

FROM BAGHDAD TO KABUL:  
THE IMPLICATIONS OF COALITION AIRPOWER FOR  
INTERNATIONAL HUMANITARIAN LAW AND ACTION

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## **Abstract**

The last decade has witnessed a substantial increase in the use of military airpower for peace enforcement. Coalition airstrikes in the 1991 Gulf War, the use of NATO airpower against Bosnian-Serbs in 1995 and Yugoslavia in 1999, and the use on US-led airpower in the recent conflict in Afghanistan, are all examples of this trend.

The use of airpower presents important implications for the laws of armed conflict while having consequences for the internationally-sanctioned delivery of humanitarian relief to war victims. Has the use of airpower increasingly limited civilian casualties since the Gulf War? Are humanitarian operations possible during coalition air campaigns?

While centered on Protocol I of the Geneva Conventions and the work of the International Committee of the Red Cross, this thesis will identify and examine legal gaps and humanitarian tensions. An evaluation will be conducted of the behavior and results of coalition airpower and of relief agency access.

\* \* \* \* \*

## **Sommaire**

La dernière décennie a connu une croissance importante dans l'utilisation de la force aérienne pour des fins de renforcement de paix et autres objectifs politiques. Des frappes aériennes menées par une coalition militaire durant la guerre du Golfe en 1991, l'utilisation de la force aérienne par l'OTAN contre les Serbes-bosniaques en 1995 et la Yougoslavie en 1999, et la coalition aérienne Américaine menée contre l'Afghanistan récemment, démontrent ce phénomène.

L'emploi de la force aérienne pose de grands défis pour le droit international humanitaire et par conséquent le droit d'ingérence des agences humanitaires voulant accéder aux victimes de conflits. L'utilisation de la force aérienne démontre-t-elle un progrès en terme de victimes civiles minimum? Les opérations humanitaires sont-elles possibles durant les frappes aériennes concertées?

Axé sur Protocol I des Conventions de Genève et sur le travail de la Croix-rouge International, ce mémoire identifiera et examinera les lacunes légales et les tensions humanitaires en entreprenant une évaluation du comportement et des résultats de frappes aériennes des coalitions militaires et du travail des agences humanitaires pendant les quatre études.

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## Acknowledgements

It was after the historic NATO decision of 1999, to change by force the behavior of a sovereign state, by “humanitarian intervention,” that I began to examine coalition airpower. I disagreed not with the action taken, but with the labeling of such action as humanitarian, which it was not, and as an intervention, which NATO never carried into Kosovo. While all aid agencies had to abandon their relief activities, not one coalition soldier ever entered Kosovo during the conflict. My research was also inspired by 6 months of work for an NGO in rural Laos, conducting a survey of the impact of US unexploded ordnance dropped during an earlier nine-year air campaign.

I have my advisor Professor Rex Brynen to thank for suggesting that I logically alter my initial and much too ambitious research of the consequences of military intervention upon international law and humanitarian assistance to an analysis of the use of airpower since the Gulf War, obviously including addition of a case study then on the front-pages, the US-led air campaign against Taliban/Al Qaeda forces in Afghanistan. Professor Brynen’s peacebuilding course was a primary reason for my choosing studies at McGill. His laborious guidance and deserved criticisms of my thesis research greatly benefited my focus and writing, for which I am very grateful. His continued availability during a sabbatical year and social upheaval in the Middle East was most commendable.

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Having worked for two UN peacekeeping missions, UNHCR, Handicap International, the Canadian Red Cross, in addition to other foreign contracts and travel, having witnessed the work of the ICRC, I was inspired to learn more about the limits of international law and of relief agencies in attempting to deal with particular political crises. For so often welcoming me home after such rewarding ventures, where the most important lessons were learned, I thank my parents for their patience and omnipresent support.

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Comments to this research are welcome at [lemieuxmarc@yahoo.com](mailto:lemieuxmarc@yahoo.com)

## INTRODUCTION

The last decade has witnessed a substantial increase in the use of military airpower for peace enforcement and other political objectives, such as United Nations Security Council (UNSC) enforcement of no-fly zones, safe havens and sanctions. Coalition airstrikes in the 1991 Gulf War, the use of airpower by the North Atlantic Treaty Organization (NATO) and especially the United States (US) against Bosnian-Serbs in 1995 and against Yugoslavia in 1999, and the US reliance on airpower in the 2001-02 conflict in Afghanistan, are all examples of this trend.

During civil and international wars, specialized humanitarian agencies have for decades delivered emergency relief to civilian victims of armed conflict. Although the use of modern airpower technology has proven largely effective for achieving political objectives, increasing means of coercion from the air present important implications for the laws of armed conflict and consequences for the internationally-sanctioned delivery of humanitarian relief to war victims. This thesis will examine both of these, identifying legal gaps and humanitarian tensions.

In the first major section, this thesis will examine the development and current status of International Humanitarian Law (IHL) in regards to aerial warfare, the capacities of modern US airpower technologies to comply with the laws of war and the behavior and results of coalition airpower in the above four case studies. Politico-military tensions about targeting decisions and differences in national interpretation of IHL compliance will be studied, including the targeting of dual-use civilian-military facilities. Particular attention will be paid to the American interpretation of and coalition compliance with Additional Protocol I of the Geneva Conventions, the last international treaty to regulate the use of force in 1977.

Do US-led airpower coalitions meet the legal obligations of IHL? Has the use of airpower increasingly limited civilian casualties since the Gulf War? Have advances in US airpower technology allowed for greater compliance with the rules of war? An understanding of available airpower technology during the four cases is imperative to concluding any ability to meet legal obligations. While research focuses on the means and methods of (air) warfare, *jus in bello*, no examination will be made of the legality of using force or of the right to militarily intervene, *jus ad bellum*.

In the second major section, examination will be made of the implications of the above four air campaigns upon the operations of impartial relief agencies.

Airstrikes present consequences for the safety of internally-displaced persons (IDPs) and relief workers. After the rights entitled to organizations conducting humanitarian operations are explained, the concepts of humanitarian space and of protected zones will be defined, especially in regards to aerial protection of United Nations (UN) – declared safe areas. A brief analysis of the humanitarian value of military aid drops during the cases will be made. Research will also address the aerial protection of safe areas and the military role in aid drops. Particular attention will be paid to the work of the International Committee of the Red Cross (ICRC) as the guardian of IHL and as a body mandated to provide relief and protection to victims of armed conflict.

Can relief agencies effectively and impartially operate during airstrikes sanctioned by the UN or NATO? Does humanitarian work remain possible within the constraints of today's use of airpower technology? Have coalitions increasingly learned to heed an operational ability to relief agencies?

This paper also challenges the notion among some proponents of airpower that airpower alone can provide solutions to political problems at a lesser political, civilian and humanitarian cost. Air campaigns without ground-based intelligence or ground forces increase the vulnerability of civilians and aid workers to targeting failures.

Research will conclude that, during the use of coalition airpower, the laws to protect civilians and to enable the efforts of specialized relief organizations reveal legal gaps, humanitarian consequences, politico-military tensions and technological short-comings. The targeting of dual-use civilian-military facilities during air warfare presents the greatest challenge to the protection of non-combatants and to the effective work of relief agencies. Despite the legal rights of impartial aid agencies to access victims of armed conflict, ambiguities in the laws of war permit decisions by military lawyers and commanders to argue the military necessity of certain actions which consequently obstruct effective humanitarian efforts. It has not however meant that humanitarian relief during airstrikes is impossible, as will be revealed.

In addressing these issues, this study begins to fill an important analytical gap in current academic literature combining examination of both the legal and humanitarian consequences of coalition airpower in the four case studies. Such analysis is not yet available in comparative form in book or periodical, not only because the fourth case study, pertaining to actions against the former Taliban regime in Afghanistan, remains front-page news, but also because no one organization, think

tank or institute houses a combined, critical analysis of legal, military and humanitarian issues.

For instance, the ICRC largely reserves comment of coalition airpower behavior in order not to jeopardize its primary mandate of accessing war victims. Other apolitical humanitarian agencies depend on donor support largely originating from those same wealthy liberal democracies advocating the use of airpower and may be reluctant to voice public opposition. UN agencies remain entirely uncritical and neutral. Military academies and their governments remain somewhat secretive about sharing intelligence on the actions of their forces, particularly when the ambiguity of determining military necessity is weighed against the Geneva Conventions and public opinion on acceptable collateral damage. University scholars have generally been slow to address these issues, perhaps because few possess an adequate knowledge of humanitarian relief operations or previous field work experience.



## THE CONSEQUENCES OF AIRPOWER UPON INTERNATIONAL HUMANITARIAN LAW

Humanitarian law is a branch of public international law which owes its inspiration to a feeling for humanity and which is centered on the protection of the individual.<sup>1</sup>

Jean Pictet, former Vice-President, ICRC

Laws of warfare were, strictly speaking, not fully applicable, since the NATO nations had not formally declared war.<sup>2</sup>

US General Wesley Clark, NATO Commander, Operation Allied Force, 1999

### **Balancing military necessity against humanitarian considerations: development of laws on air warfare**

Because it is important to understand the legal obligations of air force coalitions, this section will analyze the development of laws on air warfare, outlining details as they pertain to current regulation applicable to states in the four air campaigns.

The birth of a new field of international law, by the first Geneva Convention of 1864, was intended to complement and facilitate efforts at reaching, assisting and protecting victims during conflict. The suffering of war victims, witnessed by Henry Dunant in northern Italy in 1859, had so impacted the Swiss businessman that he helped establish the Red Cross movement in 1863.

The creation of a law known today as international humanitarian law (IHL), a part of public international law, is driven by two humanitarian objectives. First, it is intended to limit the means and methods of warfare, a stream called “Hague Law.” Second, it is to protect those hors-de-combat, those not or no-longer involved in belligerency, a stream called “Geneva Law.” The two streams form IHL or the laws of armed conflict<sup>3</sup> and find their expression and wide acceptance in the two 1977 Additional Protocols to the Geneva Conventions of 1949.<sup>4</sup>

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<sup>1</sup> Francoise Bory, *Origin and Development of International Humanitarian Law*, (ICRC: Geneva, 1982), 7.

<sup>2</sup> Wesley K. Clark, *Waging Modern War: Bosnia, Kosovo and the Future of Combat*, (New York: Public Affairs, 2001): 259.

<sup>3</sup> The term “laws of war” is less preferred, given its cross-border connotation, and is widely unused given the discontinued practice by states of declaring war since WWII. Except in the preamble, the UN Charter makes use of the term “use of force” in place of the term war. The 1928 Kellogg-Briand Pact

The two streams compliment and are no longer separate from each other. Originally motivated by the effects of ground and naval warfare, Hague Law seeks to regulate the conduct of fighting while Geneva Law aims to protect non-combatants, including prisoners of war and civilians. Limiting the use of some weapons and curbing the manner of using others leads to greater protections for otherwise vulnerable non-combatants. The effect of some rules of the Hague Conventions of 1899 and 1907 has been to protect victims of conflict, just as Geneva Law has limited belligerent actions.<sup>5</sup>

The four years of deliberations by states parties to the Geneva Conventions in the 1970s were partly driven by a need to update Hague Law, last codified in 1907,<sup>6</sup> a time before aviation revolutionized warfare. The use of airstrikes, also termed bombardment or aerial bombing, by armed forces is therefore regulated by both Hague Law and the Geneva Conventions.

It should be noted that this study focuses primarily on Protocol I for two reasons. It is the last international agreement regulating aspects of air warfare. Secondly, in each case study except Iraq's invasion of Kuwait, a US-led airpower coalition had acquired the status of belligerent in the conflict, thus internationalizing a previous civil conflict between ethnic groups. Protocol II concerns the regulation of non-international conflict.

The military conduct of states and their field commanders are to be constrained by principles of humanity, distinction and proportionality. All decisions pertaining to the attainment of definite military advantage over an enemy must be measured against these principles. The most fundamental tenet of IHL is that the profession of warring must be guided by humanitarian considerations.

The invention of air travel a century ago marked an increase in the vulnerability of civilian populations to airpower. The first Geneva Convention of 1864 did not include protections for non-combatants "as at that time it was considered

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defining state aggression had generated much controversy and was thus avoided. The absence of a declaration of war has no effect on the validity of IHL, as stated in common article 2 to the four Geneva Conventions.

<sup>4</sup> All 189 UN member states have ratified the 1949 Geneva Conventions. Protocol 1 regulating international conflict has been ratified by 159 states. See [www.icrc.org/eng/party\\_gc](http://www.icrc.org/eng/party_gc)

<sup>5</sup> ICRC, *International humanitarian law: answers to your questions*, Geneva: document 0703/002, 4.

<sup>6</sup> Christopher Greenwood, "A Critique of the Additional Protocols to the Geneva Conventions of 1949," in *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Helen Durham and Timothy L. H. McCormack, eds. (The Hague: Martinus Nijhoff, 1999): 5.

evident that civilians would remain outside hostilities”.<sup>7</sup> “Air power enabled the belligerent to strike well behind enemy lines, at the lines of communication and logistics that kept enemy armies supplied.”<sup>8</sup> In 1953, the ICRC attempted to limit the use of airpower to the immediate battlefield.<sup>9</sup>

Following the 1899 Hague Declaration to Prohibit for the Term of Five Years the Launching of Projectiles and Explosives from Balloons, this first attempt to regulate airwar was repeated in a similarly worded 1907 Hague Declaration, still in force today.<sup>10</sup> The major states never ratified the Declaration.<sup>11</sup> Nevertheless, the same prohibition to discharge projectiles from the air was repeated in Article 25 of the Annex to Hague Convention IV. In 1925, the US launching of the aircraft carrier Lexington revolutionized the potential of airpower to project and protect national interests<sup>12</sup> without dependence on expensive foreign bases.<sup>13</sup>

The most fundamental principle of Hague Law states that means and methods of killing are not unlimited. Article 22 of Hague Convention IV of 1907, Regulations Respecting the Laws and Customs of War on Land,<sup>14</sup> states that “the right of belligerents to adopt means of injuring the enemy is not unlimited.”<sup>15</sup> Article 35.1 of 1977 Additional Protocol I repeats this principle. Subsection two reminds states parties that weapons must not cause unnecessary suffering and superfluous injury,<sup>16</sup> an objective first argued by Russia in the codification of the 1868 St Petersburg Declaration banning the use of projectiles charged with inflammable substances, also called exploding bullets.<sup>17</sup> Military advantage competes against and is judged acceptable by its measure of respect for unnecessary suffering. Article 36 also states

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<sup>7</sup> ICRC, *Preliminary Remarks to the Geneva Conventions of August 12, 1949*, Geneva, 16.

<sup>8</sup> A.P.V. Rogers, “Zero-casualty warfare,” in *International Review of the Red Cross* (herein *IRRC*), 837 (31 March 2000): 2, website edition [www.icrc.org](http://www.icrc.org)

<sup>9</sup> W. Hays Parks, “Air War and the Law of War,” in *The Air Force Law Review*, 32 (1999): 103.

<sup>10</sup> Mjr Ariane L. DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War: An Overview,” in *Air Force Law Review*, 37 (1994): 45.

<sup>11</sup> Although the US was a party, in 1942 it stated that it would no longer observe the treaty. See Richard Guelff and Adam Roberts, *Documents on the Laws of War*, (Oxford: Clarendon, 1989): 121.

<sup>12</sup> W. Hays Parks, “Air War and the Law of War”, 35.

<sup>13</sup> Because of host state politics following the end of the Cold War, the US closed air bases in places like the Philippines and Panama.

<sup>14</sup> All five permanent members of the present UN Security Council had ratified the treaty.

<sup>15</sup> Hans Blix, “Means and Methods of Combat,” in *International Dimensions of Humanitarian Law*, (London: Martinus Nijhoff, 1988): 135.

<sup>16</sup> The successful International Campaign to Ban Landmines argued that landmines were already illegal by virtue of this article, leading to the signature of the Ottawa Convention in December of 1997.

<sup>17</sup> Hans Blix, “Means and Methods of Combat”, 138.

that new weapons technologies developed by states parties must meet these standards.<sup>18</sup>

In 1923, given the revolutionary advance of militarized aircraft during World War I, an attempt was made to codify rules pertaining to humanitarian regulation of aerial warfare: the 1923 Hague Draft Rules of Aerial Warfare. Although never adopted, its customary value was evident in the drafting of other subsequent conventions. Article 22, prohibiting the terrorizing of civilians and the destruction of private property of no military character, also found its equivalent in 1977 regulations. Belligerent obligations to distinguish between military advantage and collateral civilian damage, between military and civilian objects, found in Article 24 of the 1923 Draft, are elaborated upon in Articles 52-3 of Protocol I of 1977.

Of note in 1923 and during World War II was the lesser degree of protection afforded civilians during carpet bombing operations: Article 24.4 of the draft read, the “bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment”.<sup>19</sup> The killing of civilians for military advantage remained permissible.<sup>20</sup> The burden of war suffered by civilians was seen to be part of a Napoleonic duty to the state, a *levee en masse*, general popular mobilization, thus justifying their targeting and losses in the name of patriotic wars.

Of equal declaratory but nonbinding value was the unanimous adoption in 1938 by the League of Nations Assembly of a British House of Commons initiative outlining three principles regulating airwar: 1) direct attack against the civilian population is illegal, 2) targets for air bombardment must be legitimate, identifiable military objectives, and 3) reasonable care must be taken in attacking military objectives to avoid a neighbouring civilian population.<sup>21</sup> There is however to this day, no international treaty expressly addressing air warfare or bombardment.<sup>22</sup>

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<sup>18</sup> In 1995, blinding laser weapons were banned at the International Diplomatic Conference of states parties to the Geneva Conventions. The US is said to have initiated this treaty (Protocol IV to the 1980 Convention on Certain Conventional Weapons). See Col. Dennis B. Herbert, “Non-Lethal Weaponry: From Tactical to Strategic Applications,” in *Joint Force Quarterly*, (spring 1999): 90, [www.dtic.mil/doctrine/jel/jfq\\_pubs/spring99.htm](http://www.dtic.mil/doctrine/jel/jfq_pubs/spring99.htm)

<sup>19</sup> Guelff and Roberts, *Documents on the Laws of War* (1989): 126-7.

<sup>20</sup> Anne-Marie Slaughter and William Burke-White, “The Future of Law: Protecting the Rights of Civilians,” in *Harvard International Review*, 24, 1 (spring 2002): 67.

<sup>21</sup> Guelff and Roberts, *Documents on the Laws of War* (1989): 122.

<sup>22</sup> Guelff and Roberts, *Documents on the Laws of War* (1989): 121.

The Geneva Conventions and their 1977 Additional Protocols called for a strengthening of the humanitarian principle of distinction and proportionality in regards to determinations of military necessity. The humanitarian principle of distinction means that parties to a conflict shall at all times distinguish between civilian objects and military objectives, and between the civilian population and combatants (Article 48, Protocol I). In order to judge the civilian or military value of a target, it is necessary to determine whether its “total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage” (Article 52.2)

The principle of proportionality is another principle limiting the use of force to what is militarily necessary. Proportionality assists in respecting distinction. Indiscriminate attacks are prohibited (Article 51.4). To clarify, such prohibition includes “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”. Article 51.5 specifically forbids general aerial attack by means of area bombardment, also called carpet bombing: indiscriminate attack includes “bombardment by any method or means which treats as a single military objective a number of clearly separate and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects”. Carpet bombing had been routinely practiced during World War II and the Second War of Indochina (1964-73).

