KOSOVO BOMBINGS: BEHIND THE RHETORIC

Noam Chomsky

There have been many inquiries concerning NATO(meaning primarily US) bombing in connection with Kosovo. A great deal has been written about the topic, including Znet commentaries. I'd like to make a few general observations, keeping to facts that are not seriously contested.

There are two fundamental issues:

(1) What are the accepted and applicable "rules of world order"?

(2) How do these or other considerations apply in the case of Kosovo?

(1) What are the accepted and applicable "rules of world order"?

There is a regime of international law and international order, binding on all states, based on the UN Charter and subsequent resolutions and World Court decisions. In brief, the threat or use of force is banned unless explicitly authorized by the Security Council after it has determined that peaceful means have failed, or in self-defense against "armed attack" (a narrow concept) until the Security Council acts.

There is, of course, more to say. Thus there is at least a tension, if not an outright contradiction, between the rules of world order laid down in the UN Charter and the rights articulated in the Universal Declaration of Human Rights (UD), a second pillar of the world order established under US initiative after World War II. The Charter bans force violating state sovereignty; the UD guarantees the rights of individuals against oppressive states. The issue of "humanitarian intervention" arises from this tension. It is the right of "humanitarian intervention" that is claimed by the US/NATO in Kosovo, and that is generally supported by editorial opinion and news reports (in the latter case, reflexively, even by the very choice of terminology).

The question is addressed in a news report in the NY Times (March 27), headlined "Legal Scholars Support Case for Using Force" in Kosovo (March 27). One example is offered: Allen Gerson, former counsel to the US mission to the UN. Two other legal scholars are cited. One, Ted Galen Carpenter, "scoffed at the Administration argument" and dismissed the alleged right of intervention. The third is Jack Goldsmith, a specialist on international law at Chicago Law school. He says that critics of the NATO bombing "have a pretty good legal argument," but "many people think (an exception for humanitarian intervention) does exist as a matter of custom and practice." That summarizes the evidence offered to justify the favored conclusion stated in the headline.

Goldsmith's observation is reasonable, at least if we agree that facts are relevant to the determination of "custom and practice." We may also bear in mind a truism; the right of humanitarian intervention, if it exists, is premised on the "good faith" of those intervening, and that assumption is based not on their rhetoric but on their record, in particular their record of adherence to the principles of international law, World Court decisions, and so on. That is indeed a truism, at least with regard to others. Consider, for example, Iranian offers to intervene in Bosnia to prevent massacres at a time when the West would not do so. These were dismissed with ridicule (in fact, ignored); if there was a reason beyond subordination to power, it was because Iranian "good faith" could not be assumed. A rational person then asks obvious questions: is the Iranian record of intervention and terror worse than that of the US? And other questions, for example: How should we assess the "good faith" of the only country to have vetoed a Security Council resolution calling on all states to obey international law? What about its historical record? Unless such questions are prominent on the agenda of discourse, an honest person will dismiss it as mere allegiance to doctrine. A useful exercise is to determine how much of the literature — media or other — survives such elementary conditions as these.

(2) How do these or other considerations apply in the case of Kosovo?

There has been a humanitarian catastrophe in Kosovo in the past year, overwhelmingly attributable to Yugoslav military forces. The main victims have been ethnic Albanian Kosovars, some 90% of the population of this Yugoslav territory. The standard estimate is 2000 deaths and hundreds of thousands of refugees.

In such cases, outsiders have three choices:

(i) try to escalate the catastrophe

(ii) do nothing

(iii) try to mitigate the catastrophe

The choices are illustrated by other contemporary cases. Let's keep to a few of approximately the same scale, and ask where Kosovo fits into the pattern.

(A) Colombia: In Colombia, according to State Department estimates, the annual level of political killing by the government and its paramilitary associates is about at the level of Kosovo, and refugee flight primarily from their atrocities is well over a million. Colom-

bia has been the leading Western hemisphere recipient of US arms and training as violence increased through the 90s, and that assistance is now increasing, under a "drug war" pretext dismissed by almost all serious observers. The Clinton administration was particularly enthusiastic in its praise for President Gaviria, whose tenure in office was responsible for "appalling levels of violence," according to human rights organizations, even surpassing his predecessors. Details are readily available.

