than Kosovo, suggesting that some changes had been made in alliance policy.


At the same time, NATO attacks killed at least seventy-two civilians and wounded fifty-five.\(^{72}\) These figures are very likely to be much lower than the actual total, since the investigating bodies had limited access to sites in several cities and towns where the air campaign was active.\(^{73}\) In addition, *New York Times* investigators found significant damage to civilian infrastructure, homes, and businesses. For example, investigators found the remains of air attacks on food storage warehouses that were near businesses and houses that were destroyed, and other damage in areas where no military target could be identified.\(^{74}\) In addition, after accidentally striking a convoy of anti-government rebels, “the attack continued as civilians, including ambulance crews, tried to converge on the craters and flames to aid the wounded.”\(^{75}\) The single largest case of civilian casualties from a NATO airstrike took place in the town of Majer on August 8, where the U.N. Commission found NATO bombs killed 34 civilians and injured 38. After the initial airstrike killed sixteen, a group of rescuers arrived and were hit by a subsequent attack, killing eighteen.\(^{76}\)

Although it is clear that NATO took significant steps to minimize civilian casualties during the campaign, its strategy and political goals undermined these efforts. The Security Council resolution approved the use of force solely to protect Libyan civilians who were under direct threat from government forces. As long as NATO targeted tanks, mortars, helicopters, and other military objects directly involved in attacking civilians it was able to maintain low civilian

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\(^{73}\) See, for example, C.J. Chivers and Eric Schmitt, “In Strikes on Libya by NATO, an Unspoken Civilian Toll,” *New York Times*, December 17, 2011.

\(^{74}\) C.J. Chivers and Eric Schmitt, “In Strikes on Libya by NATO.”

\(^{75}\) C.J. Chivers and Eric Schmitt, “In Strikes on Libya by NATO.”

casualty rates. However it soon became clear that NATO was targeting government installations that had more to do with keeping Gaddafi in power than repressing civilians. For example, warplanes attacked houses where government officials lived and were thought to be meeting, as well as businesses and economic assets tied to close supporters of Qaddafi. 77 These attacks continued even long after Qaddafi’s forces had lost the initiative and were actually in retreat, making it unlikely that they were any longer a threat to civilian populations. In fact, the largest civilian casualty toll inflicted by NATO bombing occurred on August 8, after Qaddafi’s forces were all but defeated; at least 35 civilians were killed and scores wounded in a series of NATO attacks on private residences. 78 By the second month of the campaign, NATO leaders were publicly calling for Qaddafi’s overthrow and its targeting choices made it clear that the alliance was focused far more on pursuing regime change and providing military support to the rebel militias than they were trying to protect civilians from attack. 79

CONCLUSION

The practice of humanitarian intervention suffers from the unwillingness of the interveners to place the protection of civilians as the first and foremost priority in developing strategy and tactics. Even where civilian protection is a major goal of the campaign, military organizations treat them as classic military operations designed to defeat an enemy and secure a quick victory at the lowest possible cost to their own forces, even if it means sacrificing civilian

77 This included the home owned by Major General El-Khweldi el-Hamedi, an attack that left approximately thirteen civilians dead. C.J. Chivers and Eric Schmitt, “In Strikes on Libya by NATO, an Unspoken Civilian Toll.”


lives. This undermines the legitimacy of their actions and equally importantly, produces a level of collateral damage that is disproportionate to the goals of a protection campaign.

NATO’s war against Serbia in 1999 illustrated these problems quite starkly. Unwilling to make the necessary sacrifices or even take the minimal risks necessary to protect the Kosovar Albanias, the alliance focused their attacks on Serbia’s infrastructure and society in the hope that destroying the political, social, and economic fabric of the country would force the government to capitulate. The strategy did ultimately work, however at the cost of the 500-1500 civilian lives, and the destruction of much of the infrastructure necessary for the survival of the civilian population. In a sense, NATO used Serbia’s citizens as weapons to undermine their government. At the same time, little was actually accomplished in terms of protecting the Kosovar Albanians. NATO not only declined to stop the expulsion of the Albanians from Kosovo, their attacks on Serbia’s main cities produced a backlash that encouraged Serbian forces to increase the expulsions in retaliation.