The destruction of property is therefore prohibited unless it is imperatively required by military necessity.<sup>23</sup> Article 53 prohibits the destruction of cultural property, earlier found in Article 56 of the 1907 Hague Convention IV.<sup>24</sup> Distinctive signs are to be clearly affixed upon such protected cultural objects, monuments, museums, places of worship: a blue and white square ending at the bottom with a protruding triangle.<sup>25</sup> According to Article 52.2, a military object is one whose destruction affords a definite military advantage. Consequently, if the use of a civilian object is altered to “make an effective contribution to military action”, it loses the protections previously granted it as a civilian object. Article 52.3 prohibits attack

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<sup>23</sup> ICRC, *IHL and the conflict in the Balkans: Questions and Answers*, (23 April 1999) [www.icrc.org](http://www.icrc.org)

<sup>24</sup> Although the other permanent UN Security Council members have, the US and UK have not ratified the 1954 Hague Convention for the Protection of Cultural Property. See [www.icrc.org/ihl](http://www.icrc.org/ihl)

<sup>25</sup> ICRC, *Soldier's booklet: Rules for Behavior in Combat*, 1985, 14.

when there is doubt as to the status of an object normally dedicated to civilian purpose, such as a place of worship, school, house, or other dwelling. If the military is unsure whether such a place “is being used to make an effective contribution to military action, it shall be presumed not to be so used.”<sup>26</sup> A place, site or object of attack is to be deemed innocent of military complicity until proven guilty of harbouring false status. This article, highly debated among military strategists, politicians and lawyers during the airstrike decision-making process on the targeting validity of dual-use facilities, will be reviewed later.

Unlike the 1907 Hague Convention IX, Concerning Bombardment by Naval Forces in Time of War, which had placed the onus of responsibility for civilian loss of life during attack upon a besieged party, all feasible precautions (Article 57.2(a)(i)) had now to be taken by a party considering attack, including the obligation to minimize incidental loss of civilian life and civilian objects (Article 57.2(a)(ii)), to cancel an attack if it becomes apparent that the object is civilian (Article 57.2(b)), to provide effective advance warning of an attack which could affect the civilian population (Article 57.2 (c)). The Hague Convention IX had recognized the “inevitability” of such naval attacks, the treaty absolving the attacker of responsibility for “unavoidable” collateral damage: “collateral civilian casualties during a siege were regarded as a burden upon the besieged commander – an inducement to end the siege.”<sup>27</sup>

In the time of the 1907 Conventions, “bombardments of the interior parts of cities had been justified by the argument that the civilians thus put at risk were, after all, ‘enemies’, and if made wretched enough would press the military commander to surrender”.<sup>28</sup> During World War I, “demoralization of the enemy by means of aerial bombardment was accepted as part of the functions of the bombardment group...regardless of the injury to non-combatants and private property.”<sup>29</sup>

The traditional distinction between soldier and civilian, which had been so clear in the eighteenth and nineteenth centuries and which had even survived the First World War, once again disappeared; particularly since air warfare put civilians at just

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<sup>26</sup> ICRC, *Protocols Additional to the Geneva Conventions of 12 August 1949*, Geneva, 37.

<sup>27</sup> W. Hays Parks, “Air War and the Law of War”, 17-19.

<sup>28</sup> Geoffrey Best, *Humanity in Warfare*, (London: Methuen, 1983): 263.

<sup>29</sup> Geoffrey Best, *Humanity in Warfare*, 269, citing M.W. Royse, *Aerial Bombardment and the International Regulation of Warfare*, (1928): 192-3.

as great risk as all but a small proportion of the men in the armed forces.... So although the era of mass armies supported by the fanatical nationalism of the civil population had passed, the Second World War was, in a far more profound sense, a conflict between entire societies almost as absolute as those of the Dark Ages.<sup>30</sup>

Attacking a nation's industrial infrastructure and civilian population in the 1940s was widespread, the intent being to bypass ground forces to inflict damage on physical and moral capacity, culminating in the US Air Force dropping of uranium and plutonium bombs over Japan in August of 1945. Some 130,000 people were killed outright by the two atomic explosions.<sup>31</sup> Civilian deaths by aerial bombardment alone are estimated at 12 million<sup>32</sup> during World War II, civilian casualties accounting for half of all those killed.<sup>33</sup>

Area bombing by Allied Forces largely began in 1944 after US Allied Commander General Eisenhower decided that military necessity required a quicker end to the war in order to save lives.<sup>34</sup> The practice of indiscriminate area bombing and firebombing of cities<sup>35</sup> was so prevalent that there was no interest to see such actions included in deliberations of the Nuremberg Tribunal.<sup>36</sup> Debates towards acceptance of an additional protocol however provided the ICRC an opportunity to argue a shift in responsibility for civilian casualties from the defender to the attacker.<sup>37</sup> To understand the difficulty in determining where military necessity meets humanitarian considerations, it is necessary to turn to the international legal debates of the 1970s.

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<sup>30</sup> Michael Howard, *War in European History*, 134.

<sup>31</sup> Michael Howard, *War in European History*, 135.

<sup>32</sup> Judith G. Gardam, "Noncombatant Immunity and the Gulf Conflict," in *Virginia Journal of International Law*, 32, 4 (summer 1992): 821, citing Howard S. Levie, *When Battle Rages How Can Law Protect?*, 24, 70 (1970).

<sup>33</sup> Kofi Annan, "Human Rights and Humanitarian Intervention in the Twenty-First Century," in *Realizing Human Rights*, Samantha Power and Graham Allison, ed. (New York: St Martin's Press, 2000): 316.

<sup>34</sup> Some 330,000 Japanese civilians died. See Kenneth R. Rizer, "Bombing Dual-Use Targets: Legal, Ethical and Doctrinal Perspectives," in *Air Power Chronicles*, (01 May 2001): 13, off website [www.airpower.maxwell.af.mil/airchronicles/cc/Rizer.html](http://www.airpower.maxwell.af.mil/airchronicles/cc/Rizer.html), citing Edward C. Holland, "Fighting with a Conscience: The Effects of an American Sense of Morality in the Evolution of Strategic Bombing Campaigns," thesis presented to US Air Force School of Advanced Airpower Studies, Maxwell AFB, AL, (May 1992): 28.

<sup>35</sup> The US is said to have hit 65 cities in this manner during the WWII. See Kenneth R. Rizer, "Bombing Dual-Use Targets: Legal, Ethical and Doctrinal Perspectives," citing Edward C. Holland, thesis, 28.

<sup>36</sup> Judith G. Gardam, "Noncombatant Immunity and the Gulf Conflict," 821, citing Telford Taylor, *Nuremberg and Vietnam: An American Tragedy*, (1970): 140.

<sup>37</sup> W. Hays Parks, "Air War and the Law of War", 164.

## **American ROE and concerns about Protocol I**

This section will examine principle US concerns regarding the subjectivity of any definition of military necessity. Analysis will include the context of the four-year ICRC-sponsored international diplomatic conference culminating in the 1977 Additional Protocols and US reservations regarding particular articles which had caused legal ambiguities. The complementarity of IHL and coalition Rules of Engagement (ROE) during air campaigns will be briefly exposed.

Article 57 regarding precautions to be taken during attack, has been the focus of considerable controversy among states parties with traditionally uniformed and identifiable armed forces. Uniforms and insignia cost money, sometimes scarce among rebels seeking national self-determination. The required precautions to be taken during combat become that much more difficult when belligerents enter conflict temporarily, in out-of-uniform, sporadic, hit-and-run guerilla warfare. When combatants are only occasionally uniformed, it renders their non-combatant status virtually indistinguishable from that of a civilian. The successful avoidance of civilian facilities and non-combatants by belligerents is directly relative to the manner of their use, appearance and behavior. Article 44.3 regarding combatant and prisoner-of-war status introduced a legal gray area, open to interpretation during efforts to distinguish combatants from collaborating civilian parties to a war cause. By virtue of article 43.1, warring parties must meet the following criteria: be organized, form part of a command structure, be armed, and possess an internal disciplinary system capable of enforcing compliance with IHL.

Article 57.2 (a)(iii) raises the humanitarian threshold of what is militarily necessary to remain within acceptable incidental losses. The scale of proportionality is heightened from what are “reasonable precautions” during combat (Article 57.4) to refraining completely from what later could be judged as “excessive in relation to the concrete and direct military advantage anticipated”. The commander is arguably being expected to simultaneously consider an immediate attack’s just cause, *jus ad bellum*, and long-term consequences and a war’s expected outcome, the whole campaign.



Jus ad bellum issues remain the legal preserve of state leaders who can later be made accountable.<sup>38</sup> The laws of war are meant to restrain its conduct, jus in bello, and do not pronounce on the justification of using force. The preamble to Protocol I makes clear that the origin or nature of war or causes of parties are irrelevant to its application. In Article 54.2 of Protocol I, motives for attack are irrelevant. As in Articles 24 and 51 of the UN Charter, it is up to state leaders and UN members to determine the legality governing a right to wage war and a right to attack in self defence.

The distinction between jus ad bellum and jus in bello has thus become blurred<sup>39</sup> because proportionality expects decisions “to be weighed in the context of the war, and not the battle itself”.<sup>40</sup> Lawyers and military officers are not entirely in agreement on the interpretation of this article. For fear of risking the lives of troops in combat, this confusing mix of required predictability, morality and legality in Article 57.2 (a)(iii) should not be the preserve of commanders. After an attack, it is not possible for a commander to predict whether, a week later, hostilities will end, thus accentuating any possibly unwarranted escalation, or whether the conflict will last for years, thus rendering actions relative to overall military gains.

A loophole to this obligation is the Rendulic rule, developed as a result of the acquitted trial of a German general for action in a WWII campaign in Norway. The rule “holds that a commander in the field is not to be judged by knowledge gained in hindsight” but on the information at hand.<sup>41</sup> A party cannot be accused of being in violation of a law of armed conflict because of false information.

Alternatively, a commander’s plea of ignorance to available facts at the time of attack presents a challenge to jurists, a situation criticized during very embarrassing coalition bombing mistakes in 1991 and 1999, later examined. Use of the words “in the circumstances ruling at the time” in Article 52.2 recognizes the need to weigh judgment of a commander’s decisions in accordance with prevailing options in the

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<sup>38</sup> Christopher Greenwood, “Customary international law and the First Geneva Protocol of 1977 in the Gulf conflict,” 231. For this reason, civilian leaders began vetoing targeting decisions of NATO against Yugoslavia in 1999, later discussed in this paper.

<sup>39</sup> Christopher Greenwood, “The Relationship between ius ad bellum and ius in bello,” in *Review of International Studies*, 9 (1983): 232.

<sup>40</sup> Ariane DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War,” 49.

<sup>41</sup> Ariane DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War,” 64

heat of battle. Several states had made observations to this effect when signing or ratifying Protocol I.<sup>42</sup>

Article 51.3 of Protocol I introduced another legal tension for those ununiformed, turnstyle combatant-civilians involved in part-time intelligence gathering, sabotage, or other activities arguably affording definite military advantage, but claiming no *direct part in hostilities*. According to the ICRC: “‘direct’ participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel or equipment of the enemy”.<sup>43</sup> Such a position is open to contention and is vulnerable to mistakes in judgment about who is not a combatant during the heat of battle. By legitimizing out-of-uniform, non-state guided violence at the expense of clear codification, articles 44.3 and 51.3 accentuated the difficulties for combatants to fulfill the obligations of article 57.

Given such a legal ambiguity, how does a soldier, let alone a pilot, distinguish between innocent civilians and belligerent military personnel when they are clothed in the same manner? Measures of precaution expected from the air or sea, as obliged in article 57.4, become exponentially hazardous<sup>44</sup> to such turnstyle civilian-combatants who would otherwise be afforded the protections of article 50: that in cases of doubt, the person shall be considered a civilian. Witness the non-uniformed Viet Cong, Taliban and Al-Qaeda during the use of airpower over Vietnam and Afghanistan. Their visible bearing of arms was largely the only manner by which they distinguished themselves from the local civilian population.

The practice of political entities to conscript their whole population in a national defence effort is not new and predates any international legal effort to regulate combat. The North Vietnamese government called on all citizens to wage war. This practice has jeopardized the distinguishing requirement in IHL during airstrikes. During the Vietnam war, the Government of North Vietnam call to equip its whole population with weapons and have them shoot up at passing US helicopters

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<sup>42</sup> Comment by Professor Rene Provost, Faculty of Law, McGill University, December 2001.

<sup>43</sup> W. Hays Parks, “Air War and the Law of War,” 117-8, citing *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (Geneva: ICRC, 1959): 619. Parks argues that the risk taken by Protocol I in accepting a part-time role for civilians in war efforts caused a blur jeopardizing the protective status of all other civilians.

<sup>44</sup> During aerial operations, Parks says these precautions are “impossible”: W. Hays Parks, “Air War and the Law of War,” 117.

provoked the ICRC to issue a warning that such practice was placing their entire civilian population at risk.<sup>45</sup>

In 1974, states had a chance to clarify the laws of armed conflict after the Second War of Indochina. However, the years of negotiation culminating in the 1977 Protocols were politicized by the many newly-independent developing states which had decided to make use of the Red Cross movement's diplomatic conference as a political platform to ensure that wars of liberation against colonial domination would be recognized as international conflicts (Article 1.4). National self-determination, a human right<sup>46</sup> and not a humanitarian rule, was thrust onto the agenda by powers using the wrong forum for clarifying jus ad bellum issues and expressing demands during Cold War stalemates at the UN Security Council.<sup>47</sup> The confusion between jus ad bellum and jus in bello and between human rights and humanitarian rights in armed conflict was also evident in the non-binding UN General Assembly resolution 2444 of 1969, Respect for Human Rights in Armed Conflict.<sup>48</sup>

In order to ensure a wide participation, the diplomatic conference invited certain national liberation movements, although these could not vote.<sup>49</sup> A number of new state members of the international community had come to power through guerilla warfare.<sup>50</sup> Both the British delegate and the ICRC's legal expert commented on the legal perils of widening the categorization of international conflict which could lower civilian immunity from attack: such wars of national liberation "could import dangerous notions of the jus ad bellum into humanitarian law and dispel the requirement of equal treatment for all victims of such disputes."<sup>51</sup>

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<sup>45</sup> W. Hays Parks, "Air War and the Law of War," 119.

<sup>46</sup> Article 1.2 of the UN Charter. Article 75 of Protocol I, on people's fundamental guarantees during conflict, is directly derived from the 1966 International Covenant on Civil and Political Rights. See Guelff and Roberts, *Documents on the Laws of War*, (2000): 420.

<sup>47</sup> Two-thirds of the delegates came from Third World states, many with their own agendas. See Christopher Greenwood, "A Critique of the Additional Protocols to the Geneva Conventions of 1949,"

6. See also Caroline Moorehead, *Dunant's Dream: War, Switzerland and the History of the Red Cross*, (London: Harper Collins, 1998): 634-5.

<sup>48</sup> Human Rights Watch, *Needless Deaths in the Gulf War: Civilian Casualties during the Air Campaign and Violations of the Laws of War*, (New York: Human Rights Watch Committee, 1991): 30.

<sup>49</sup> Guelff and Roberts, *Documents on the Laws of War*, (2000): 419.

<sup>50</sup> W. Hays Parks, "Air War and the Law of War," 119.

<sup>51</sup> Judith G. Gardam, "Noncombatant Immunity and the Gulf Conflict", 825, citing G.I.A.D. Draper, "Wars of National Liberation and War Criminality," in *Restraints on War*, Michael Howard ed. (1979): 135; Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict, 1974-77, 8, 24.

While non-state, “freedom-fighters” could now benefit from combatant status and consequently the protections of prisoner-of-war status, mercenaries could not (Article 47). On condition that such out-of-uniform combatants openly carried their weapons, the demand for a uniform or recognizable sign was dropped (Article 44.3).<sup>52</sup> Following more than a century of international legal agreements that states, not rebel groups, had the monopoly over using force, the legal benefits of warfare now lay open to legitimized non-state actors.<sup>53</sup> In its arguments against ratification of Protocol I, the US recognized that, in lowering previous standards by which combatants were required to distinguish themselves from civilians, the ambiguity favoured protection of terrorists and their struggles.<sup>54</sup>

Among the many historic judgments of the International Court of Justice, two in particular, the 1986 *Nicaragua v. United States* case<sup>55</sup> and the 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, support the view that the Geneva Conventions form part of customary international law. In 1996, the world court announced that “a great many rules of humanitarian law applicable in armed conflict are so fundamental” that “these fundamental rules are to be observed by all States whether or not they have ratified the Conventions that contain them”.<sup>56</sup>

Since April of 2001, when France deposited its documents of ratification to the Swiss government, the US has become the only permanent Security Council member not party to Protocol I.<sup>57</sup> Both Britain in 1998 and Germany in 1991 had indicated reservations during their ratification pertaining to the ambiguity of what in

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<sup>52</sup> Jacques Moreillon, “Humanitarian Law, The ICRC, and Promoting the Geneva Conventions,” in *American University Law Review*, 31, (1982): 824-5. Speaking as Director of the ICRC Department of Principles and Law, Moreillon questioned the place of politics in humanitarian law and the mixing of war objectives and military conduct. He stated that wars of national liberation or any other motives for fighting, *jus ad bellum*, had no place in the codification of laws intended to regulate *jus in bello*, the means and methods of such war. The reasons for warring were not to be the concern of IHL or the ICRC.

<sup>53</sup> W. Hays Parks, “Air War and the Law of War,” 119.

<sup>54</sup> Judith G. Gardam, “Noncombatant Immunity and the Gulf Conflict”, 826, citing Abraham D. Sofaer, “The Rationale for the United States Decision,” in *American Journal of International Law*, 82 (1988): 784.

<sup>55</sup> According to Toronto’s Osgoode Hall Law School professor Michael Mandel, the US withdrew from the ICJ in 1986, no longer recognizing its jurisdiction. See Michael Mandel, “Say what you want, this war is illegal,” in *Globe and Mail*, 9 October 2001, A17.

<sup>56</sup> Laurence Boisson de Chazournes and Luigi Condorelli, “Common Article 1 of the Geneva Conventions revisited: Protecting collective interests,” in *IRRC*, 837 (31 March 2000): 68, citing *Legality of the Threat and Use of Nuclear Weapons, Advisory Opinion of 8 July, 1996*, I.C.J. Reports, 1996, para. 79.

<sup>57</sup> See [www.icrc.org/ihl](http://www.icrc.org/ihl). Aside from the US and Turkey, all other NATO members have ratified Protocol I.

Article 52.2 constitutes “effective contribution” and “definite military advantage” in deciding an attack.<sup>58</sup>

While IHL remains static during a given conflict, a belligerent’s Rules of Engagement (ROE), which comprise military, legal and political objectives,<sup>59</sup> can shift and adapt to changing circumstances, thus politically altering what is militarily necessary.<sup>60</sup> IHL compliance becomes positively affected by ROE and the military principle of economy of force: ensuring maximum target accuracy in order to minimize resources necessary to neutralize a military objective, preventing the need for subsequent sorties which further jeopardize pilot exposure to enemy fire. A pilot’s decision to abort the dropping of bombs on obstructed targets limits the wasting of military resources while reducing the chances of unnecessary collateral damage which can be expected during inclement weather. Jets are also more likely during return to base to drop their unspent bombs in a safe area before landing, especially if they are dumb bombs.<sup>61</sup>

During Vietnam, ROE and targeting decisions were complicated by politicization from the White House and the Pentagon,<sup>62</sup> “a case of airpower being undermined by civilian control of air operations, with images of President Johnson and Secretary of Defense McNamara on their knees on the Oval Office selecting targets.”<sup>63</sup>

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<sup>58</sup> Peter Rowe, “Kosovo 1999: The air campaign – Have the provisions of Additional Protocol I withstood the test?” in *IRRC*, 82, 837 (31 March 2000): 1-2.

<sup>59</sup> Garth J. Cartledge, “Legal Constraints on Military Personnel Deployed on Peacekeeping Operations,” in *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Helen Durham and Timothy L. H. McCormack, eds. (The Hague: Martinus Nijhoff, 1999): 123. See also Lt Col John G. Humphries, “Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm,” in *Airpower Journal*, 6, 3 (fall 1992): 12, off website [www.airpower.maxwell.af.mil/airchronicles/apj/hump.html](http://www.airpower.maxwell.af.mil/airchronicles/apj/hump.html)

<sup>60</sup> Drew A. Bennett and Anne F. MacDonald, “Coalition Rules of Engagement,” in *Joint Force Quarterly*, (Summer, 1995): 124. This was evident during operations Desert Storm and Allied Force. On shifting ROE, see also US Rules of Engagement: Pocket Card, 1991 Operation Desert Storm, in Richard Guelff and Adam Roberts, *Documents on the Laws of War*, (Oxford: Oxford University Press, 2000): 561.