In this case, the US reaction is (I): escalate the atrocities.

(B) Turkey: By very conservative estimates, Turkish repression of Kurds in the 90s falls in the category of Kosovo. It peaked in the early 90s; one index is the flight of over a million Kurds from the countryside to the unofficial Kurdish capital Diyarbakir from 1990 to 1994, as the Turkish army was devastating the countryside. 1994 marked two records: it was "the year of the worst repression in the Kurdish provinces" of Turkey, Jonathan Randal reported from the scene, and the year when Turkey became "the biggest single importer of American military hardware and thus, the world's largest arms purchaser." When human rights groups exposed Turkey's use of US jets to bomb villages, the Clinton Administration found ways to evade laws requiring suspension of arms deliveries, much as it was doing in Indonesia and elsewhere.

Colombia and Turkey explain their (US-supported) atrocities on grounds that they are defending their countries from the threat of terrorist guerrillas. As does the government of Yugoslavia.

Again, the example illustrates (I): try to escalate the atrocities.

(C) Laos: Every year thousands of people, mostly children and poor farmers, are killed in the Plain of Jars in Northern Laos, the scene of the heaviest bombing of civilian targets in history it appears, and arguably the most cruel: Washington's furious assault on a poor peasant society had little to do with its wars in the region. The worst period was from 1968, when Washington was compelled to undertake negotiations (under popular and business pressure), ending the regular bombardment of North Vietnam. Kissinger-Nixon then decided to shift the planes to bombardment of Laos and Cambodia.

The deaths are from "bombies," tiny anti-personnel weapons, far worse than land-mines: they are designed specifically to kill and maim, and have no effect on trucks, buildings, etc. The Plain was saturated with hundreds of millions of these criminal devices, which have a failure-to-explode rate of 20%-30% according to the manufacturer, Honeywell. The numbers suggest either remarkably poor quality control or a rational policy of murdering civilians by delayed action. These were only a fraction of the technology deployed, including advanced missiles to penetrate caves where families sought shelter. Current annual casualties from "bombies" are estimated from hundreds a year to "an annual nationwide casualty rate of 20,000," more than half of them deaths, according to the veteran Asia reporter Barry Wain of the Wall Street Journal — in its Asia edition. A conservative estimate, then, is that the crisis this year is approximately comparable to Kosovo, though deaths are far more highly concentrated among children — over half, according to analyses reported by the Mennonite Central Committee, which has been working there since 1977 to alleviate the continuing atrocities.

There have been efforts to publicize and deal with the humanitarian catastrophe. A British-based Mine Advisory Group (MAG) is trying to remove the lethal objects, but the US is "conspicuously missing from the handful of Western organisations that have followed MAG," the British press reports, though it has finally agreed to train some Laotian civilians. The British press also reports, with some anger, the allegation of MAG specialists that the US refuses to provide them with "render harmless procedures" that would make their work "a lot quicker and a lot safer." These remain a state secret, as does the whole affair in the United States. The Bangkok press reports a very similar situation in Cambodia, particularly the Eastern region where US bombardment from early 1969 was most intense.

In this case, the US reaction is (II): do nothing. And the reaction of the media and commentators is to keep silent, following the norms under which the war against Laos was designated a "secret war" — meaning well-known, but suppressed, as also in the case of Cambodia from March 1969. The level of self-censorship was extraordinary then, as is the current phase. The relevance of this shocking example should be obvious without further comment.

I will skip other examples of (I) and (II), which abound, and also much more serious contemporary atrocities, such as the huge slaughter of Iraqi civilians by means of a particularly vicious form of biological warfare — "a very hard choice," Madeleine Albright commented on national TV in 1996 when asked for her reaction to the killing of half a million Iraqi children in 5 years, but "we think the price is worth it." Current estimates remain about 5000 children killed a month, and the price is still "worth it." These and other examples might also be kept in mind when we read awed rhetoric about how the "moral compass" of the Clinton Administration is at last functioning properly, as the Kosovo example illustrates.