NATO made some adjustments in its subsequent action in Libya. They decided not to use cluster munitions or other anti-personnel devises, and declined to attack Libyan main infrastructure. This led to a lower level of civilian casualties than the Kosovo operation. At the same time, like the Kosovo operation, they quickly abandoned the goal of protecting the civilian population and refocused their efforts toward actively supporting the rebel militias and trying to destroy the government’s foundations of power and authority. This led to attacks on targets that had little if anything to do with protecting Libyan civilians. Quite the contrary, it encouraged them to launch attacks on targets that were very likely to cause inadvertent civilian casualties.

It is tempting to justify civilian casualties during humanitarian actions by comparing the number killed by the interveners to those likely to have been killed by the oppressor. If, on
balance, the interveners kill fewer civilians than would have likely have died absence the intervention then the balance sheet comes out in favor of the intervention. This is misguided in several ways. First, it obscures the question of alternatives. Was the intervention the only or best method for preventing future atrocities? Was the strategy used the best one to achieve the goals? In other words, could a similar result have been achieved without the loss of civilian lives caused by the interveners themselves? The cases suggest that it could but it will require the interveners to make substantial changes in their actions.

It is commonly accepted among human rights scholars that humanitarian assistance organizations stationed in conflict zones and political operatives from opposition groups tend to greatly exaggerate the level of repression and death inflicted on a population by government forces. This is doubly true for political leaders from states seeking to build support for an upcoming interventionary operation. This observation doesn’t trivialize the level of suffering many government rein on their civilian populations, but it should motivate us to investigate the degree to which a “humanitarian emergency” exists before committing to the use of military force. This clearly was not done in the cases of Kosovo or Libya. At the same time, even if the emergency is dire, the use of overwhelming force to defeat government forces is usually not warranted, particularly when such force is reigned down from 15,000 feet in the air. In neither case did NATO actually try to protect the civilians who were under threat and this led to military operations that put civilians at risk.

Second, comparing the conduct of the interveners to that of the abusive government seeks to absolve the interveners of their own transgressions and encourages them to act with impunity. In both the Kosovo and Libyan cases, NATO officials and the political leaders of the NATO states not only refused to take any responsibility for the civilian casualties that they caused, in

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most cases they refused to acknowledge that they even occurred.\textsuperscript{81} For example, faced with credible allegations that NATO attacks killed civilians, the alliance said it had neither the capacity for nor intention of investigating, and often repeated that disputed strikes were sound. As NATO Secretary General Anders Fogh Rasmussen stated, “We have carried out this operation very carefully \textit{without any confirmed civilian casualties}.”\textsuperscript{82}

Finally, the consequences wrought by the interveners through the use of massive and overwhelming force go far beyond the balance sheet of the immediate deaths and injuries among civilians. In all cases, the destruction of civilian infrastructure, houses, government services, and community institutions vital to the survival of the population has led to the creation of massive numbers of additional refugees, lack of adequate food, water, and shelter and other “reverberating effects.” As Michael Schmitt points out, these effects are “second, third, fourth (and so on) tier-effects that result from an attack on a legitimate target. They are not directly and immediately caused by the attack but lie in the attack’s chain of causation; in tort terms, they would not have occurred ‘but for’ the attack.”\textsuperscript{83} As the International Criminal Tribunal for the Former Yugoslavia, which ruled, “although single attacks might not \textit{per se} be illegal, their cumulative effect might render them so... In case of repeated attacks, all or most of them falling within the grey area between indisputable legality and unlawfulness, it might be warranted to conclude that the cumulative effect of such acts entails that they may not be in keeping with

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\textsuperscript{81} This point was continually supported by Human Rights Watch and Amnesty International’s attempts to engage NATO’s political leadership in a discussion of civilian casualties.
\textsuperscript{82} C.J. Chivers and Eric Schmitt, “In Strikes on Libya by NATO” Italics, mine.
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international law. Indeed, this pattern of military conduct may turn out to jeopardize excessively the lives and assets of civilians, contrary to the demands of humanity. “

All of this leads to the conclusion that if states or their alliances are unwilling to undertake protection operations that follow the strict restriction necessary to protect civilians, they should not intervene at all.