<sup>61</sup> Conversation with Western Air Force officer. Also, during the author’s work in Laos, a 1996-97 socio-economic impact survey of unexploded ordnance by Handicap International determined that large numbers of unspent ordnance were located near hills because Thai and US Air Force pilots heading back from missions over Vietnam to bases in Thailand did not always want to land with their bomb loads. Pilots could more easily find such landmarks as escarpments, thereby minimizing chances of inadvertently hitting Lao villages.

<sup>62</sup> Ariane DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War,” 58.

<sup>63</sup> Scott A. Cooper, “The Politics of Airstrikes,” in *Policy Review*, 107 (June-July 2001): 56.

US ROE were reviewed during Operation Desert Storm, after Iraq began the illegal practice of human shielding,<sup>64</sup> placing anti-aircraft guns on civilian property like apartment buildings, schools and hospitals,<sup>65</sup> and commingling military assets with civilian people,<sup>66</sup> in violation of Articles 51.7 and 58 (b). At the launch of NATO's Operation Allied Force, there were only 169 targets politically approved from among some 2000 targets identified,<sup>67</sup> in what was to be a short-term punishment of the Milosevic regime. The 78-day campaign culminated with a list of 976 targets filling six volumes.<sup>68</sup> The ROE for NATO pilots only later evolved to include the striking of north Yugoslav dual-use targets: bridges, television transmitters and the Belgrade power grid.

ROE during the Afghan air campaign changed to reflect ground realities dictated by the advance of Northern Alliance Forces southward. ROE also acknowledged the presence of relief convoys operating along certain roads.<sup>69</sup>

### **U.S. operations law and examples of IHL obedience**

In order to understanding reasons for the American legal approach to air warfare and the 1976 *US Air Force Pamphlet* on regulations in air warfare, a background explanation is necessary. Brief examples of US compliance to current IHL in the case studies will be provided.

The withdrawal of American troops from Vietnam in 1973 resulted in many reforms in military and legal policy. The image of US soldiers committing war crimes played a role in dissuading further domestic support for the war effort. Following investigation into the 1968 My Lai massacre of some 300 civilian Vietnamese villagers, the US Department of Defence issued a directive in 1974 mandating the training of the law of war to all military personnel, called operations

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<sup>64</sup> Judith G. Gardam, "Noncombatant Immunity and the Gulf Conflict." 829.

<sup>65</sup> Lt Col John G. Humphries, "Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm," in *Airpower Journal*, 6, 3 (fall 1992): 9, off website [www.airpower.maxwell.af.mil/airchronicles/apj/hump.html](http://www.airpower.maxwell.af.mil/airchronicles/apj/hump.html)

<sup>66</sup> Ariane DeSaussure, "The Role of the Law of Armed Conflict During the Persian Gulf War," 65.

<sup>67</sup> Ray Funnell, "Military history overturned: Did air power win the war?" in *Kosovo and the challenge of humanitarian intervention*, Albrecht Schnabel and Ramesh Thakur, eds. (Tokyo: United Nations University, 2000): 436.

<sup>68</sup> Jeffrey L. Gingras and Tomislav Z. Ruby, "Morality and Modern Air War," in *Joint Force Quarterly*, (summer 2000): 108, from website: [www.dtic.mil/doctrine/jel/jfq\\_pubs/summer00.htm](http://www.dtic.mil/doctrine/jel/jfq_pubs/summer00.htm)

<sup>69</sup> Col. David N. Blackledge, CENTCOM Public Affairs office, Tampa, Florida, phone conversation, 14 March 2002.

law.<sup>70</sup> Abuses of IHL and excessive use of force were accused of having taken place in Vietnam partly because of an American military “tendency to dehumanize the enemy”.<sup>71</sup>

Although it had signed Protocol I in 1977, in 1987 the US announced that it would not ratify but would consider itself legally bound to those rules which reflected customary international law.<sup>72</sup> Particularly given the lessons learned from the Second War of Indochina (1965-73), the US has demonstrated legal resolve toward respecting *jus in bello*.<sup>73</sup> The 1976 *Air Force Pamphlet* (AFP) and the 1991 *US Rules of Engagement Pocket Card* during Operation Desert Storm reflect provisions of Protocol I in regards to distinction, proportionality and military necessity. The 1976 US instructions on the legal limits of applying force repeat almost verbatim the provisions of Article 57 of Protocol I.<sup>74</sup> With the lessons of My Lai in mind, the pocket card stated that civilians and their property be treated “with respect and dignity”, that prisoners be treated “humanely and with respect and dignity”.<sup>75</sup>

Proof of US compliance to the laws of armed conflict and many provisions of Protocol I were evident in the cases. For instance, Article 82 calls on parties to make available legal advisers to inform military commanders on the Conventions and the Protocol. An Army judge advocate served as attorney to coalition commander US General Schwarzkopf’s battle staff in Saudi Arabia.<sup>76</sup> The US deployed some 400 army and air force military lawyers to the Gulf area.<sup>77</sup> During the NATO conflict against Yugoslavia, military lawyers at every phase of the campaign “contributed assessments of the standard Geneva Convention questions for each target: was the

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<sup>70</sup> Steven Keeva, “Lawyers in the War Room,” in *American Bar Association Journal*, 77 (December 1991): 55.

<sup>71</sup> Barry R. McCaffrey, “Human Rights and the Commander,” in *Joint Force Quarterly*, (autumn 1995): 12.

<sup>72</sup> Prior to the Gulf War, the US had announced that, although it had signed the Protocol with the intention of ratification, it had decided not to become party to Protocol One. See Christopher Greenwood, “Customary international law and the First Geneva Protocol of 1977 in the Gulf conflict,” 63.

<sup>73</sup> Examination of the 1983 Grenada and 1989 Panama campaigns could provide evidence.

<sup>74</sup> Matthew C. Waxman, *International Law and the Politics of Urban Air Operations*, (Santa Monica: RAND, 2000): 12, referring to US *Air Force Pamphlet* (AFP) 110-31, *International Law – The Conduct of Armed Conflict and Air Operations*, (1976): 5-9.

<sup>75</sup> US Rules of Engagement: Pocket Card, 1991 Operation Desert Storm, in Guelff and Roberts, *Documents on the Laws of War* (2000): 562-3.

<sup>76</sup> Ariane DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War,” 58.

<sup>77</sup> Cpt David Garratt, “The role of legal advisers in the armed forces,” in *The Gulf War 1990-91 in International and English Law*, Peter Rowe, ed. (London: Routledge, 1993): 59. Keeva states that the US Army alone counted 200 lawyers; see Steven Keeva, “Lawyers in the War Room,” 54.

objective military; were the means selected proportional to the objective; and what were the risks of damage to civilians?”<sup>78</sup> During the first night of US airstrikes against the Taliban regime in Afghanistan, much to the discomfort of Defence Secretary Donald Rumsfeld, efforts to minimize incidental loss of civilian casualties were noted when US military lawyers of the Central Command vetoed Central Intelligence Agency (CIA) permission<sup>79</sup> to allow a Predator missile strike against a suspected convoy alleged to include Taliban leader Mullah Omar.<sup>80</sup> Tests for the carrying and firing of missiles by the unpiloted drone Predator had only been completed the previous February.<sup>81</sup>

Another example of obedience to the principle of military necessity was the US abstention from destroying cultural property, regulated by Article 53. Two Soviet MIG-21 fighter aircraft, parked adjacent to the ancient Temple of Ur and located two miles from the nearest airstrip, were spared.<sup>82</sup> In Afghanistan, modern US airpower technology enabled the sparing of a historic fort that was in proximity to targeted Taliban military command facilities.<sup>83</sup>

The practice of advance warning during attacks suspected of incurring civilian exposure and casualties, as per Article 57.2 (c), provided a third example of the strengthening of customary norms during coalition conflicts. The 1976 *US Air Force Pamphlet* suggests that an “increased emphasis has been placed on the desirability and necessity of prior warnings.”<sup>84</sup> This law challenges some of the old military philosophy of Sun Tzu: the value of surprise attack, deceptions in executing

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<sup>78</sup> Michael Ignatieff, *Virtual War: Kosovo and Beyond*, (Toronto: Viking, 2000): 197-8, from an interview with Col. Tony Montgomery, Judge Advocate General, EUCOM, Frankfurt, Germany, November, 1999, BBC Television *Future War* project.

<sup>79</sup> Rebecca Grant, “The War Nobody Expected,” in *Air Force Magazine*, 85, 4 (April 2002) [www.afa.org/magazine/April2002/0402airwar.asp](http://www.afa.org/magazine/April2002/0402airwar.asp)

<sup>80</sup> Reuters, “US had Omar in sights, magazine says,” in *Globe and Mail*, 15 October, 2001, A2. See also Seymour M. Hersh, “King’s Ransom,” in *The New Yorker*, 22 October 2001 [www.zmag.org/hirshsaudi.cfm](http://www.zmag.org/hirshsaudi.cfm)

<sup>81</sup> Thomas E. Ricks, “U.S. arms unmanned aircraft,” in *Washington Post*, 18 October 2001 [www.s-t.com/daily/10-01/10-18-01/a02wn013.htm](http://www.s-t.com/daily/10-01/10-18-01/a02wn013.htm)

<sup>82</sup> John G. Humphries, “Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm,” 12.

<sup>83</sup> “The War on Terror,” in *Air Force Magazine*, (December 2001): 36. The article shows photos of the fort before and after coalition strikes.

<sup>84</sup> Human Rights Watch, *Needless Deaths in the Gulf*, Middle East Watch, (New York: Human Rights Watch, 1991): 57, citing *Air Force Pamphlet* 110-31 in Matthew C. Waxman, *International Law and the Politics of Urban Air Operations*, para. 5-3 (c)(2)(d) at 5-11.



attacks.<sup>85</sup> Such military thinking also convinces politicians of the necessity of reviewing targets whose collateral consequences could, despite winning military points, ultimately cause public criticism, vulnerable coalition unity or weakened domestic media support.

During Operation Desert Storm, the coalition dropped leaflets and broadcast messages from three radio stations in the theatre of war warning the general civilian population of the general risks of coalition engagement.<sup>86</sup> While some leaflets dropped over Kuwait and Baghdad in mid-January of 1991 promised safety if soldiers surrendered, other leaflets simply warned enemy troops of imminent “death from above.”<sup>87</sup> Bosnian Serbs were given clear and repeated warning of imminent UN-sanctioned NATO airstrikes against their artillery positions and weapons depots surrounding Sarajevo prior to August of 1995.<sup>88</sup> Prior to the 2AM, 23 April, 1999, NATO night attack on the Serbian television and radio station (RTS), advance notice had twice been given by the Pentagon, on April 12 and 18, to the Yugoslav government and foreign war correspondents using the station.<sup>89</sup> Following one Pentagon news briefing, “the Serbs had ordered all international journalists to report to the Serb television building”,<sup>90</sup> a violation of IHL articles forbidding human shielding.<sup>91</sup>

The use of cluster bomb units (CBUs), developed during the Vietnam war and unable to distinguish between civilian and military targets, was discontinued by the US in Bosnia in 1995<sup>92</sup> and temporarily halted by the White House during the

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<sup>85</sup> Don D. Chipman, “The Balkan Wars: Diplomacy, Politics and Coalition Warfare,” in *Strategic Review*, (winter 2000): 29, citing Sun Tzu, *The Art of War*, translated by Samuel B. Griffith, (London: Oxford University Press): 66.

<sup>86</sup> John G. Humphries, “Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm,” 11, citing *Conduct of the Persian Gulf Conflict: An Interim Report to Congress*, US Department of Defence, (July 1991): 12-3.

<sup>87</sup> Alberto Bin, Richard Hill and Archer Jones, *Desert Storm: A Forgotten War*, (Westport: Praeger, 1998): 114.

<sup>88</sup> After two days, NATO bombing was then temporarily paused in order to allow Bosnian-Serb Commander Mladic another opportunity to comply with the UN ultimatum within another 48 hours, after which airstrikes resumed. See Michael O. Beale, *Bombs Over Bosnia: The Role of Airpower in Bosnia-Herzegovina*, thesis, School of Advanced Airpower Studies, Air University, Maxwell Air Force Base, AL, (June 1996): 27, [www.fas.org/man/eprint/beale.htm](http://www.fas.org/man/eprint/beale.htm)

<sup>89</sup> Dana Priest, “France played skeptic on Kosovo attacks,” in *Washington Post*, 20 September 1999, 5, [www.washingtonpost.com/wp-srv/national/daily/sept99/airwar20.htm](http://www.washingtonpost.com/wp-srv/national/daily/sept99/airwar20.htm)

<sup>90</sup> Wesley Clark, *Waging Modern War*, 264.

<sup>91</sup> Bosnian Serbs had used UN peacekeepers taken hostages as human shields upon Bosnian bridges in 1995.

<sup>92</sup> Steven Mufson, “Pentagon Changing Color of Airdropped Meals,” in *Washington Post*, 02 November 2002, A21.

Kosovo campaign because of incidents of civilian casualties.<sup>93</sup> The Independent International Commission on Kosovo recommended that CBU's never be used by coalitions.<sup>94</sup> The ICRC had also called for a ban of CBU's in 2000.<sup>95</sup> The US has ignored this non-binding advice.<sup>96</sup>

### **From peace dividend to Mogadishu line to U.N. hostages**

This section will briefly expose American and European reasons for preferring modern airpower means to ground interventions, thus underlining the importance of a legal analysis. Key events during peace-enforcement operations will be briefly discussed.

The end of the Cold War saw a major reduction in military expenditures by great powers. Public taxpayers expected a peace dividend as a result of reduced fears of Soviet expansion. Since 1991, NATO has seen a reduction of 25 percent in land and air forces and increased reliance upon reserves.<sup>97</sup> The US military witnessed a reduction in forces of 40 percent between 1990 and 1998.<sup>98</sup> "Technology has been used as a 'force multiplier' to offset the effects of the 1990s downsizing with the hope of preserving combat capabilities."<sup>99</sup> While private US "industry and the military rely on government-sponsored research for the intellectual groundwork of research and development," the US Department of Defence spends less than 2 percent of the budget on science and technology.<sup>100</sup>

The early 1990s proliferation of peacekeeping and peace-enforcement operations worldwide however stretched the already decreasing military resources of industrial powers. The deaths of 18 US Rangers serving in parallel to a UN mission in Somalia in October of 1993 resulted in ever greater reluctance by Congressional leaders in Washington to further risk the lives of troops in operations other than war

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<sup>93</sup> Wesley Clark, *Waging Modern War*, 336-7.

<sup>94</sup> Independent International Commission on Kosovo, *The Kosovo Report*, (Oxford: Oxford University Press, 2000): 181. The ICRC called for the banning of CBU's in September of 2000.

<sup>95</sup> Claire Doole, "ICRC calls for cluster bomb ban," in *BBC*, 5 September 2000.

<sup>96</sup> Richard Norton-Taylor, "Afghanistan littered with 14,000 unexploded bomblets, says UN," in *The Guardian*, 23 March 2002. See also Human Rights Watch, *Cluster Bombs Litter Afghanistan*, (New York: Human Rights Watch): 16 November 2001. [www.hrw.org/press/2001/11/CBAfgh1116.htm](http://www.hrw.org/press/2001/11/CBAfgh1116.htm)

<sup>97</sup> Philip Cox and James M. Hudson, "NATO Exercise Programs: A Case for Improvement," in *Joint Force Quarterly*, (spring 2000): 77-8.

<sup>98</sup> Grant T. Hammond, "Myths of the Gulf War: Some 'Lessons' Not To Learn," 7.

<sup>99</sup> Col. Howard J. Marsh, "Emerging Technologies and Military Affairs," in *Toward a Revolution in Military Affairs?*, Thierry Gongora and Harald von Riekhoff, eds. (Westport: Greenwood Press, 2000): 63.

<sup>100</sup> Joseph I. Lieberman, "Techno-War: Innovation and Military R&D," in *Joint Force Quarterly*, (summer 1999): 15.

(OOTW) and of limited national interest.<sup>101</sup> There were more Americans lost (over 76 injured) in this single firefight in Somalia than during a single combat incident in the Gulf War<sup>102</sup> which saw but 100 hours of ground combat.

The psychological crossing of the Mogadishu line reawakened memories of the perils of Vietnam, thus quickly ending the US honeymoon with the UN after the success of the Gulf War and of Operation Provide Comfort.<sup>103</sup> Even during the Gulf War, British commandos entered Iraq before American commandos.<sup>104</sup> Out of fear of them getting into trouble, US General Schwarzkopf was reluctant to make use of Special Operations.<sup>105</sup> Greater technological reach including airpower would prevent the political risks of body-bags during foreign policy ventures ever-increasingly covered by global media.

The US decision to avoid any deployment of troops to resolve the Bosnian conflict in turn accentuated their reliance on airpower to solve problems on the ground. The ineffectiveness of NATO airpower was demonstrated in November of 1994 when its use, even though accurate, resulted in the holding of 70 Dutch UN peacekeepers by Bosnian Serb forces during 5 days,<sup>106</sup> marking the end of UN impartiality, now a belligerent. The next use of NATO airstrikes, in May of 1995, led to 300 UN troops being taken hostage by the Bosnian Serbs.<sup>107</sup>

An exaggerated American fear of casualties<sup>108</sup> was criticized by French General Philippe Morillon, former UN force commander in Bosnia,<sup>109</sup> stating: "What

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<sup>101</sup> Following the killing of Pakistani UN peacekeepers in Somalia, President Clinton stated that he supported the use of airpower to defend international peacekeeping troops in Somalia, Bosnia and Macedonia. See Doyle McManus and Stanley Meisler, "Clinton defends decision on Somalia air strikes," in *Los Angeles Times*, 16 June 1993, A4.

<sup>102</sup> Grant T. Hammond, "Myths of the Gulf War: Some 'Lessons' Not To Learn," 8.

<sup>103</sup> A four-month US-led force of 23,000 troops from 13-states (12 NATO members plus Australia) in northern Iraq to repatriate and protect a half-million Iraqi Kurds from the Turkish border in 1991.

<sup>104</sup> With the British SAS already in west Iraq and SCUDs still flying against Israel and Saudi Arabia, US Special Operations Forces were finally deemed necessary after 29 January. See Peter de la Billiere (Sir Gen.), *Storm Command: A Personal Account of the Gulf War*, (London: Harper Collins, 1992): 225.

<sup>105</sup> Michael R. Gordon, "Demonstrating a Willingness to Risk Casualties," in *New York Times*, 20 October 2001. [www.nytimes.com/2001/10/20/international/20STRA.html](http://www.nytimes.com/2001/10/20/international/20STRA.html)

<sup>106</sup> William Shawcross, *Deliver Us From Evil: Peacekeepers, Warlords and a World of Endless Conflict*, (New York: Simon and Schuster, 2000): 155.

<sup>107</sup> William Shawcross, *Deliver Us From Evil*, 158.

<sup>108</sup> Compared to the loss of 58,000 US troops in Vietnam, perhaps two dozen US soldiers have lost their lives during five military interventions (Kurdistan, Somalia, Bosnia, Rwanda, Haiti). See Andrew S. Natsios, *U.S. Foreign Policy and the Four Horsemen of the Apocalypse*, (Westport: Praeger and the Center for Strategic and International Studies, Washington Papers/170, 1997): 1.

<sup>109</sup> While the US refused to deploy troops to Bosnia, the French lost 53 soldiers seconded to UNPROFOR, 19 of which were killed in combat with another 264 wounded in combat. See Brigitte

good are members of an armed force who are permitted to kill but not to die?”<sup>110</sup> During a 1993 cabinet meeting, Madeleine Albright, the US representative to the UN, asked General Colin Powell, the chairman of the Joint of Chiefs of Staff, “What’s the point of having this superb military that you’re always talking about if we can’t use it?”<sup>111</sup> Centuries earlier, battles were so destructive and professional soldiers so difficult to replace, that “generals in the eighteenth century displayed the same reluctance to engage in them as had their mercenary predecessors two centuries earlier.”<sup>112</sup>

When states threaten force but are unwilling to stomach troop losses, when casualties are only expected on one side of the conflict, proportionality in modern warring becomes unrealistic. Concerns about force protection and the loss of multi-million dollar aircraft have decreased aircraft proximity to targets and increased the dependence on science to comply with the demands of military necessity and humanitarian law. “Minimizing risk – force protection – has become more important than military effectiveness. The Vietnam syndrome thrives”.<sup>113</sup>

In 2000, given its sensitivity to combat casualties, Congress called for Pentagon research into the development of a greater capacity to deploy unmanned combat systems: “to convert a sizable portion of its fighting forces to robotic systems” with a Senate-authorized “increase of \$200 million for research and development of remotely-controlled air and ground combat vehicles.”<sup>114</sup> Does this 30-year old syndrome of the US Congress and White House, present increased risk of incidental civilian loss in order to save pilots? How well has this technology of airpower worked? What are its capacities, limits?