Just what does the example illustrate? The threat of NATO bombing, predictably, led to a sharp escalation of atrocities by the Serbian Army and paramilitaries, and to the departure of international observers, which of course had the same effect. Commanding General Wesley Clark declared that it was "entirely predictable" that Serbian terror and violence would intensify after the NATO bombing, exactly as happened. The terror for the first time reached the capital city of Pristina, and there are credible reports of large-scale destruction of villages, assassinations, generation of an enormous refugee flow, perhaps an effort to expel a good part of the Albanian population — all an "entirely predictable" consequence of the threat and then the use of force, as General Clark rightly observes.

Kosovo is therefore another illustration of (I): try to escalate the violence, with exactly that expectation.

To find examples illustrating (III) is all too easy, at least if we keep to official rhetoric. The major recent academic study of "humanitarian intervention," by Sean Murphy, reviews the record after the Kellogg-Briand pact of 1928 which outlawed war, and then since the UN Charter, which strengthened and articulated these provisions. In the first phase, he writes, the most prominent examples of "humanitarian intervention" were Japan's attack on Manchuria, Mussolini's invasion of Ethiopia, and Hitler's occupation of parts of Czechoslovakia. All were accompanied by highly uplifting humanitarian rhetoric, and factual justifications as well. Japan was going to establish an "earthly paradise" as it defended Manchurians from "Chinese bandits," with the support of a leading Chinese nationalist, a far more credible figure than anyone the US was able to conjure up during its attack on South Vietnam. Mussolini was liberating thousands of slaves as he carried forth the Western "civilizing mission." Hitler announced Germany's intention to end ethnic tensions and violence, and "safeguard the national individuality of the German and Czech peoples," in an operation "filled with earnest desire to serve the true interests of the peoples dwelling in the area," in accordance with their will; the Slovakian President asked Hitler to declare Slovakia a protectorate.

Another useful intellectual exercise is to compare those obscene justifications with those offered for interventions, including "humanitarian interventions," in the post-UN Charter period.

In that period, perhaps the most compelling example of (III) is the Vietnamese invasion of Cambodia in December 1978, terminating Pol Pot's atrocities, which were then peaking. Vietnam pleaded the right of self-defense against armed attack, one of the few post-Charter examples when the plea is plausible; the Khmer Rouge regime (Democratic Kampuchea, DK) was carrying out murderous attacks against Vietnam in border areas. The US reaction is instructive. The press condemned the "Prussians" of Asia for their outrageous violation of international law. They were harshly punished for the crime of having terminated Pol Pot's slaughters, first by a (US-backed) Chinese invasion, then by US imposition of extremely harsh sanctions. The US recognized the expelled DK as the official government of Cambodia, because of its "continuity" with the Pol Pot regime, the State Department explained. Not too subtly, the US supported the Khmer Rouge in its continuing attacks in Cambodia.

The example tells us more about the "custom and practice" that underlies "the emerging legal norms of humanitarian intervention."

Despite the desperate efforts of ideologues to prove that circles are square, there is no serious doubt that the NATO bombings further undermine what remains of the fragile structure of international law. The US made that entirely clear in the discussions leading to the NATO decision. Apart from the UK (by now, about as much of an independent actor as the Ukraine was in the pre-Gorbachev years), NATO countries were skeptical of US policy, and were particularly annoyed by Secretary of State Albright's "saber-rattling" (Kevin Cullen, Boston Globe, Feb.22). Today, the more closely one approaches the conflicted region, the greater the opposition to Washington's insistence on force, even within NATO (Greece and Italy). France had called for a UN Security Council resolution to authorize deployment of NATO peacekeepers. The US flatly refused, insisting on "its stand that NATO should be able to act independently of the United Nations," State Department officials explained. The US refused to permit the "neuralgic word `authorize'" to appear in the final NATO statement, unwilling to concede any authority to the UN Charter and international law; only the word "endorse" was permitted (Jane Perlez, NYT, Feb.11). Similarly the bombing of Iraq was a brazen expression of contempt for the UN, even the specific timing, and was so understood. And of course the same is true of the destruction of half the pharmaceutical production of a small African country a few months earlier, an event that also does not indicate that the "moral compass" is straying from righteousness — not to speak of a record that would be prominently reviewed right now if facts were considered relevant to determining "custom and practice."