### **The technology of killing: IHL benefits, PGM fallibility and human error**

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Stern, ed. *United Nations Peacekeeping Operations: A Guide to French Policies*, (Tokyo: United Nations University Press, 1998): 130.

<sup>110</sup> Peter F. Herrly, “The Plight of Joint Doctrine after Kosovo,” in *Joint Force Quarterly*, (summer 1999): 104, . [www.dtic.mil/doctrine/jel/jfq\\_pubs/](http://www.dtic.mil/doctrine/jel/jfq_pubs/)

<sup>111</sup> Susan L. Woodward, “Upside-Down Policy: The U.S. Debate on the Use of Force and the Case of Bosnia,” in *The Use of Force after the Cold War*, H.W. Brands, ed. (College Station: Texas A & M University Press, 2000): 112.

<sup>112</sup> Michael Howard, *War in European History*, (Oxford: Oxford University Press, 2001): 70-71.

<sup>113</sup> Jeffrey Record, “Operation Allied Force: Yet Another Wake-up Call for the Army?” in *Parameters*, 29, 4 (winter 1999-2000): 16.

<sup>114</sup> Jason Sherman, “Out of the Loop: Congress has called for horde of unmanned systems,” in *Armed Forces Journal International*, July 2000. [www.afji.com/AFJI/Mags/2000/July/politics\\_&\\_budgets\\_1.html](http://www.afji.com/AFJI/Mags/2000/July/politics_&_budgets_1.html)

Has an increase in technological capacities enabled greater military compliance with IHL? Can airpower technology in the absence of ground-based intelligence sufficiently avoid collateral damage? This section intends to explain the ability of certain modern technology to achieve the military principle of economy of force and consequently greater compliance with IHL. A brief chronology will outline some new means, including the essential role of available forward air controllers (ground spotters) during each case of airpower.

Precision-guided munitions (PGMs) were only developed by the late stages of the Vietnam War and used in 1972-73.<sup>115</sup> The first use of precision weaponry dates to an accurate hit upon the strategic Thanwa bridge in Vietnam in 1972.<sup>116</sup> Electro-optical guided bombs and laser-guided bombs proved fallible once the adversary made use of obscurants like smoke screens and contrast-faulting optical illusions painted onto susceptible building tops, resulting in increased collateral damage including the striking of the French Embassy and Cuban chancellery in Hanoi in 1972.<sup>117</sup> The technology depends on the accuracy of the laser which is guiding the fall of the bomb: “the standard laser-guided delivery systems used in the Balkans conflict depend on line-of-sight, following a beam aimed from an aircraft to a target. But if the beam is obscured by clouds or fog, the bomb can go astray.”<sup>118</sup>

The most celebrated weapon of the Gulf War was the radar-evading F-117 Stealth fighter, first used in Panama.<sup>119</sup> It was deployed on Day 1 of combat over Baghdad with its highly accurate navigation and weapons delivery systems capable of operating in heavily defended areas.<sup>120</sup> Known as a fighter but actually used as a bomber, carrying a maximum of two 2000-pound laser-guided bombs, the stealth flew over a third of all bombing missions on the first day of the Gulf War.<sup>121</sup> Although not

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<sup>115</sup> James S. Corum, “Airpower and Peace Enforcement,” in *Airpower Journal*, 10, 4 (winter 1996): 15, [www.airpower.maxwell.af.mil/airchronicles/api/win96/corum.html](http://www.airpower.maxwell.af.mil/airchronicles/api/win96/corum.html). Only 0.2 percent of the bombs dropped during nine years were PGMs. See John A. Tirpak, “Deliberate Force,” in *Air Force Magazine*, 80, 10 (October 1997): 3, [www.afa.org/magazine/1097deli.html](http://www.afa.org/magazine/1097deli.html)

<sup>116</sup> Michael Ignatieff, *Virtual War*, 165, citing an interview with George Freedman of Stratfor Inc, Texas, BBC *Future War*, July 1999.

<sup>117</sup> W. Hays Parks, “Air War and the Law of War,” 194, citing Henry Kissinger, *Years of Upheaval*, 1982.

<sup>118</sup> David Pescovitz, “Smarter bomb,” in *Wired*, (July 1999): 58.

<sup>119</sup> Elliott Brenner and William Harwood, *Desert Storm: The Weapons of War*, (New York: Orion, 1991): 23.

<sup>120</sup> Ariane DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War,” 60.

<sup>121</sup> BBC, “Guide to military strength.” 25 September 2001. [http://news/bbc.co.uk/hi/english/world/americas/newsid\\_1557000/1557140.stm](http://news/bbc.co.uk/hi/english/world/americas/newsid_1557000/1557140.stm)

one was lost over Iraq,<sup>122</sup> early in the NATO campaign against Yugoslavia in 1999, the US lost an F-117 to Serbian air defences, the pilot being later recovered.

During the Gulf War, targeting was facilitated by intelligence gathered from manned reconnaissance aircraft, full-time airborne AWACS in addition to the untested JSTARS (joint surveillance and target attack radar systems) carrying 18 crew members.<sup>123</sup> The US depended on its satellites and JSTARS reconnaissance planes to detect Iraqi SCUD launches.<sup>124</sup>

At the time of Operation Deliberate Force in 1995, the US made use of the Navy's weapon of choice, sea-based all-weather Tomahawk cruise missiles. At a cost of \$1.3 million each, and upgraded since the Gulf War, they were guided to their targets by instructions relayed from a network of US satellites orbiting above.<sup>125</sup> US F-117 radar-evading Stealth bombers were not used because other NATO allies did not want to see a chance of combat escalation.<sup>126</sup>

In 1999, the US military made use of two highly-prized assets of airpower technology during the Kosovo campaign: the Predator, an unmanned aerial reconnaissance vehicle (UAV) which provided 24-hour surveillance images during day, night and cloudy weather, and the JDAM (Joint Direct Attack Munition), a device structurally attached to the tail of a 500 to 2000-pound bomb that enabled a dumb-bomb upgrade to all-weather, smart-bomb capacity, becoming guided by a satellite-based Global Positioning System (GPS).<sup>127</sup>

Remotely-controlled Predators were first used in 1995, with the ability to launch two Hellfire missiles added only since September of 2001.<sup>128</sup> Equipped with laser illuminators, they enabled improved visibility of targets from below cloud-cover.<sup>129</sup> NATO lost over 20 unmanned surveillance aircraft of various types during

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<sup>122</sup> James P. Coyne, "A Strike by Stealth," in *Air Force Magazine*, 75, 3 (March 1992), [www.afa.org/magazine/perspectives/desert\\_storm/0392stealth.html](http://www.afa.org/magazine/perspectives/desert_storm/0392stealth.html)

<sup>123</sup> Ariane DeSaussure, "The Role of the Law of Armed Conflict During the Persian Gulf War," 59.

<sup>124</sup> Alberto Bin, Richard Hill and Archer Jones, *Desert Storm: A Forgotten War*, (Westport: Praeger, 1998): 103.

<sup>125</sup> Eric Schmitt, "Wider NATO Raids on Serbs Expose Rifts in Alliance," in *New York Times*, 12 September 1995, A1.

<sup>126</sup> Eric Schmitt, "Wider NATO Raids on Serbs Expose Rifts in Alliance," in *New York Times*, 12 September 1995, A1.

<sup>127</sup> James Dao, "Newer Technology is Shielding Pilots," in *New York Times*, 28 November 2001, [www.nytimes.com/2001/11/29/international/asia/29air.html](http://www.nytimes.com/2001/11/29/international/asia/29air.html)

<sup>128</sup> *Associated Press*, "Predator Spy Planes Lurk Over Targets," in *New York Times*, 13 February 2002.

<sup>129</sup> Anthony H. Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, (Westport: Praeger, 1999): 49.

the Kosovo campaign<sup>130</sup> and two Predators during Operation Deliberate Force in 1995.<sup>131</sup>

The value<sup>132</sup> of the silent, missile-equipped Predator drone was proven by CIA-use during Operation Enduring Freedom over Afghanistan, hunting for members of Al Qaeda. The remotely-controlled spy plane was able to monitor and record enemy movements. As demonstrated in CIA attacks in January and February upon suspected Al Qaeda convoys, Hellfire anti-tank missiles were remotely fired from the Predator.<sup>133</sup> The US Defence budget proposal for 2003 included plans to buy 22 more Predators.<sup>134</sup>

The JDAM was developed to rectify weather frustrations encountered during the Gulf War.<sup>135</sup> The campaign against Yugoslavia witnessed 50 percent cloud cover more than 70 percent of the time.<sup>136</sup> In 1999, only 625 JDAM bombs were dropped on Yugoslavia<sup>137</sup> as only the B-2 bomber was equipped to deliver them.<sup>138</sup> While a PGM can cost \$50,000 US dollars, a JDAM device from Boeing is worth \$18,000.<sup>139</sup> The JDAM “makes two B-2 bombers capable of attacking the same number of targets in adverse weather as sixteen F-117 stealth fighters in good weather during Desert Storm.”<sup>140</sup> In the US airstrikes over Afghanistan, in addition to the B-2, the B-1 and B-52 bombers as well as the Navy F-18 and Air Force F-16 fighter jets were equipped to drop JDAMs.<sup>141</sup> Considerably more expensive cruise missiles were used in all three

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<sup>130</sup> BBC, “Guide to military strength,” 25 September 2001, [http://news.bbc.co.uk/1/hi/english/world/americas/newsid\\_1557000/1557140.stm](http://news.bbc.co.uk/1/hi/english/world/americas/newsid_1557000/1557140.stm).

<sup>131</sup> Tim Ripley, *Operation Deliberate Force: the UN and NATO campaign in Bosnia 1995*, Centre for Defence and International Security Studies, (Lancaster: Lancaster University, 1999): 317.

<sup>132</sup> Estimated at \$40 million US dollars. See Seymour M. Hersh, “King’s Ransom,” in *The New Yorker*, 22 October 2001 [www.zmag.org/hirshsaudi.cfm](http://www.zmag.org/hirshsaudi.cfm)

<sup>133</sup> John Lloyd, “Technology blowback: As ye sow, so shall ye reap,” in *Globe and Mail*, 07 January 2002, A13. See also *Reuters*, “US had Omar in sights, magazine says,” in *Globe and Mail*, 15 October 2001, A2.

<sup>134</sup> *Associated Press*, “Predator Spy Planes Lurk Over Targets,” in *New York Times*, 13 February 2002.

<sup>135</sup> John A. Tirpak, “The State of Precision Engagement,” in *Air Force Magazine*, 83, 3 (March 2000) [www.afa.org/magazine/0300precision.html](http://www.afa.org/magazine/0300precision.html)

<sup>136</sup> John A. Tirpak, “The State of Precision Engagement,” in *Air Force Magazine*, 83, 3 (March 2000) [www.afa.org/magazine/0300precision.html](http://www.afa.org/magazine/0300precision.html)

<sup>137</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 43, citing US Department of Defence, *Report to Congress: Kosovo/Operation Allied Forces After Action Report*, (Washington: January 31 2000): 67-69, 87-88, 104.

<sup>138</sup> James Dao, “Newer Technology is Shielding Pilots.”

<sup>139</sup> David Pescovitz, “Smarter bomb,” in *Wired*, (July 1999): 58. Cordesman estimated the cost of JDAM add-on kits at between \$20,000 and \$25,000 USD.

<sup>140</sup> Gen. Henry H. Shelton, “A Word from the Chairman,” in *Joint Defense Quarterly*, 27 (winter 2000): 5.

<sup>141</sup> James Dao and Thom Shanker, “US ready to send additional troops to hunt bin Laden,” in *New York Times*, 21 November 2001, [www.nytimes.com/2001/11/21/international/asia/21MILI.html](http://www.nytimes.com/2001/11/21/international/asia/21MILI.html)

campaigns, especially in the opening month of NATO's bombing of Yugoslavia,<sup>142</sup> given their all-weather capability.

One defence analyst claimed that JDAMs, directed by GPS, are less accurate than laser-guided bombs, thus explaining a higher incidence of collateral damage during the Afghan air campaign.<sup>143</sup> Given its hybrid engineering as an add-on, the JDAM is not technically a "precision" weapon.<sup>144</sup> GPS-dependent JDAMs also cannot track moving targets, unlike laser-wielding ground spotters or calibrated eyeballs directed by fighter co-pilots.

Operation Allied Force also saw the introduction of the \$2 billion dollar B-2 bomber, which mostly bombed at night after non-stop flight from US soil enabled by mid-air refuelling. Although they flew in less than 1 percent of the total sorties flown by all NATO aircraft, they accounted for 11 percent of the bomb load dropped on Yugoslavia, putting 90 percent of their bombs within the prescribed 40 feet of their targets.<sup>145</sup>

During the Gulf conflict and Kosovo campaign, the use of non-lethal technology to cut electrical supply to the military was effectively proven. "Tomahawk missiles released thousands of spools of carbon fibers over Iraqi power stations that floated down to short circuit electrical components that ultimately disrupted electrical supplies."<sup>146</sup> Over Belgrade's power grids and transformer yards, dispensers the size of a can of tennis balls were dropped, each with its parachute: "spools of specially treated carbon-graphite thread unraveled into a web, causing instant short circuits."<sup>147</sup>

The air campaign against the Taliban brought new life to a controversial \$28 billion aircraft, the B-1 bomber, originally planned in the 1970s under President Nixon for deep nuclear attack inside the Soviet Union. Although the B-1 only flew 10 percent of the sorties from the British Indian Ocean base of Diego Garcia, it accounted for 70 percent of the ordnance dropped over Afghanistan because it could

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<sup>142</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 46.

<sup>143</sup> Carl Conetta, *Operation Enduring Freedom: Why a higher rate of civilian casualties*, Briefing Paper #11, Project on Defense Alternatives, 18 January 2000, [www.comw.org/pda/0201oef.html#appendix1](http://www.comw.org/pda/0201oef.html#appendix1)

<sup>144</sup> Tim Dougherty, "B-1 is tailor-made for Operation Enduring Freedom," in *Air Force Link*, 29 March 2002 [www.af.mil/news/n20020329\\_0489.shtml](http://www.af.mil/news/n20020329_0489.shtml)

<sup>145</sup> John A. Tirpak, "With Stealth in the Balkans: the performance of the B-2," in *Air Force Magazine*, 82, 10 (October 1999). [www.afa.org/magazine/1099stealth.html](http://www.afa.org/magazine/1099stealth.html)

<sup>146</sup> Col. Dennis B. Herbert, "Non-Lethal Weaponry: From Tactical to Strategic Applications," in *Joint Force Quarterly*, (spring 1999): 89, [www.dtic.mil/doctrine/jel/jfq\\_pubs/spring99.htm](http://www.dtic.mil/doctrine/jel/jfq_pubs/spring99.htm)

<sup>147</sup> Dana Priest, "France played skeptic on Kosovo attacks," in *Washington Post*, 20 September 1999, 6, <http://www.washingtonpost.com/wp-srv/national/daily/sept99/airwar20.htm>



carry more weapons than any other aircraft, 24 precision bombs.<sup>148</sup> Both the B-1 and B-2 bombers make use of GPS for targeting accuracy.<sup>149</sup>

The fifty-year-old B-52 bomber also saw rebirth as a precision bomber during the war,<sup>150</sup> JDAMs giving it new life. Formerly known for its gravity-dropped bombing in Vietnam, followed by cruise missile launches, its flexibility has seen refitting with advanced electronics and communications gear for precision munitions.<sup>151</sup> Along with the B-1, the B-52 would travel 15-hour flights from its Indian Ocean base to Afghanistan, where bombers were said to have flown 11 percent of all sorties during Operation Enduring Freedom, compared to 2 percent during Operation Allied Force.<sup>152</sup>

Also for the first time in 2001, the Air Force deployed the armed Global Hawk,<sup>153</sup> an unpiloted reconnaissance aircraft which flies higher and faster than the slower Predator.<sup>154</sup>

The fallibility of PGMs, a category which includes JDAMs, remains to this day a reality of war: they are unable to guarantee that incidental loss of life, civilian or military, or damage to civilian property can be avoided, later detailed in each case study. Technical malfunctions, human intelligence errors and weather-inhibited accuracy will happen. A British Air Vice Marshall speaking to BBC during the Afghan air campaign stated that a “smart bomb is only as accurate as the information which has led to its targeting.”<sup>155</sup>

As proof of the vulnerability of commanders and pilots to human error, about a quarter of the US soldiers who died in the Gulf War were killed by “friendly” fire, meaning that their own coalition forces had fired upon them.<sup>156</sup> Accidental, unintentional loss of life took place during numerous battles in the Second World

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<sup>148</sup> Peter Pae, “Maligned B-1 Bomber Now Proving Its Worth,” in *Los Angeles Times*, 12 December 2001, [www.latimes.com/news/nationworld/nation/la-121201bomber.story](http://www.latimes.com/news/nationworld/nation/la-121201bomber.story) See also Tim Dougherty, “B-1 is tailor-made for Operation Enduring Freedom,” in *Air Force Link*, 29 March 2002 [www.af.mil/news/n20020329\\_0489.shtml](http://www.af.mil/news/n20020329_0489.shtml)

<sup>149</sup> John Hendren, “Afghanistan yields lessons for Pentagon’s next targets,” in *Los Angeles Times*, 21 January 2002, A1.

<sup>150</sup> Conversation with Western Air Force officer.

<sup>151</sup> Eric Schmitt and James Dao, “Use of Pinpoint Air Power Comes of Age in New War,” in *New York Times*, 24 December 2001, [www.nytimes.com/2001/12/24/international/24WEAP.html](http://www.nytimes.com/2001/12/24/international/24WEAP.html)

<sup>152</sup> Carl Conetta, *Operation Enduring Freedom: Why a higher rate of civilian casualties*, Briefing Paper #11, Project on Defense Alternatives, 18 January 2000, [www.comw.org/pda/0201oef.html#appendix1](http://www.comw.org/pda/0201oef.html#appendix1)

<sup>153</sup> John A. Tirpak, “Enduring Freedom,” in *Air Force Magazine*, 85, 2 (February 2002), [www.afa.org/magazine/Feb2002/0202airwar.asp](http://www.afa.org/magazine/Feb2002/0202airwar.asp)

<sup>154</sup> James Dao, “Newer Technology is Shielding Pilots.”

<sup>155</sup> Michael Schrage, “Too Smart For Our Own Good,” in *Washington Post*, 02 June 2002, B03.

<sup>156</sup> Paul Knox, “The risks of collaboration,” in *Globe and Mail*, 19 April 2002, A13.

War, including the deaths of 65 Canadian soldiers during a major assault on Normandy on 08 August, 1944, when a US bomber accidentally attacked what was thought to be a German position.<sup>157</sup>

In Afghanistan, three US servicemen were killed on 05 December, 2001, after a B-52 bomber had dropped an errant 2000-pound JDAM guided by a satellite navigation system.<sup>158</sup> Later investigation however revealed that the ground spotter had given the bombardier in the B-52 his own coordinates instead of that of the intended target.<sup>159</sup> Even with available ground intelligence supported by the world's most sophisticated airpower technology, unintended losses take place. Incidents of human error in entirely unpredictable combat circumstances are attributable to the fog of war, a phenomenon implicitly acknowledged in the careful wording of the Geneva Conventions.

In another show of human error and intelligence failure despite smart bomb technology, on 18 April, 2002, a US Air National Guard pilot with years of Navy experience, flying at 23,000 feet at 2AM<sup>160</sup> and believing himself to be under ground attack, dropped a laser-guided bomb on Canadian forces conducting training exercises in a cordoned area by their Kandahar base, resulting in four deaths and eight wounded.<sup>161</sup> The pilot and his wing man had been denied permission to attack but ignored instructions from a forward air controller who, seconds later stated, after it was too late, reported that "potential friendlies were in the area."<sup>162</sup> US officials confirmed that Canadian forces information about the position of their exercise had been shared with US forces. While one hypothesis posited that such information had not reached the Kuwait-based F-16 pilots in time,<sup>163</sup> another mentions that the two F-16's may have been running out of fuel<sup>164</sup> as they were about to meet their refueling

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<sup>157</sup> Estanislao Ozievich and Colin Freeze, "Fatal errors are regrettable but inevitable, experts agree," in *Globe and Mail*, 19 April 2002, A5.

<sup>158</sup> Peter Cheney, "US 'friendly fire' kills three," in *Globe and Mail*, 6 December, 2001, A8, and "Errant US bomb kills 3 G.I.s," in *New York Times*, 6 December 2001, [www.nytimes.com/2001/12/05/international/05CND-MILI.html](http://www.nytimes.com/2001/12/05/international/05CND-MILI.html)

<sup>159</sup> James Dao, "G.I.'s Mistakenly Attack Friendly Afghan Soldiers, Killing 3," in *New York Times*, 01 June 2002, A4.

<sup>160</sup> Daniel Leblanc, "A pilot's fateful decision over Afghanistan," in *Globe and Mail*, 21 June 2002, A3.

<sup>161</sup> Daniel Leblanc, Paul Koring and Peter Cheney, "U.S. pilot believed he was under attack," in *Globe and Mail*, 19 April 2002, A1. See also Eric Schmitt, "Inquiry on Canadians' Deaths Says U.S. Pilots Broke Rules," in *New York Times*, 19 June 2002.

<sup>162</sup> Eric Schmitt, "Inquiry on Canadians' Deaths Says U.S. Pilots Broke Rules."

<sup>163</sup> Daniel Leblanc, "A pilot's fateful decision over Afghanistan."

<sup>164</sup> Daniel Leblanc, "A pilot's fateful decision over Afghanistan."

plane to gas up before their three-hour return to base.<sup>165</sup> The whole incident was said to have taken place in about two minutes, while airstrike targeting permissions during the Afghan war typically turned around in five times that duration, or even hours.<sup>166</sup>

While the US military additionally factored in a 10 percent munition failure rate during the air campaign in Afghanistan<sup>167</sup>, the weakness of sufficient human analysis of ground intelligence from such technologies has been admitted by the defence industry: “We have these networks of satellites and electronics that cost literally ...tens of billions of dollars each year, and yet we’ll pay the young person who’s analyzing the data \$25,000 a year. We need a much more balanced intelligence system.”<sup>168</sup>

Just as airpower alone cannot attain victory, its airborne technology also does not suffice to reach military and political objectives. A ground presence remains an essential element to any airpower operation. Witness US ground troops in the Gulf War, coalition SCUD busters inside west Iraq, a Rapid Reaction Force supporting NATO airstrikes in Bosnia, the CIA-directed Croatian offensive (Operation Storm) in Croatia and Bosnia, KLA operations in Kosovo, Northern Alliance operations in Afghanistan.

Only ground forces can best engage a camouflaged enemy and thus expose it to airpower technology: satellites, aircraft and munitions. Otherwise, tank plinking and other enemy-reduction measures vital to military success will be left to later planning, thus requiring sufficient reserves of laser-guided PGMs like million-dollar cruise missiles for accurate hits upon mobile targets. Until any potential engagement of enemy forces, a commander may tend, out of military necessity, to deploy less precise GPS-guided JDAMs (if available) against targets such as fixed dual-use infrastructure.

During Operation Desert Storm, British and later American Special Forces were inserted by helicopter into SCUD launch areas inside Iraq in order to destroy Iraqi launch sites.<sup>169</sup> Supported by satellite-driven navigation equipment for ground

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<sup>165</sup> Eric Schmitt, “Inquiry on Canadians’ Deaths Says U.S. Pilots Broke Rules.”

<sup>166</sup> Eric Schmitt, “Inquiry on Canadians’ Deaths Says U.S. Pilots Broke Rules.”

<sup>167</sup> Statement by US General Tommy Franks, commander of Operation Enduring Freedom. Cited in Ian Traynor, “The unfinished war – Afghans are still dying as air strikes go on,” in *The Guardian*, 12 February 2002, 4.

<sup>168</sup> John Hendren, “Afghanistan Yields Lessons For Pentagon’s Next Targets,” in *Los Angeles Times*, 21 January 2002, A1.

<sup>169</sup> Alberto Bin, Richard Hill and Archer Jones, *Desert Storm: A Forgotten War*, 103.

positioning, UK and US ground spotters either destroyed or called in airstrikes to eliminate mobile SCUD missiles.<sup>170</sup> They were sometimes assisted by lasers for directing airstrikes.<sup>171</sup>

During Operation Deliberate Force, British SAS troops acted as forward air controllers around Sarajevo, guiding aircraft to targets by use of laser target markers,<sup>172</sup> and thus greatly increasing the accuracy of strikes while minimizing collateral damage to civilians.

In 1999, the KLA received covert CIA and US Army Special Forces training in Albania once the NATO air campaign began, even acting as forward air controllers, providing ground intelligence to facilitate the targeting of enemy forces and equipment.<sup>173</sup> Retired military personnel among the OSCE KVM<sup>174</sup> monitors in Yugoslavia in 1998-99 “undoubtedly passed on accurate target information to NATO or US military planners.”<sup>175</sup> While pushing for use of Apache Army helicopters in Kosovo, US General Wesley Clark, commander of NATO troops in Operation Allied Force, admitted the need for forward ground units to enable attack plans. The Apaches had not been trained to use such airpower without ground intelligence.<sup>176</sup>

During Operation Enduring Freedom, ground-based US Air Force Special Operations operatives, equipped with lap-tops, advanced communications devices and hand-directed laser range finders, traveled on horse-back while escorted by Northern Alliance forces; they played a key role in enabling the accuracy of target hits by US bombing raids, even turning the massive “B-52 bomber into virtual attack fighter.”<sup>177</sup> Although ground spotters have been used throughout the history of air warfare,<sup>178</sup> their possession of technological sophistication did not marry together so successfully

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<sup>170</sup> Peter de la Billiere (Sir Gen.), *Storm Command: A Personal Account of the Gulf War*, (London: Harper Collins, 1992): 224-7.

<sup>171</sup> Alberto Bin, Richard Hill and Archer Jones, *Desert Storm*, 103.

<sup>172</sup> Ian Traynor and David Fairhall, “Serbs hit with Cruise Missiles,” in *The Guardian*, 11 September 1995, 1.

<sup>173</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 250-4.

<sup>174</sup> Organization for Security and Cooperation in Europe Kosovo Verification Mission

<sup>175</sup> Peter Bouckaert, “US Air War Challenges,” 09 October 2001, [www.iwpr.net/index.pl?archive/rca/rca\\_200110\\_73\\_5\\_eng.txt](http://www.iwpr.net/index.pl?archive/rca/rca_200110_73_5_eng.txt)

<sup>176</sup> Wesley K. Clark, *Waging Modern War: Bosnia, Kosovo and the Future of Combat*, (New York: Public Affairs, 2001): 231.

<sup>177</sup> John Hendren, “Afghanistan Yields Lessons For Pentagon’s Next Targets,” in *Los Angeles Times*, 21 January 2002, A1.

<sup>178</sup> Michael E. O’Hanlon, “A Flawed Masterpiece,” in *Foreign Affairs*, 81, 3 (May/June 2002): 59.

during the air campaign over Vietnam,<sup>179</sup> as it would 30 years later. In Afghanistan, for the first time, “they were frequently able to provide targeting information accurate to within several meters and do so quickly.”<sup>180</sup>

In today’s new world of coalition conflicts, ground spotters are a highly-prized, scarce and valuable military asset. A rare luxury to coalitions, they are very expensive to train, speaking many languages.<sup>181</sup> The simultaneous use of US military and Central Intelligence Agency (CIA) resources is an even more rare asset to coalition warfare. While the Vietnam syndrome still seems to feed American foreign policy and thus airpower doctrine because of an inadequate deploying of military forces for ground intelligence, a gap in foreign affairs is now being filled by the CIA, a civilian agency.

Current, corroborated and properly analysed intelligence is a key ingredient to any successful airpower mission, regardless of technological superiority. An absence of ground-based intelligence in order to pin-point enemy targets via global positioning devices and lasers increases the likelihood of intelligence error and thus collateral damage. The importance of coalition ground spotters for collecting intelligence which could avoid dependence on biased sources like Afghan warlords was especially evident in incidents in which the US fell victim to false information, later discussed.

### **Comparing air campaigns: civilian casualties and PGM use**

Case study examination will analyze and compare coalition airpower behavior and results, statistics on civilian casualties, levels of PGM-use, collateral damage from targeting errors and the degree of coordination between international organizations, if any. An evaluation will be made of legal, media and NGO critiques on the effects of airpower. A comparison of political involvement in targeting decisions will be discussed in the section following case presentations.

This section will enable an evaluation of the degree of IHL compliance resulting from target decision-making processes. The intention is to evaluate whether progress is being made by airpower coalitions toward respect for non-combatants

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<sup>179</sup> Michael R. Gordon, “‘New’ U.S. War: Commandos, Airstrikes and Allies on the Ground,” in *New York Times*, 29 December 2001, [www.nytimes.com/2001/12/29/international/29STRA.html?pagewanted=2](http://www.nytimes.com/2001/12/29/international/29STRA.html?pagewanted=2)

<sup>180</sup> Michael E. O’Hanlon, “A Flawed Masterpiece,” 59.

<sup>181</sup> Conversation with Western Air Force officer.

during air force campaigns and to expose the varying degrees of technological progress in airpower use. It must be noted that no consistent, independent and transparent sources exist for the compilation of figures on civilian casualties. Periods of airpower, available ground facts, and types and numbers of bombs used varied between case study, complicating effective comparisons.

It should also be noted that there is a difference between targeting failure and targeting error, both being a challenge to the principle of discrimination required by the Geneva Conventions. The former indicates an unintended action, reflecting both a degree of human error and of technical weakness, a bomb's striking inaccuracy being due to factors such as inappropriate munition-type used, competency of pilot, of laser-pointer (co-pilot) or of ground spotter, laser malfunction, climate obstruction. Targeting error however indicates the intentional striking of a target whose identity is later revealed to be of a non-military nature, thus either an intelligence failure.

The former can be remedied by better training and greater use of PGMs, laser pointers and ground spotters, while the latter cannot. Violations of IHL occur when a commander or pilot deliberately target non-military objectives, or when use of force is disproportionate to military advantage afforded, as previously discussed. The law must prove that intentional human malevolence took place on the part of a belligerent.

Targeting failure is not to be confused with unexploded ordnance (UXO), bombs landing but failing to detonate. It should also be noted that not all sorties reflect air strike activity as some sorties only serve reconnaissance purposes while other sorties may not have been able to drop their bombs for reasons of visibility or strict ROE.

### ***Iraq:***

The Gulf War witnessed the heaviest aerial bombardments since World War II, in a campaign which received greater attention to Protocol I than any previous conflict.<sup>182</sup> The introduction of stealth fighters, satellite imagery and precision-guided munitions over Baghdad in 1991 was popularized by sensationalist CNN coverage, welcomed and promoted by the Pentagon. Cruise missiles said to be entering the front door of Iraqi command and control centers, or descending air vents to explode

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<sup>182</sup> Christopher Greenwood, "Customary international law and the First Geneva Protocol of 1977 in the Gulf conflict," 65.

on a desired floor, have done much to artificially and unrealistically elevate the public's expectations of surgical aerial bombing in general<sup>183</sup> and of zero-casualty warfare in particular.

During the 43-day UN-authorized Operation Desert Storm, between 3000<sup>184</sup> and 3200 Iraqi civilians were reported killed,<sup>185</sup> compared to some 146 US military combat deaths<sup>186</sup> and 17 British military combat deaths.<sup>187</sup> US figures on the war's impact upon the Iraqi military included 15,000 to 20,000 dead, 120,000 to 200,000 deserted, and 86,000 captured.<sup>188</sup>

During 72,000 sorties, 8.8 percent of the 84,700 tons of bombs dropped were PGMs.<sup>189</sup> Human Rights Watch (HRW) stated without citing its source that the estimated accuracy rate of the remaining dumb bombs was 25 percent.<sup>190</sup> According to official US reports, even among precision munitions dropped by F-117 Nighthawks, 20 percent of their precision bombs did not hit their targets: "about 400 tons of bombs from the F-117s alone may have caused collateral damage."<sup>191</sup>

Iraqi capacities to fill its skies with metal of all kinds soon prevented the coalition's initial strategy of radar-evading low-flight attack tactics. After the Royal Air Force had lost five aircraft in seven days, a switch of ROE resulted in high-

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<sup>183</sup> Grant T. Hammond, "Myths of the Gulf War," 6, [www.airpower.maxwell.af.mil/airchronicles/api/apj98/fal98/hammond.html](http://www.airpower.maxwell.af.mil/airchronicles/api/apj98/fal98/hammond.html)

<sup>184</sup> Human Rights Watch, *Needless Deaths in the Gulf*, 19.

<sup>185</sup> Ian Traynor, "The unfinished war – Afghans are still dying as air strikes go on," in *The Guardian*, 12 February 2002, 4. Because the US refused to estimate the number of Iraqi military and civilian casualties, figures on deaths differ greatly, with Greenpeace estimating between 5,000 and 15,000 civilian deaths. See Anthony H. Cordesman, *The Lessons of Modern War, volume IV: The Gulf War*, (Boulder: Westview, 1996): 27-28 and 342-3.

<sup>186</sup> Grant T. Hammond, "Myths of the Gulf War," 2. On 25 February, 28 US military were killed and over 100 wounded by debris from an Iraqi SCUD missile fallen near US barracks at Dhahran, Saudi Arabia. See David Travers, "A Chronology of Events" in *The Gulf War 1990-91 in International and English Law*, Peter Rowe, ed. (London: Routledge, 1993): 25. The US declared 24 troops missing-in-action, including under ten pilots. See Tracy Wilkinson and Nick B. Williams, "Iraq to return remains of 14 Allied dead," in *Los Angeles Times*, 12 March 1991, A1. The US lost 145 troops due to non-combat deaths. See Juan Tamayo, "Low Death Count Reflect U.S.'s Technological Might, Taliban's Weaknesses," in *Miami Herald*, 01 March 2002.

<sup>187</sup> A.P.V. Rogers, "Zero-casualty of warfare," 2.

<sup>188</sup> Paul K. White, "Airpower and a Decade of Containment," in *Joint Force Quarterly*, (winter 2000-2001): 35, [www.dtic.mil/doctrine/jel/jfq\\_pubs/win0001.htm](http://www.dtic.mil/doctrine/jel/jfq_pubs/win0001.htm)

<sup>189</sup> John G. Humphries, "Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm," 7, citing briefing by Gen. Merrill A. McPeak, Air Force Chief of Staff, 15 March 1991, in US Department of Defence, *Conduct of the Persian Gulf Conflict: An Interim Report to Congress*, July, 1991, p. 4-5.

<sup>190</sup> Human Rights Watch, *Needless Deaths in the Gulf*, 6.

<sup>191</sup> Alberto Bin, *Desert Storm*, 103.

altitude flights dropping 1000-pound from 20,000 feet, offering pilot safety while increasing the chances of collateral damage from less accurate ordnance drops.<sup>192</sup>

Despite the optimism of Gulf commanders estimating target accuracy at 80 percent, a congressional report later stated that “the real hit rate may have been as low as 41 percent.”<sup>193</sup> In a 1997 US General Accounting Office evaluation of the effectiveness of Operation Desert Storm airpower, conclusions included the following points:

“weapon system performance were overstated, misleading, inconsistent with the best available data, or unverifiable; aircraft and pilot losses were historically low, partly owing to the use of medium- or high-altitude munition delivery tactics that nonetheless both reduced the accuracy of guided and unguided munitions and hindered target identification and acquisition.”<sup>194</sup>

Unlike during the Vietnam war, military commanders in the Gulf theatre had the necessary freedom to plan and execute the campaign: “not once did Pentagon officials reverse decisions from the Black Hole<sup>195</sup> about what weapons to use, what targets to strike, and how and when to attack them.”<sup>196</sup> However, after the bombing of the Amiriya bunker in week 4, the Pentagon took back some targeting control from field commanders.<sup>197</sup> Approximately 25 percent of combat sorties returned without having dropped their ordnance,<sup>198</sup> an indication of ROE complementing both military economy of force and IHL efforts to minimize civilian casualties.

Among the most criticized coalition strikes were those against the baby milk factory in late January and against the Amiriya command bunker/civilian shelter on 13 February, the latter killing between 300 and 400 people.<sup>199</sup> Spain called for an

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<sup>192</sup> A.P.V. Rogers, “Zero-casualty warfare,” 2, citing Allen, Charles, ed. *Thunder and Lightning*, HMSO, 1991, pp. 74, 80.

<sup>193</sup> BBC. “F-117 Stealth Fighters stay on alert.” 20 February 1998.

<sup>194</sup> US Government Accounting Office, *Operation Desert Storm: Evaluation of the Air Campaign*, GAO/NSIAD-97-134, (06/12/1997) [www.fas.org/man/gao/nsiad97134/index.html](http://www.fas.org/man/gao/nsiad97134/index.html)

<sup>195</sup> US command center in Saudi Arabia.

<sup>196</sup> John G. Humphries, “Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm,” 6.

<sup>197</sup> Ariane DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War,” 58, citing Matthews, Thomas, “The Secret History of the War,” in *Newsweek*, March 18 1991, 28 and 36.

<sup>198</sup> John G. Humphries, “Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm,” 12, citing Parks, W. Hays, Chief, International Law Branch, Office of the Army Judge Advocate General, *Memorandum, Review of Coalition Air Operations*, 10 December 1991.

<sup>199</sup> Iraq had announced the recovery of some 288 bodies, including 91 children, according to Martin Walker, David Fairhall and John Hooper, “The Gulf War: Bush faces backlash over bunker deaths,” in *The Guardian*, 15 February 1991. The wreckage has become a shrine dedicated to the 408 civilians



international inquiry into the bunker attack and an end to blanket bombing.<sup>200</sup> In the case of the former, military intelligence claimed that the target was a biological weapons factory.<sup>201</sup> According to the Rendulic rule earlier mentioned, a party cannot be accused of being in violation of a law of armed conflict because of false information.

Military intelligence regarding the Amiriya site revealed that the facility, whether used for civilian or military purposes, was covered in camouflage, protected by barbed wire and armed guards at the door, and that it had been converted to a command and control centre during the Iran-Iraq war.<sup>202</sup> Additionally, intercepted command communications originating from the building indicated its military use.<sup>203</sup> Iraqi President Saddam Hussein was known throughout the war to commingle civilian and military objects and people in order to provide some deterrence.<sup>204</sup> Also, after a month-long air campaign, Iraq had begun the illegal practice of human shielding, hiding weapons in schools, hospitals and mosques, while placing anti-aircraft guns on the rooftops of public buildings.<sup>205</sup>

Another highly criticized use of coalition airpower regarded the unnecessary level of military retribution used against fleeing Iraqi troops leaving Kuwait with the spoils of war along the Basra highway, later dubbed the "Highway of Death." Although it is not illegal in war to attack retreating troops, a disproportionate level of force was used against the Iraqi army, the results of which were globally publicized by the media.

Regarding US claims of accomplished surgical strikes, the ICRC questioned this presumption,<sup>206</sup> calling numerous times on all parties to respect the Geneva conventions. According to a Greenpeace study, Iraqi water pumping stations, treatment plants and distribution facilities were however not directly targeted by

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killed, according to Timothy Appleby, "Inside the 'axis of evil'," in *Globe and Mail*, 09 March 2002, F8.

<sup>200</sup> Martin Walker, David Fairhall and John Hooper, "The Gulf War: Bush faces backlash over bunker deaths," in *The Guardian*, 15 February 1991.

<sup>201</sup> Ariane DeSaussure, "The Role of the Law of Armed Conflict During the Persian Gulf War," 64, citing Chairman of the Joint Chiefs of Staff, General Colin Powell, briefing of 23 January 1991.