It could be argued, rather plausibly, that further demolition of the rules of world order is irrelevant, just as it had lost its meaning by the late 1930s. The contempt of the world's leading power for the framework of world order has become so extreme that there is nothing left to discuss. A review of the internal documentary record demonstrates that the stance traces back to the earliest days, even to the first memorandum of the newly-formed National Security Council in 1947. During the Kennedy years, the stance began to gain overt expression. The main innovation of the Reagan-Clinton years is that defiance of international law and the Charter has become entirely open. It has also been backed with interesting explanations, which would be on the front pages, and prominent in the school and university curriculum, if truth and honesty were considered significant values. The highest authorities explained with brutal clarity that the World Court, the UN, and other agencies had become irrelevant because they no longer follow US orders, as they did in the early postwar years.

One might then adopt the official position. That would be an honest stand, at least if it were accompanied by refusal to play the cynical game of self-righteous posturing and wielding of the despised principles of international law as a highly selective weapon against shifting enemies.

While the Reaganites broke new ground, under Clinton the defiance of world order has become so extreme as to be of concern even to hawkish policy analysts. In the current issue of the leading establishment journal, Foreign Affairs, Samuel Huntington warns that Washington is treading a dangerous course. In the eyes of much of the world — probably most of the world, he suggests — the US is "becoming the rogue superpower," considered "the single greatest external threat to their societies." "Realist international relations theory," he argues, predicts that coalitions may arise to counterbalance the rogue superpower. On pragmatic grounds, then, the stance should be reconsidered. Americans who prefer a different image of their society might call for a reconsideration on other than pragmatic grounds.

Where does that leave the question of what to do in Kosovo? It leaves it unanswered. The US has chosen a course of action which,

as it explicitly recognizes, escalates atrocities and violence — "predictably"; a course of action that also strikes yet another blow against the regime of international order, which does offer the weak at least some limited protection from predatory states. As for the longer term, consequences are unpredictable. One plausible observation is that "every bomb that falls on Serbia and every ethnic killing in Kosovo suggests that it will scarcely be possible for Serbs and Albanians to live beside each other in some sort of peace" (Financial Times, March 27). Some of the longer-term possible outcomes are extremely ugly, as has not gone without notice.

A standard argument is that we had to do something: we could not simply stand by as atrocities continue. That is never true. One choice, always, is to follow the Hippocratic principle: "First, do no harm." If you can think of no way to adhére to that elementary principle, then do nothing. There are always ways that can be considered. Diplomacy and negotiations are never at an end.

The right of "humanitarian intervention" is likely to be more frequently invoked in coming years — may be with justification, may be not — now that Cold War pretexts have lost their efficacy. In such an era, it may be worthwhile to pay attention to the views of highly respected commentators — not to speak of the World Court, which explicitly ruled on this matter in a decision rejected by the United States, its essentials not even reported.

In the scholarly disciplines of international affairs and international law it would be hard to find more respected voices than Hedley Bull or Louis Henin. Bull warned 15 years ago that "Particular states or groups of states that set themselves up as the authoritative judges of the world common good, in disregard of the views of others, are in fact a menace to international order, and thus to effective action in this field." Henkin, in a standard work on world order, writes that the "pressures eroding the prohibition on the use of force are deplorable, and the arguments to legitimize the use of force in those circumstances are unpersuasive and dangerous... Violations of human rights are indeed all too common, and if it were permissible to remedy them by external use of force, there would be no law to forbid the use of force by almost any state against almost any other. Human rights, I believe, will have to be vindicated, and other injustices remedied, by other, peaceful means, not by opening the door to aggression and destroying the principle advance in international law, the outlawing of war and the prohibition of force."

Recognized principles of international law and world order, solemn treaty obligations, decisions by the World Court, considered pronouncements by the most respected commentators — these do not automatically solve particular problems. Each issue has to be considered on its merits. For those who do not adopt the standards of Saddam Hussein, there is a heavy burden of proof to meet in undertaking the threat or use of force in violation of the principles of international order. Perhaps the burden can be met, but that has to be shown, not merely proclaimed with passionate rhetoric. The consequences of such violations have to be assessed carefully — in particular, what we understand to be "predictable." And for those who are minimally serious, the reasons for the actions also have to be assessed — again, not simply by adulation of our leaders and their, "moral compass." ■