<sup>202</sup> Steven Keeva, "Lawyers in the War Room," 58, citing Parks without reference. During the Iran-Iraq war, most Western states supported Iraq, including the building of such bunkers.

<sup>203</sup> Ariane DeSaussure, "The Role of the Law of Armed Conflict During the Persian Gulf War," 65.

<sup>204</sup> Hella Pick, "PoW's death in allied raid raises fears of Saddam's human shield ploy," in *Guardian*, 30 January 1991.

<sup>205</sup> John G. Humphries, "Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm," 8.

<sup>206</sup> Christophe Girod, *Tempete sur le desert: Le comite de la Croix-rouge et la guerre du Golfe 1990-1991*, (Paris: Bruylant-Bruxelles, 1995): 143.

coalition forces.<sup>207</sup> Despite UN cries of epidemics<sup>208</sup> caused by the intensity of coalition airstrikes upon dual-use facilities, “the ICRC team itself did not find any evidence confirming the media’s pessimistic reports of widespread epidemics”.<sup>209</sup> The targeting of dual-use facilities is later discussed.

The coalition had no ground spotters in Iraqi urban centres to permit better targeting accuracy, although some small teams of British and US Special Forces operated inside western Iraq on scud-busting operations. Weather largely did not inhibit targeting capacities. Many bombing raids over Baghdad took place at night, something criticized by HRW as being a cause of high civilian casualty rates due to poor visibility.<sup>210</sup>

### **Bosnia:**

During NATO’s 16-day Operation Deliberate Force against Bosnian-Serb weapons sites, US-led airstrikes comprised 3,515 sorties by over nine countries between 30 August and 14 September 1995.<sup>211</sup>

According to an ICRC assessment, the period of conflict resulted in the loss of 27 civilians, attributing deaths as a direct result of NATO bombings or of UN artillery fire from Rapid Reaction Forces.<sup>212</sup>

Aircraft released 1,026 bombs, from above 10,000 feet,<sup>213</sup> 69 percent of which were PGMs, hitting 97 percent of planned targets.<sup>214</sup> Non-US aircraft dropped

<sup>207</sup> Yves Etienne and P. Giorgio Nembrini, “Establishing water and sanitation programmes in conflict situations: The case of Iraq during the Gulf War,” in *Social and Preventive Medicine*, 40, 1 (01 January 1995): 18-26. [www.icrc.org/ihrceng.nsf/4dc394db5b54f3fa4125673900241f2f/dee32cbe2370b1f412](http://www.icrc.org/ihrceng.nsf/4dc394db5b54f3fa4125673900241f2f/dee32cbe2370b1f412), citing WM Arkin, D. Durrant and M. Cherni, *On impact: modern warfare and the environment: a case study of the Gulf War*, (Washington DC: Greenpeace, 1991).

<sup>208</sup> Susan Okie, “Health Official Sees Threat of Epidemics in Iraq; Allied bombing Leaves Shortage of Clean Water and Sewage Treatment Facilities,” in *Washington Post*, 26 February 1991, A10.

<sup>209</sup> Yves Etienne and P. Giorgio Nembrini, “Establishing water and sanitation programmes in conflict situations: The case of Iraq during the Gulf War,” in *Social and Preventive Medicine*, 40, 1 (01 January 1995): 18-26. [www.icrc.org/ihrceng.nsf/4dc394db5b54f3fa4125673900241f2f/dee32cbe2370b1f412](http://www.icrc.org/ihrceng.nsf/4dc394db5b54f3fa4125673900241f2f/dee32cbe2370b1f412)

<sup>210</sup> Human Rights Watch, *Needless Deaths in the Gulf*.

<sup>211</sup> John A. Tirpak, “Deliberate Force,” in *Air Force Magazine*, 80, 10 (October 1997): 2-3, [www.afa.org/magazine/1097deli.html](http://www.afa.org/magazine/1097deli.html) 69 percent of sorties were US Air Force, other aircraft being provided by the US Navy and US Marine Corps.

<sup>212</sup> Tim Ripley, *Operation Deliberate Force: the UN and NATO campaign in Bosnia 1995*, Centre for Defence and International Security Studies, (Lancaster: Lancaster University, 1999): 316. See also the claim that 26 people were killed during the NATO airstrikes, in Don C. Chipman, “The Balkan Wars: Diplomacy, Politics and Coalition Warfare,” in *Strategic Review*, (winter 2000): 26, citing Col. Robert C. Owen, “Summary of Operation Deliberate Force,” unpublished manuscript, Air University School of Advanced Airpower Studies, Montgomery AL, 64. During the Dayton negotiations, Yugoslav President Milosevic is said to have stated that 25 people were killed by NATO airstrikes. See Michael O. Beale, *Bombs Over Bosnia: The Role of Airpower in Bosnia-Herzegovina*, thesis, School of Advanced Airpower Studies, Air University, Maxwell Air Force Base, AL, (June 1996): 26 [www.fas.org/man/eprint/beale.htm](http://www.fas.org/man/eprint/beale.htm)

72 percent of non-precision “dumb” bombs.<sup>215</sup> NATO was even careful about not directly attacking Serbian soldiers,<sup>216</sup> the object being technical military capability, not lives.<sup>217</sup> Although many non-US NATO aircraft did not possess PGM capability, the hitting of 338 pre-approved individual aim points within 48 complexes, was complimented by on-board computer systems, enabling even unguided bombs to become highly accurate.<sup>218</sup> A NATO French Mirage aircraft was shot down by a Bosnian-Serb, shoulder-fired, heat-seeking infrared missile over Pale.<sup>219</sup>

NATO bombing over Bosnia actually took place during only 12 of the 16 days from 30 August to 14 September.<sup>220</sup> In Bosnia, all targets were fixed, unlike some mobile targets during the Gulf and Kosovo campaigns. Operation Deliberate Force had the sole objective of pushing back Bosnian-Serb guns from weapons exclusion zones around UN safe areas, despite the operation’s much-hailed but only consequential success in bringing the parties to Dayton for peace negotiations two months later. On 12 April, 1993, NATO had begun enforcement of a UN-declared no-fly zone over Bosnia, Operation Deny Flight<sup>221</sup> not examined in this study.

In order to balance civilian politico-diplomatic accountability with military preparedness, a dual-key system was devised to ensure maximum coordination between a UN civilian and a NATO commander. Until the convening in London of NATO foreign and defence ministers, in July of 1995, along with the Russians, these keys were held by the UN Secretary General’s Special Representative, Yasushi Akashi, and NATO’s Southern Region commander, US Admiral Leighton Smith.<sup>222</sup>

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<sup>213</sup> Paul C. Forage, “Bombs for Peace: A Comparative Study of the Use of Air Power in the Balkans,” in *Armed Forces and Society*, 28, 2 (winter 2002): 218.

<sup>214</sup> John A. Tirpak, “Deliberate Force,” 3.

<sup>215</sup> Richard P. Hallion, *Precision Guided Munitions and the New Era of Warfare*, APSC Paper Number 53, Air Power Studies Centre, 1995. [www.fas.org/man.dod-101/sys/smart/docs/paper53.htm](http://www.fas.org/man.dod-101/sys/smart/docs/paper53.htm)

<sup>216</sup> Tim Ripley, *Operation Deliberate Force: the UN and NATO campaign in Bosnia 1995*, 162.

<sup>217</sup> Don D. Chipman, “The Balkan Wars: Diplomacy, Politics and Coalition Warfare,” 26, citing Col. Robert C. Owen, “Deliberate Force: A Case Study in Effective Air Campaigning,” unpublished document, Montgomery: Air University, 1998, p.7-1.

<sup>218</sup> Michael Beale, *Bombs Over Bosnia: The Role of Airpower in Bosnia-Herzegovina*, 26.

<sup>219</sup> Tim Ripley, *Air War in Bosnia: UN and NATO Airpower*, (Shrewsbury: Airlife Publishing, 1996): 92 and 111. The two-member crew was captured on day-2 of the operation and only released on 12 December 1995.

<sup>220</sup> Col. Robert C. Owen, “The Balkans Air Campaign Study: Part 2,” in *Airpower Journal*, 11, 3 (fall 1997): 3.

<sup>221</sup> Associated Press, “Chronology of Bosnia War,” in *New York Times*, 06 February 1994, 12.

<sup>222</sup> William Shawcross, *Deliver Us from Evil*, 174.

Akashi had “delayed and even vetoed air attacks enough times to make the U.N. look more cowardly than the other actors when faced with Serb aggression.”<sup>223</sup>

Held in the wake of the fall to Bosnian-Serbs of the declared safe areas of Zepa and Srebrenica, London conferees agreed to the necessity of decisive military action and the transfer of Akashi’s key to the UNPROFOR force commander, French General Bernard Janvier. This decision left both keys in military hands,<sup>224</sup> increasing the likelihood of airstrikes. Once both keys were turned on 29 August, the execution of a surgical airwar remained the responsibility of US General Michael Ryan, who later stated: “your targeting is always going to be joint, it’s always going to be political, and I guarantee it’s going to be on CNN, so you’d better get it right.”<sup>225</sup>

There were two halts during the 16-day campaign, principally to provide the Bosnian Serbs with opportunities to agree to the withdrawal of heavy weapons from Sarajevo, and partly due to hampered weather conditions. On 12 and 13 September, weather caused most sorties to be cancelled,<sup>226</sup> proving again that the principle of economy of force complimented efforts of compliance to IHL. Due to a limited number of very expensive PGMs in the US arsenal, their waste was important to avoid. After all, the US development of PGMs like the cruise missile was intended for Soviet-era containment purposes and not peace-enforcement operations of limited value to American national interests, especially during a Presidential election year.

After the second halt to airstrikes and failed talks between Bosnian Serb General Mladic and French UNPROFOR commander Janvier, the US launched 13 all-weather Tomahawk cruise missiles from an Adriatic ship to destroy air defence systems near Banja Luka,<sup>227</sup> causing a rift in the NATO alliance. Despite the position of more aggressive alliance members, Chirac announced on public television an airstrike halt of a few hours, even though the suspension could not be confirmed by

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<sup>223</sup> Stanley Meisler, “Dateline U.N.: A New Hammaraskjold?” in *Foreign Policy*, 98 (spring, 1995): 193-4.

<sup>224</sup> William Shawcross, *Deliver Us From Evil*, 174.

<sup>225</sup> Don D. Chipman, “The Balkan Wars: Diplomacy, Politics and Coalition Warfare,” 28, citing Buchnam, Mark A., “The Influence of UN and NATO Theater Level Commanders on the Use of Airpower Over Bosnia During Deny Flight: 1993-95,” unpublished PHD dissertation, King’s College, University of London, 1999, 226.

<sup>226</sup> John A. Tirpak, “Deliberate Force,” 7.

<sup>227</sup> Banja Luka, the Bosnian-Serb capital of Republika Srpska, was nowhere near a UN safe area.

the UN, nor by NATO.<sup>228</sup> This was not the last time that NATO members would have differing views on military necessity, later discussed.

### *Kosovo:*

Following the withdrawal of OSCE monitors<sup>229</sup> from Kosovo and a failed attempt at mediation with Yugoslav President Slobodan Milosevic by US envoy Richard Holbrooke on 23 March, NATO Secretary General Javier Solana authorized the launch of airstrikes the next day. During the 78-days of Operation Allied Force against Yugoslavia in 1999, the US-led coalition, involving aircraft from 14 of the 19 NATO members, operating from 24 European bases and three aircraft carriers, conducted 37,225 sorties, one-third of which were strike and air defence suppression sorties, non-US sorties constituting about 39 percent of this total.<sup>230</sup> In what was expected to be a short,<sup>231</sup> expensive cruise-missile oriented campaign of possibly a dozen days,<sup>232</sup> NATO had but 50 pre-approved targets.<sup>233</sup>

Collateral damage included the deaths of some 500 civilians killed in 90 separate incidents of which 78 were investigated by HRW.<sup>234</sup> Some 820 civilians were wounded.<sup>235</sup> Some 600 Serbian military and special police were killed, according to Yugoslavia government officials.<sup>236</sup> HRW noted that Yugoslav civilian

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<sup>228</sup> Tracy Wilkinson, "U.S. fires 13 Cruise missiles at Serbian targets in Bosnia," in *Los Angeles Times*, 11 September 1995, A1. Also Eric Schmitt, "Wider NATO Raids on Serbs Expose Rifts in Alliance," in *New York Times*, 12 September 1995, A1.

<sup>229</sup> Organization for Security and Cooperation in Europe Kosovo Verification Mission (OSCE KVM).

<sup>230</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 43, citing US Department of Defence, *Report to Congress: Kosovo/Operation Allied Forces After Action Report*, Washington, 31 January 2000, 32, 67-69, 87-88, 104.

<sup>231</sup> NATO commander Gen. Clark predicted a 40 percent chance of a 4-day war. See Dana Priest, "United NATO Front Was Divided Within," in *Washington Post*, 21 September 1999, <http://www.washingtonpost.com/wp-srv/inatl/daily/sept99/airwar21.htm> NATO Secretary General Javier Solana saw the campaign as lasting "days, not months." See Wesley Clark, *Waging Modern War*, 208.

<sup>232</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 21, citing Steven Erlanger, "NATO was closer to ground war than is widely believed," in *New York Times*, 7 November 1999, A-6.

<sup>233</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, citing Rebecca Grant, *The Kosovo Campaign: Aerospace Power Made It Work*, (Arlington: Air Force Association, September 1999): 6.

<sup>234</sup> Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, (New York: Human Rights Watch, February 2000), 12 (1D), 4, [www.hrw.org/reports/2000/nato/Natbm200.htm](http://www.hrw.org/reports/2000/nato/Natbm200.htm)

<sup>235</sup> International Criminal Tribunal for the Former Yugoslavia (ICTY), "Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia," (herein "ICTY Final Report") in *International Legal Materials*, 39 (08 June 2000), 1283.

<sup>236</sup> Dana Priest, "France played skeptic on Kosovo attacks." Three US prisoners of war were released during the campaign, after ICRC reminders of IHL obligations and the visit of US diplomat Jesse Jackson to Belgrade.

death figures were three times higher while those of the US government were lower than the HRW result.<sup>237</sup>

Although the beginning of the campaign saw a 90 percent count in use of PGMs, clear weather began to permit greater use of dumb bombs, culminating with a 34 to 37 percent PGM-use over the campaign period.<sup>238</sup> By the end of the air campaign's first month, poor weather had caused the cancellation of over 50 percent of strike sorties during 20 days.<sup>239</sup> Weather limited the number of sorties in a considerable way, forcing "NATO to cancel at least half of its total number of planned sorties on 39 days of the 78-day campaign, and allowed unimpeded air strikes on only 24 of 78 days."<sup>240</sup> Two-thirds of US strikes occurred at night.<sup>241</sup>

Two NATO planes were shot down, one US F-117A stealth fighter on Day 4 and one US F-16 fighter jet; both pilots were recovered.<sup>242</sup> NATO bombs erroneously hit three embassies (China, Sweden, Switzerland) and two foreign countries (Albania and Bulgaria) during the campaign.<sup>243</sup> In May of 1999, NATO strikes mistakenly hit a KLA outpost, killing one rebel.<sup>244</sup> Other NATO bombing errors and the NATO targeting and striking of dual-use civilian-military targets are addressed in detail in later sections.

To ensure the safety of foreign dignitaries in Belgrade during mediation efforts, NATO limited its airstrikes on the city during the visits of Russian and Finnish envoys.<sup>245</sup> "NATO pilots were forced to drop millions of dollars of ordnance in the Adriatic and on open countryside because they could not find their targets or engage them properly due to bad weather and the aerial rules of engagement imposed by politicians."<sup>246</sup>

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<sup>237</sup> Kenneth Roth, executive director of Human Rights Watch - New York, letter to *The Guardian*, 15 February 2002, 23.

<sup>238</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 44.

<sup>239</sup> Wesley Clark, *Waging Modern War*, 272.

<sup>240</sup> Anthony Cordesman, *ibid.*, 49.

<sup>241</sup> William M. Arkin, "Operation Allied Force: 'The Most Precise Application of Air Power in History'," in *War Over Kosovo: Politics and Strategy in a Global Age*, Andrew J. Bacevich and Eliot A. Cohen, eds. (New York: Columbia University, 2001): 21.

<sup>242</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 51.

<sup>243</sup> Bjorn Moller, "Kosovo and the Just War Tradition," in Copenhagen Peace Research Institute, working papers, (August 2000): 8, Columbia International Affairs Online, [www.cc.columbia.edu/sec/dlc/ciao/wps/mob11/mob11.html](http://www.cc.columbia.edu/sec/dlc/ciao/wps/mob11/mob11.html) See also Wesley Clark, *Waging Modern War*, 214 and 314.

<sup>244</sup> Raf Casert, "NATO admits hitting Kosovar rebels at border post," from *Nando Media*, 22 May 1999, <http://archive.nandotimes.com/Kosovo/story/general/>

<sup>245</sup> Wesley Clark, *ibid.*, 226 and 349.

<sup>246</sup> Timothy L. Thomas, "Kosovo and the Current Myth of Information Superiority," in *Parameters*, (spring 2000) <http://carlisle-www.army.mil/usawc/parameters/00spring/thomas.htm>

The element of civilian restraint upon military targeting ambitions complimented the objectives of IHL compliance. This role is examined in the next sub-section.

Airpower technology without sufficient ground intelligence made targeting vulnerable to human error. Dependence upon airpower alone to achieve NATO's objectives proved more difficult than expected.<sup>247</sup> After the first six weeks, there were more Serb forces in Kosovo than before the campaign.<sup>248</sup> This military difficulty caused a rift in NATO planning policies, with Americans preferring the punishing of northern Yugoslav command and control centers, including Milosevic's Presidential palace<sup>249</sup> in Belgrade, while the Europeans wanted bombing concentrated on southern Yugoslavia, upon Serb forces in Kosovo.<sup>250</sup> The Europeans were far short of such advanced US technological airpower capacities and were more fearful of collateral damage<sup>251</sup> and its political consequences upon continued refugee flows and regional economic instability.

After the 78-day campaign and the negotiated withdrawal of Serb forces, the number of retreating tanks and troops<sup>252</sup> proved NATO's inability to win a campaign purely by aerial means in Kosovo without a ground option. NATO ultimately decided to repeat the World War II practice of hitting targets that would maximize the adversary's political vulnerability to public pain. The change in NATO ROE, to strike more dual-use targets, attempted to increasingly deteriorate the moral fabric of Yugoslav society to support its own leadership, hopefully forcing Milosevic to the table, later discussed. Such a strategy could only work against democratic societies, not Iraqi or Taliban dictatorships with little accountability to and regard for their citizens.

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<sup>247</sup> Clinton considered the ground option for the first time on 19 May. See William Shawcross, *Deliver Us from Evil*, 382.

<sup>248</sup> Michael Ignatieff, *Virtual War*, 62.

<sup>249</sup> As Commander in Chief of Yugoslav forces.

<sup>250</sup> Wesley Clark, *Waging Modern War*, 271.

<sup>251</sup> A 1999 ICRC worldwide survey on modern war determined that about two-thirds of the public in France and the UK accepted an absolute standard on distinguishing combatants and civilians, compared to a majority in the US: "Those that accept less than an absolute standard are more likely to accept military practices that put civilians at risk... Fully 63 per cent of the American public say there are no laws to stop attacks on populated areas, but so do 46 per cent of the British and 30 per cent of the French. See Greenberg Research, *People on War: country report France, United Kingdom, United States, ICRC worldwide consultation in the rules of war*, (Geneva: October 1999): iii-iv [http://www.icrc.org/eng/onwar\\_reports](http://www.icrc.org/eng/onwar_reports)

<sup>252</sup> William Shawcross, *Deliver Us from Evil*, 384.

Ultimate military victory was never permitted against Yugoslavia, NATO politicians, Britain notwithstanding, and the US government constantly having to pacify Clark's desires as an army soldier to send in ground troops to engage Serb forces. The NATO objective was strictly to use sufficient force to create the political conditions, unavailable during the Rambouillet talks of 1998, that would complement diplomatic efforts, achieved by Finnish President Maarti Ahtisaari and former Russian Prime Minister Victor Chernomyrdin in June.

Amnesty's June 2000 report criticized NATO's conduct of airstrikes from 15,000 feet, causing risk of incidental loss of civilian life.<sup>253</sup> While AI accused NATO of violating international law, the June 8, 2000, Final Report by the ICTY found no basis for further investigation,<sup>254</sup> nor for charging NATO or its leaders with war crimes: NATO had not violated the laws of armed conflict since "there was no deliberate targeting of civilians or unlawful military targets."<sup>255</sup> The ICTY Final Report did remark that NATO, in answering specific questions about specific incidents, replied only in "general terms and failed to address the specific incidents."<sup>256</sup>

It should also be noted that the ICTY was created in 1993 by resolution of the UNSC, a political body comprising veto-wielding states which also happened to be the leading users of airpower in 1999. As the ICTY reports to the UNSC and not to a separate UN ombudsman or independent world body, the court's absolute independence remains in question.

### ***Afghanistan:***

A US-UK coalition with NATO support began bombing the Taliban regime on 07 October, 2001. The objective of Operation Enduring Freedom differed from the other three air campaigns which had publically sought the withdrawal of forces from a distinct territory. Enduring Freedom sought the annihilation and replacement of a regime, the Taliban and its largely foreign-based Al-Qaeda allies.

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<sup>253</sup> Steven Erlanger, "Amnesty Slams NATO bombing as violation of international law," of *New York Times*, in *Globe and Mail*, 8 June 2000, A10.

<sup>254</sup> "ICTY Final Report," 1283.

<sup>255</sup> Steven Erlanger, "Amnesty Slams NATO bombing as violation of international law."

<sup>256</sup> "ICTY Final Report," 1282.



The air campaign, executed from above 10,000 feet and supported by three US aircraft carriers,<sup>257</sup> went through several phases of action, depending on the advance of Northern Alliance forces, a loose military grouping comprising various decentralized, ethnically-based opposition clans, most of which were formed in the 1980s as anti-Soviet Mujahedin forces. The Northern Alliance was comprised largely of non-Pashtun ethnicities like Uzbeks, Tadjiks, Hazaras. Once the Northern Alliance had taken control of Kabul on 13 November, US bombing diminished. While concentrating on isolated pockets of resistance in Kunduz, Kandahar, Tora Bora and Gardez, the air campaign entered a period more sensitive to the need for accuracy given the increased presence of foreign troops, foreign media and expatriate relief workers. For the purposes of comparison, given that a prime reason for Operation Enduring Freedom was the termination of power of the Taliban regime, largely achieved by the New Year,<sup>258</sup> analysis will be limited to the bombing period ending in early February of 2002, although the defeat of the Taliban can be estimated to have taken place by December 8-9, when the regime's politico-spiritual leader, Mullah Omar, fled his Kandahar base.

According to HRW, at least 1,000 civilians were killed by coalition bombing, while a Reuters news agency estimate counted 982 civilian deaths in 14 incidents.<sup>259</sup> The Associated Press review of bombings estimated the civilian death toll at between 500 and 600.<sup>260</sup> According to estimates by a senior MSF worker based on reports from hospitals and field workers around the country, some 2000 to 3000 civilians were killed.<sup>261</sup> HRW is expected to publish findings from field investigations in late Summer; until then its claims are inconclusive.<sup>262</sup>

In an exhaustive 18 January study carried out by the Project on Defence Alternatives (PDA) at the Commonwealth Institute, a public policy research organization dealing with defence issues in Massachusetts, it was estimated that

<sup>257</sup> Michael E. O'Hanlon, "A Flawed Masterpiece," in *Foreign Affairs*, 81, 3 (May/June, 2002): 50-51.

<sup>258</sup> David Rohde and Eric Schmitt, "Taliban Give Way in Final Province Where They Ruled," in *New York Times*, 10 December 2001.

<sup>259</sup> Murray Campbell, "Thousands of Afghans likely killed in bombings," in *Globe and Mail*, 03 January 2002, A1.

<sup>260</sup> Laura King/Associated Press, "Civilian toll in Afghan war likely lower: A review suggests hundreds fell to U.S. bombs, not the thousands the Taliban said," in *Philadelphia Inquirer*, 12 February 2002, A1.

<sup>261</sup> Ian Traynor, "The unfinished war – Afghans are still dying as air strikes go on," in *The Guardian*, 12 February 2002, 4.

<sup>262</sup> After a one-month investigative field trip in Afghanistan, the HRW team returned to New York in early April. Kenneth Roth, executive director of Human Rights Watch - New York, email to author, 05 April 2002 and on 25 June 2002.

between 1,000 and 1,300 civilians may have been victims of collateral damage.<sup>263</sup> The rate of civilians killed per bomb dropped was four times higher than during the NATO-led Kosovo campaign, a result of a switch to less precise GPS-guided from laser-guided bombs.<sup>264</sup> There was also a greater reliance on the dropping of bombs by bombers than by fighter jets; in Operation Allied Force only 2 percent of bombs dropped were launched from bombers while 11 percent of bombs dropped over Afghanistan through until 10 December originated from high altitude bombers. Bombing by fighter jet and by laser-guided targeting thus seems to afford the greatest likelihood of bombing accuracy and the least number of civilian casualties. While fighter jets carry fewer bombs, they also cost less than bombers.

In a more contested compilation of civilian casualties, Economics professor Marc Herold, of the University of New Hampshire, concluded on 10 December that 3,767 civilians had been killed, an average of 62 civilian deaths per bombing day.<sup>265</sup> Regarding methodology, sources for the PDA study were chosen from non-Asian, Western media (BBC, Reuters, Agence France-Presse, Associated Press, The Independent, The Times, The Guardian)<sup>266</sup> while the Herold study depended on reports from Indian, Pakistani and European media<sup>267</sup> including internet surfing practices<sup>268</sup> and other reports such as the Afghan Islamic Press, a pro-Taliban news agency based in Pakistan.<sup>269</sup>

Herold charged the Pentagon with waging a war without witnesses.<sup>270</sup> On 11 October, the Pentagon was said to have purchased exclusive rights to all satellite images from Space Imaging, a US company with information capable of surveying and corroborating claims of collateral damage from coalition bombings.<sup>271</sup> It may also be possible that such a measure was meant to prevent enemy knowledge of the

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<sup>263</sup> Carl Conetta, *Operation Enduring Freedom: Why a higher rate of civilian casualties*, Briefing Paper #11, Project on Defense Alternatives, 18 January 2002, [www.comw.org/pda/0201oef.html#appendix1](http://www.comw.org/pda/0201oef.html#appendix1).

<sup>264</sup> Carl Conetta, *Operation Enduring Freedom: Why a higher rate of civilian casualties*.

<sup>265</sup> Murray Campbell, "Thousands of Afghans likely killed in bombings," in *Globe and Mail*, 03 January 2002, A1. Also Michael Massing, "Grief Without Portraits," in *The Nation*, 04 February 2002.

<sup>266</sup> These sources seemed more attuned to the issue of civilian casualties than were US newspapers. See Carl Conetta, *Operation Enduring Freedom: Why a higher rate of civilian casualties*.

<sup>267</sup> Michael Massing, "Grief Without Portraits," in *The Nation*, 04 February 2002.

<sup>268</sup> Kenneth Roth, executive director of Human Rights Watch - New York, letter to *The Guardian*, 15 February 2002, 23.

<sup>269</sup> Juan Tamayo, "Low Death Count Reflect U.S.'s Technological Might, Taliban's Weaknesses," in *Miami Herald*, 01 March 2002.

<sup>270</sup> Murray Campbell, "Thousands of Afghans likely killed in bombings," in *Globe and Mail*, 03 January 2002, A1.

<sup>271</sup> Roberto J. Gonzales, "Pentagon veils true toll of war," in *San Francisco Chronicle/Deseret News*, 06 January 2002, A7.

position of coalition allies, coalition ground forces and laser-wielding forward air controllers.

William M. Arkin, a columnist for the Washington Post and former army intelligence analyst for MSNBC, working as military advisor to HRW while teaching at the US Air Force School of Advanced Airpower Studies, noted some 300 “incidents” during the campaign, a third of which it was estimated needed further attention because of civilian casualties.<sup>272</sup> HRW had two researchers on the Pakistani-Afghan border for 11 weeks compiling a general picture of targeting failures and errors.<sup>273</sup>

According to one American reporter, 2 out of three bombs dropped during the air campaign were PGMs.<sup>274</sup> In the first six weeks of airstrikes, over 60 percent of bombs were precision-guided munitions.<sup>275</sup> An analysis of the first five days of bombing determined a 43 percent use of smart bombs, which includes satellite-guided and laser-guided bombs.<sup>276</sup> The first two months of bombing saw 72 percent of bombs dropped by the US Air Force as being PGMs, and 60 percent, by the US Navy.<sup>277</sup> During the first week of February, US General Tommy Franks, the commander of Operation Enduring Freedom in Tampa, claimed that among the 18,000 bombs dropped, 10,000 were precision munitions.<sup>278</sup>

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<sup>272</sup> Barry Bearak, Eric Schmitt and Craig S. Smith, “Uncertain Toll on the Fog of War: Civilian Deaths in Afghanistan,” in *New York Times*, 10 February 2002, 1.

<sup>273</sup> Ian Traynor, “The unfinished war – Afghans are still dying as air strikes go on,” in *The Guardian*, 12 February 2002, 4.

<sup>274</sup> John Hendren, “Afghanistan yields lessons for Pentagon’s next targets,” in *Los Angeles Times*, 21 January 2002, A1. Article emailed to author by Emily Clark of the Center for Defence Information (USA) on 22 January 2002.

<sup>275</sup> James Dao and Thom Shanker, “US ready to send additional troops to hunt bin Laden,” in *New York Times*, 21 November 2001, [www.nytimes.com/2001/11/21/international/asia/21MILL.html](http://www.nytimes.com/2001/11/21/international/asia/21MILL.html). The same figure of 60 percent was used on 24 December. See Eric Schmitt and James Dao, “Use of Pinpoint Air Power Comes of Age in New War,” in *New York Times*, 24 December 2001, [www.nytimes.com/2001/12/24/international/24WEAP.html](http://www.nytimes.com/2001/12/24/international/24WEAP.html).

<sup>276</sup> Daniel Green of [www.danshistory.com](http://www.danshistory.com) Email to author on 12 January 2002, pursuant to an enquiry by the author to Globe and Mail global issues correspondent Marcus Gee, who closely monitored the campaign and stated that 9 out of 10 bombs dropped by the US had been PGMs; see Marcus Gee, “Mostly the Right Stuff: How the Americans make war,” in *Globe and Mail*, 22 December 2001, A21.

<sup>277</sup> John A. Tirpak, “Enduring Freedom,” in *Air Force Magazine*, 85, 2 (February 2002): 4, [www.afa.org/magazine/Feb2002/0202airwar.asp](http://www.afa.org/magazine/Feb2002/0202airwar.asp)

<sup>278</sup> Laura King/Associated Press, “Civilian toll in Afghan war likely lower: A review suggests hundreds fell to U.S. bombs, not the thousands the Taliban said,” in *Philadelphia Inquirer*, 12 February 2002, A1.

The PDA study estimated that 56 percent of bombs dropped by 10 December were considered to be PGMs.<sup>279</sup> While the Kosovo action breakdown of used bombs witnessed two-thirds being laser-guided and one-third being unguided, the Afghanistan action, until 10 December, saw 20 percent of bombs being laser-guided, 40 percent being GPS-guided and 40 percent being unguided.<sup>280</sup> The Pentagon announced that two-thirds of Navy fighter jets returned to their carriers without having dropped their bombs,<sup>281</sup> another example, as during the Gulf War, of the complementarity of concerns about military economy of force (accuracy vs wasted valuable, limited resources) and inadvertent IHL concerns.

One of the reasons for civilian casualty rates may have been the difficulty by bombers and ground spotters of distinguishing soldiers from civilians in an impoverished population of largely non-uniformed or untraditionally uniformed combatants dressed similar to their civilian counterparts. It is not certain that US satellites can differentiate armed combatants in civilian dress from unarmed civilians.

As in the Gulf War,<sup>282</sup> the US decided against a compilation of military and civilian casualties,<sup>283</sup> although “the Air Force created a special assessment team at its air operations center in Riyadh to look at cases of possible civilian losses and other unintended damage.”<sup>284</sup> While investigations regarding technological limits, malfunctions and weather problems are one concern, intentionally bombing a target later deemed a mistake due to human intelligence presents a more embarrassing concern. Neither the US nor Afghan governments intend to attempt a tally; the UN and ICRC have not compiled figures.<sup>285</sup>

The Pentagon has investigated some bombing errors and targeting failures, but only two bombing mishaps involved civilian deaths, according to a 29 March

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<sup>279</sup> Carl Conetta, *Operation Enduring Freedom: Why a higher rate of civilian casualties*, citing Richard Newman, “How the war in Afghanistan is being run from Florida,” in *US News and World Report*, 17 December 2001, 18.

<sup>280</sup> Carl Conetta, *ibid.*

<sup>281</sup> James Dao, “Newer Technology Is Shielding Pilots.”

<sup>282</sup> Anthony Cordesman, *The Lessons of Modern War, volume IV: The Gulf War*, 27-28.

<sup>283</sup> Juan Tamayo, “Low Death Count Reflect U.S.’s Technological Might, Taliban’s Weaknesses,” in *Miami Herald*, 01 March 2002. In five and a half months, the US lost 1 CIA agent on 28 November, 3 soldiers due to friendly fire from US bombs on 05 December, 1 soldier in combat on 04 January, and a total of 26 troops during accidents, 21 of which were involved in aircraft crashes.

<sup>284</sup> The team acknowledged but a handful of bombing malfunctions. See Barry Bearak, Eric Schmitt and Craig S. Smith, “Uncertain Toll on the Fog of War: Civilian Deaths in Afghanistan,” in *New York Times*, (10 February 2002): 1.

<sup>285</sup> Laura King/Associated Press, “Civilian toll in Afghan war likely lower: A review suggests hundreds fell to U.S. bombs, not the thousands the Taliban said,” in *Philadelphia Inquirer*, 12 February 2002, A1.

Pentagon report.<sup>286</sup> The often repeated Pentagon claim has been that “any civilian deaths were the result of unavoidable ‘collateral damage’ from attacks on military targets or were people killed by bombs that went astray.”<sup>287</sup> Among US military enquiries was the deliberate striking of an ICRC warehouse compound on two occasions.<sup>288</sup> A *CNN* interview claimed that the Taliban had placed an anti-aircraft battery next to the ICRC warehouse.<sup>289</sup> Falsely blaming the ICRC for not having notified them of the warehouse location, which it had,<sup>290</sup> a Pentagon investigation later revealed that a US Air Force General had exceeded his authority in ordering the intentional second strike, a change in its original claim of human error.<sup>291</sup>

Despite claims by US Defence Secretary Donald Rumsfeld that American weaponry was “probably 85-90 percent reliable,”<sup>292</sup> any ability to confirm such estimates is very difficult, requiring further investigation results from independent reporters and NGOs. General Franks called the campaign the most accurate war in US history.<sup>293</sup>

US targeting information depended heavily on ground-based cooperation with and intelligence from regional warlords, many with political agendas unknown or misunderstood by the coalition. In a society born out of war, Afghan military principles of discrimination, proportionality and restraint did not compare to those of their Western allies. To collect intelligence, 12-member US Special Operations Forces, CIA teams and British SAS began co-mingling themselves into friendly Afghan forces in October. By mid-November, ten such teams were deployed, and by 08 December, 17 teams existed.<sup>294</sup> By early November, 80 percent of US combat sorties were devoted to directly supporting opposition forces in the field.<sup>295</sup> While

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<sup>286</sup> Charles J. Hanley, “Bombing victims gather in Kabul, ‘angry and sad,’ to press U.S. Embassy for compensation,” from *Associated Press*, 06 April 2002.

<sup>287</sup> Charles J. Hanley, “Bombing victims gather in Kabul.”

<sup>288</sup> Barry Bearak, Eric Schmitt and Craig S. Smith, “Uncertain Toll on the Fog of War: Civilian Deaths in Afghanistan,” in *New York Times*, (10 February 2002): 1.

<sup>289</sup> Jim Clancy, Martin Savidge and David Grange, “Civilian Casualties in Fog of War,” on *CNN International*, 11 February 2002.

<sup>290</sup> ICRC Press Release 01/48, *Bombing and occupation of ICRC facilities in Afghanistan*, 26 October 2001. Corroborated by author’s interview of field worker.

<sup>291</sup> Jamie McIntyre, “Pentagon probes bombing of Kabul Red Cross,” in *CNN*, 19 March 2002. [www.cnn.com/2002/03/19/ret.pentagon.redcross/index.html](http://www.cnn.com/2002/03/19/ret.pentagon.redcross/index.html)

<sup>292</sup> Barry Bearak, Eric Schmitt and Craig S. Smith, “Uncertain Toll on the Fog of War: Civilian Deaths in Afghanistan,” in *New York Times*, 10 February 2002, 1.

<sup>293</sup> John Donnelly and Anthony Shahid, “Civilian Toll in US raids put at 1,000 bombing flaws, manhunt cited,” in *Boston Globe*, 17 February 2002, A1.

<sup>294</sup> Michael E. O’Hanlon, “A Flawed Masterpiece,” 51.

<sup>295</sup> Michael E. O’Hanlon, “A Flawed Masterpiece,” 51.

targeting information may have been accurate, the reasons for targeting certain groups, convoys, caves, buildings and installations may have been detrimental to civilians. This manner of proxy belligerence came at a high price to civilians, making the US increasingly vulnerable to intelligence error or deliberate warlord misinformation, as seen in the following examples.

On 20 December, a convoy of suspected terrorists in Paktia province was struck by US bombs, killing some 52 people.<sup>296</sup> While the Kabul regime quickly claimed all victims to be Taliban supporters, residents countered that 107 innocent people had died, including tribal leaders who had been heading to the inauguration of the new interim Afghan leader, Hamid Karzai.<sup>297</sup>

In another case of mistaken intelligence investigated by the *Washington Post*, US airstrikes killed another 52 people from the village of Qalai Niazi on 29 December where people had congregated for a wedding.<sup>298</sup> The incident, killing 25 children as well as the bride and groom, was being investigated by both the ICRC and the UN.<sup>299</sup> While it was the first time that the UN had demonstrated a public concern about the bombing, the Pentagon stated that the presence of ammunition in the village made the village a valid military target.<sup>300</sup> The IHL principle of proportionality was violated, as stated in Protocol I, articles 51.5 (b) and 57.2 (a) iii. No advance warning was known to have been issued by the coalition, a violation of Article 57.2 (c).

Following a 24 January incident, in which 21 civilians were killed and other detainees beaten during a US commando ground raid upon suspected terrorist cells in Oruzgan province, the military ordered a rare investigation, largely due to a complaint to General Franks by the interim Afghan leader.<sup>301</sup> The raid had been decided because solid information to justify airstrikes was lacking.<sup>302</sup> After the Afghan government stated that the raid had been a mistake, the US handed over 27

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<sup>296</sup> *Reuters*, "Afghans Seek Better U.S. Bombing Coordination," in *New York Times*, 08 January 2002.

<sup>297</sup> John Donnelly and Anthony Shahid, "Civilian Toll in US raids put at 1,000 bombing flaws, manhunt cited," in *Boston Globe*, 17 February 2002, A1.

<sup>298</sup> Edward Cody, "Villagers, U.S. At Odds Over Lethal Bombing: Residents Say Al Qaeda, Taliban Never There," in *Washington Post*, 10 January 2002, A1.

<sup>299</sup> Ian Traynor, "The unfinished war – Afghans are still dying as air strikes go on," in *The Guardian*, 12 February 2002, 4.

<sup>300</sup> Anthony Shahid, "Victims of Circumstance," in *Middle East Report*, 222 (spring 2002) [www.merip.org/mer/mer222/222\\_shahid\\_main\\_article.html](http://www.merip.org/mer/mer222/222_shahid_main_article.html)

<sup>301</sup> Barry Bearak, Eric Schmitt and Craig S. Smith, "Uncertain Toll on the Fog of War: Civilian Deaths in Afghanistan," in *New York Times*, (10 February 2002): 1. Those killed were said to be allies of Karzai. See *Globe and Mail*. "Behind the bombing of Canadian troops." editorial. 20 June 2002. A14.

<sup>302</sup> Carlotta Gall and Craig S. Smith, "Afghan Witnesses Say G.I.'s Were Duped in Raid on Allies," in *New York Times*, 27 February 2002. [www.nytimes.com/2002/02/27/international/asia/27RAID.html](http://www.nytimes.com/2002/02/27/international/asia/27RAID.html)

captives who were quickly released.<sup>303</sup> If such mistakes could be made during ground operations, where more time and information is supposed to be available to soldiers than would otherwise be to pilots, how many mistaken airstrikes took place in more remote areas in comparison to this one publicized commando raid?

On 4 February, an armed unmanned CIA Predator drone struck a target believed to be Al-Qaeda members, resulting in further civilian casualties.<sup>304</sup>

### **Targeting decisions: national interpretation of IHL, collateral damage and coalition cohesion**

This section will expose some differing national interpretations to IHL compliance by key coalition states during air campaigns, highlighting the most controversial incidents and coalition repercussions of collateral damage in the four cases. Of particular interest to this study is the effect of political involvement in targeting selection upon IHL compliance and civilian casualty rates. It is also important to examine the influence which coalition cohesion may have had on IHL compliance in the cases.

The requirement of taking all feasible precautions to minimize civilian casualties (Article 57.2) must be weighed against the military necessity to safeguard a belligerent's capacity to fight and ensure its pilots' survival. Even though weapons failures and mistaken target identification were admitted by the Gulf coalition in 1991, state practice during the conflict revealed that noncombatant immunity had become respected as a customary norm, strengthening Articles 48 and 51.2.<sup>305</sup>

According to the legal interpretation of one American military lawyer however, the "law of war is not a suicide pact. It does not require that an attacker employ the most discriminate force available to him."<sup>306</sup> Use of the words "incidental loss of civilian life" in Article 51.5 (b) of Protocol I signifies that death may be a consequence of belligerency and that such force could not be deemed illegal if the

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<sup>303</sup> The CIA later paid compensation to the victims' families, according to a defence official. See Tom Bowman, "Shadow war: Faulty intelligence supplied by competing warlords is leading to costly mistakes in Afghanistan," in *Times Union* (Albany NY), 24 February 2002, B1.

<sup>304</sup> *Associated Press*, "Rumsfeld: CIA Used Pilotless Spy Plane," in *New York Times*, 13 February 2002.

<sup>305</sup> Judith G. Gardam, "Noncombatant Immunity and the Gulf Conflict," 828-9.

<sup>306</sup> W. Hays Parks, "Air War and the Law of War," 54.

rule of proportionality is respected: “the law recognises that an attack upon a military objective may entail ‘collateral’ civilian casualties and damage.”<sup>307</sup>

A political link exists between a state’s interpretation of IHL obligations, collateral damage and the need to maintain coalition cohesion in the face of a common adversary, particularly when the global media has access to the adversary’s terrain during bombing campaigns. Targeting failures accentuate political interest in airpower management given the public accountability of coalition leaders. The 13 February 1991 airstrike upon the Amiriya civilian bunker/command center resulted in a coalition decision to “sharply reduce the bombing of targets in central Baghdad; in the two weeks after the incident, only 5 were struck, compared with 25 in the preceding two weeks.”<sup>308</sup>

While the Gulf War and anti-Taliban campaigns witnessed the relative freedoms of military lawyers and commanders to interpret the laws of war largely without political interference,<sup>309</sup> the Bosnia campaign revealed a very concerted, restrained and pre-meditated civilian-military effort at IHL compliance for specific targets, pre-screened by UN and NATO officials and officers. In Bosnia, some targets were repeatedly struck by NATO<sup>310</sup> in order to maintain pressure upon the adversary while maintaining coalition cohesion. The Kosovo air campaign almost choked as politically-approved targets were quickly exhausted by the third night,<sup>311</sup> and delays in the alliance targeting mechanism forced NATO pilots to strike some targets repeatedly.<sup>312</sup> Both the Bosnia and Kosovo campaigns required commanders to oversee air campaigns while negotiating the complexities of coalition politics.<sup>313</sup>

Unlike the large degree of civilian involvement in targeting decisions against Yugoslavia in 1999, only a minimum of political restraint was exercised against Afghanistan, particularly during the opening weeks of the war, to limit strikes

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<sup>307</sup> This was the legal argument, in para. 29, used by Christopher Greenwood in his memorandum to the House of Commons of the United Kingdom on 22 November, 1999, to defend the use of means employed by NATO against the Federal Republic of Yugoslavia, the *Legality of the Use of Force* case before the International Court of Justice. See website: <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmfaaff/28/0020802.htm>

<sup>308</sup> Thomas A. Keaney and Eliot A. Cohen, *Summary Report: Gulf War Air Power Survey*, (Washington: Office of the Secretary of the Air Force, 1993): 22, 69, 219, cited in Alberto Bin, *Desert Storm: A Forgotten War*, 108.

<sup>309</sup> Both during Republican presidencies in the US.

<sup>310</sup> Tim Ripley, *Operation Deliberate Force: the UN and NATO campaign in Bosnia 1995*, 293.

<sup>311</sup> US General Mike Short, Air Force commander in charge of the NATO air campaign and operating under US General Clark, cited by David Halberstam, *War in a Time of Peace: Bush, Clinton and the Generals* (New York: Scribner, 2001): 444.

<sup>312</sup> William Shawcross, *Deliver Us from Evil*, 381.

<sup>313</sup> Don D. Chipman, “The Balkan Wars: Diplomacy, Politics and Coalition Warfare,” 30.



north of Kabul.<sup>314</sup> Otherwise, ROE were comparatively loose and flexible, remaining almost entirely within military circles. According to a British parliamentary report on the coalition targeting process in October, American pilots operated in what were called “engagement zones,” with pilots given general types of targets, such as moving military vehicles, and gaining rapid approval to hit specific emerging targets from forward air controllers.<sup>315</sup> The Taliban also moved in non-military commercial trucks and foreign aid agency vehicles which they commandeered or stole.<sup>316</sup>

Coalition behavior and intentions differed during the four air campaigns. By the end of each campaign, while the civilian infrastructure of Iraq and Yugoslavia had become targeted, it had been absolutely spared in Bosnia. In Afghanistan, the largely damaged civilian infrastructure at the initiation of coalition airstrikes, civil war having begun 2 decades earlier, was far from matching that in the other cases. It too was mostly spared, especially given that many military targets remained available and given that Kabul was freed of Taliban control by the Northern Alliance within five weeks of bombings.

While the 2001 coalition wanted nothing less than the end of the Taliban hold on Afghan power, the first three campaigns sought the withdrawal of enemy forces from a region as an operation’s end state, not the replacement of a regime. Different degrees of freedom in commander decision-making were used to achieve these goals.

Varying degrees of technology, intelligence and national interpretation of obligations to IHL weakened the unity of Balkan airpower coalitions. Previous disunity had taken place between NATO members during years of intransigence over resolving the Bosnian conflict. During NATO attempts to prevent the fall of Srebrenica in July of 1995, the Dutch Defence minister vetoed the use of NATO airpower out of concern for UN troop safety.<sup>317</sup>

Even before the massacre of Bosnian Muslims at Srebrenica, NATO had been drafting contingency bombing plans, “selecting targets along a sliding scale of

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<sup>314</sup> Thomas E. Ricks and Alan Sipress, “Attacks Restrained by Political Goals,” in *Washington Post*, 23 October 2001, A1, [www.washingtonpost.com/wp-dyn/articles/A36257-2001Oct22.html](http://www.washingtonpost.com/wp-dyn/articles/A36257-2001Oct22.html)

<sup>315</sup> Operation Enduring Freedom and the Conflict in Afghanistan: an Update, Research Paper 01/81, International Affairs and Defence Section, House of Commons Library, (London: 31 October 2001) [www.parliament.uk/commons/lib/research/rp2001/rp01-081.pdf](http://www.parliament.uk/commons/lib/research/rp2001/rp01-081.pdf)

<sup>316</sup> Col. David N. Blackledge, CENTCOM Civil Military Operations, Tampa, Florida, phone conversation, 14 March 2002. See also Alissa J. Rubin, “Humanitarian Aid a War Victim,” in *Los Angeles Times*, 13 November 2001.

<sup>317</sup> William Shawcross, *Deliver Us From Evil*, 163.

political acceptability,”<sup>318</sup> with three options to choose from, Option 3 identifying dual-use civilian-military infrastructure, soldiers and their barracks. The selection of targets had to meet politically-correct standards: NATO “leaders were so intent on avoiding ‘collateral’ damage to civilians that pilots were prevented from going after many key weapons.”<sup>319</sup> On 10 August, a Memorandum of Understanding was signed between the UN and NATO, specifying their need to jointly approve any striking of Option 3 targets.<sup>320</sup> Neither the UN nor North Atlantic Council (NAC) ever reached consensus for approving airstrikes upon Option 3 targets.<sup>321</sup>

Despite Russian arguments against the UN/NATO use of force, the UNSG endorsed NATO’s argument that its airstrikes were permitted under UNSC resolution 836,<sup>322</sup> a measure passed two years earlier, intended to “deter attacks against” UN-declared safe areas. US Envoy Richard Holbrooke wanted a much more forceful bombing campaign than NATO was willing to permit him.<sup>323</sup> While Holbrooke wanted NATO to go to war, General Ryan kept to his approved mandate. The Russian card during Operation Deliberate Force remained utmost in the minds of NATO leaders and commanders eager to avoid any embarrassing accusations of unnecessary collateral damage.

The designating of targets by option evolved in interpretation as did the actual legality of launching strikes.<sup>324</sup> Flexibility depended on which safe area was being protected, meaning that a bridge designated as Option 3 in one targeting zone was an Option 2 target in another zone “though they were originally Option 3 targets

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<sup>318</sup> Paul C. Forage, “Bombs for Peace: A Comparative Study of the Use of Air Power in the Balkans,” 216.

<sup>319</sup> Art Pine, “Bosnia air strikes were on target but limited, U.S. says,” in *Los Angeles Times*, 19 September 1995, 13.

<sup>320</sup> Tim Ripley, *Operation Deliberate Force: the UN and NATO campaign in Bosnia 1995*, 292.

<sup>321</sup> Paul C. Forage, “Bombs for Peace: A Comparative Study of the Use of Air Power in the Balkans,” 224, citing Stephen Dawkins and David Dittmer, *Deliberate Force: NATO’s First Extended Air Operation* (Alexandria, VA: Center for Naval Analyses, 1998): 40.

<sup>322</sup> After realizing the lack of support for its position, the Russians stopped drafting a UNSC resolution claiming the illegality of Operation Deliberate Force. See Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford: Oxford University Press, 2000): 256. Legal scholar Christine Gray erroneously claimed that UN “member states were specifically authorized to use force by the Security Council.” See Christine Gray, *International Law and the Use of Force*, (Oxford: Oxford University Press, 2000): 31.

<sup>323</sup> Paul C. Forage, “Bombs for Peace: A Comparative Study of the Use of Air Power in the Balkans,” 224.

<sup>324</sup> UN/NATO airstrikes were also claimed to be warranted by UNSC resolution 816, authorizing enforcement of a no-fly zone by NATO, also passed in 1993. See Tim Ripley, *Operation Deliberate Force: the UN and NATO campaign in Bosnia 1995*, 166. The citing of both 1993 resolutions was a means by NATO states of avoiding exposure to any new UNSC resolution and thus the likelihood of a Russian veto to the Operation.

in the old plans.”<sup>325</sup> The UN authorized the targeting of indirect military assets such as supply lines.<sup>326</sup> Without informing the UN or submitting airstrike damage reports to the UNSC, NATO’s striking of some bridges and communications centers went well beyond the safe areas, an expansion into previously-agreed Option 3 targets which began to concern the UN Under-Secretary of State for Peacekeeping Affairs, Kofi Annan.<sup>327</sup> Annan’s diplomacy in this matter later earned him the top UN seat.

Civilians again involved themselves in military targeting work four years later. Politicians more than generals wanted to publically defeat Milosevic. But “making war by accepting political constraints that impede sound military preparations can be a prescription for defeat – and nearly was.”<sup>328</sup> The Kosovo campaign revealed the highest example of learn-as-you-go political involvement in targeting decisions. Although airstrike targeting plans had begun by NATO and a separate US cell in the Spring of 1998, “NATO began the war without having achieved any consensus on what the alliance would do if the hostilities extended beyond 48 hours.”<sup>329</sup>

US Generals Michael Ryan and Wesley Clark exercised an almost Bismarkian statesman-strategist composure in the Balkans, a role which became part of the Clinton Doctrine of combining incremental air force with aggressive diplomatic initiatives,<sup>330</sup> a gradual carrot-and-stick approach. Such an approach differed from the Powell Doctrine of hitting hard and heavy from day-one, as demonstrated in the Gulf War. US Generals Norman Schwarzkopf and Tommy Franks were comparatively not required to daily and hourly sell their evolving targeting plans to coalition leaders.<sup>331</sup> Gen. Clark’s US Air Force subordinate, Lt Gen Michael Short preferred a Powell approach against Milosevic,<sup>332</sup> but was temporarily vetoed by Clark, NATO and Washington.

<sup>325</sup> Tim Ripley, *Operation Deliberate Force: the UN and NATO campaign in Bosnia 1995*, 207.

<sup>326</sup> Patrick Bishop and Scott Peterson, “Serb supply lines hit as NATO widens attacks,” in *Daily Telegraph*, 08 September 1995, 13.

<sup>327</sup> William Shawcross, *Deliver Us from Evil*, 185-6.

<sup>328</sup> Ivo H. Daalder and Michael E. O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo*, (Washington: Brookings Institution, 2000): 20.

<sup>329</sup> William M. Arkin, “Operation Allied Force: ‘The Most Precise Application of Air Power in History’,” in *War Over Kosovo: Politics and Strategy in a Global Age*, Andrew J. Bacevich and Eliot A. Cohen, eds. (New York: Columbia University, 2001): 3-5.

<sup>330</sup> Don D. Chipman, “The Balkan Wars: Diplomacy, Politics and Coalition Warfare,” 29.

<sup>331</sup> It would be useful to know if Gen. Franks was stationed at Tampa (while Gen. Schwarzkopf was in Saudi Arabia in 1991) because of its time zone with Washington, thus enabling easier political access to targeting performance, something that proved frustrating to Washington in 1999 while Clark was based in Belgium.

<sup>332</sup> See John A. Tirpak, “Short’s View of the Air Campaign,” in *Air Force Magazine*, 82, 9 (September 1999), [www.afa.org/magazine/watch/0999watch.html](http://www.afa.org/magazine/watch/0999watch.html)

The failure to use the Powell Doctrine in 2001 may have allowed key Afghan regime leaders and their foreign Al-Qaeda sponsors to escape, arguably evidence of greater American concerns for collateral damage, but also tempered by a region ripe with political instability and untamed by previous empires.<sup>333</sup>

In 1999, the US, British and French interpreted the Geneva Conventions through their own political lense. By early 1999, France, Turkey and the US were the only NATO members not parties to Protocol I. All members of the European Union except France were party to Protocol I. Against Yugoslavia, “each instructed their air-crews to stay on the ground when missions they considered legally dubious were taking place.”<sup>334</sup> The Europeans were more fearful of consequences upon regional values and legal obligations. While many nations, especially NATO member Greece,<sup>335</sup> had called for a pause in bombing in March,<sup>336</sup> the idea was not supported by the NATO commander, and had been rejected by the US State Department.<sup>337</sup> A pause was also not tolerated by the Finnish mediator, President Ahtisaari, a non-NATO state, during June mediation efforts.<sup>338</sup>

General Clark learned the difficulties of waging a war with 14 veto-wielding force-contributing countries arguing over the vulnerability of target selection to political repercussions from possible civilian casualties. Describing the multi-state and multi-level targeting approval process as regularly “ricocheting around NATO headquarters”,<sup>339</sup> Clark admitted that the management of such a sensitive campaign lead more than once to NATO almost crumbling.<sup>340</sup> Even within the US position, the

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<sup>333</sup> A Powell Doctrine approach to “taking” Afghanistan with ground forces could have angered the Arab world and raised regional fears and fomented further extremism. See Michael E. O’Hanlon, “A Flawed Masterpiece,” in *Foreign Affairs*, 81, 3 (May/June 2002): 49. In late 1991, when asked to intervene in the Yugoslav crisis with US troops following the success of the Gulf War, US Chief of Defence Staff Gen. Colin Powell is said to have replied: “We do deserts; we don’t do mountains.” See Susan L. Woodward, “Upside-Down Policy: The U.S. Debate on the Use of Force and the Case of Bosnia,” in *The Use of Force after the Cold War*, H.W. Brands, ed. (College Station: Texas A & M University Press, 2000): 112.

<sup>334</sup> Michael Ignatieff, *Virtual War*, 199.

<sup>335</sup> For Czech, Hungarian and Greek reservations on NATO airpower use, see Serge Schmemmann, “Storm Front: A New Collision of East and West,” in *New York Times*, 04 April 1999, cited in Simon Chesterman, *Just War or Just Peace? Humanitarian intervention and international law*, (Oxford: Oxford University Press, 2000): 220.

<sup>336</sup> Wesley Clark, *Waging Modern War*, 202.

<sup>337</sup> Wesley Clark, *Waging Modern War*, 228.

<sup>338</sup> Wesley Clark, *Waging Modern War*, 326.

<sup>339</sup> Wesley Clark, *Waging Modern War*, 227.

<sup>340</sup> Wesley Clark, *Waging Modern War*, xxvi.

avoiding of cracks in public unity<sup>341</sup> proved a tiring exercise for an American commander in a European civil war: the “stress of the relationship with the Pentagon had been the worst part.”<sup>342</sup>

The overwhelming number of strike packages sent over Yugoslavia were led either by Americans or Canadians.<sup>343</sup> But even Canada, whose air force interoperability<sup>344</sup> is closest to that of the US Air Force and therefore more acceptable to joint air campaigns, given their similar planes and NORAD ties, presented a legal challenge to American plans. “Canada’s different legal approach was an issue during the Kosovo conflict in 1999, when the U.S. Air Force would not pair its pilots with Canadian fighters who, under a protocol of the Geneva Convention, were required to be more selective of targets.”<sup>345</sup>

France, a former World War I ally of Serbia, tempered US ambitions while the pro-interventionist British balanced the French and Americans and the newly-elected German government impressively learned fast from developments while rekindling a traditional open door with Russian counterparts. French President Jacques Chirac remarked that it was thanks to him that any bridges were spared during these political wrangles.<sup>346</sup> No British pilots participated in attacks on the TV station and electric power grid because of fears of potential IHL violation.<sup>347</sup> British and French governments prevented their aircrews from striking ground forces if these

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<sup>341</sup> During the 50<sup>th</sup> anniversary of NATO, Clark was not originally welcome by the US Defence Secretary. The 1986 Goldwater-Nichols Act had intended to correct the Vietnam lessons of decentralized command in executing wars by ensuring more joint operations between the US military services as well as greater Pentagon support to field commander decisions. While US General Schwarzkopf as Gulf War commander benefited tremendously from the Act, it had not envisioned the complexities of NATO disunity and Clark’s position within this vortex. See David Halberstam, *War in a Time of Peace*, 455.

<sup>342</sup> Wesley Clark, *Waging Modern War*, 335 and 374.

<sup>343</sup> David G. Haglund and Allen Sens, “Kosovo and the case of the (not so) free riders: Portugal, Belgium, Canada and Spain,” in *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action and International Citizenship*, Albrecht Schnabel and Ramesh Thakur, eds. (Tokyo: United Nations University Press, 2000): 195.

<sup>344</sup> Canada’s 18 CF-18 fighter jets were PGM-capable, unlike most of the other allied air forces. Although accounting for 2 percent of the 912 allied aircraft in the operation, because of superior training experience, Canadians flew 10 percent of all strike sorties, often led by Americans or Canadians. See David G. Haglund and Allen Sens, *ibid.*, 195.

<sup>345</sup> Alan Freeman, “U.K. to hand suspects to Afghans,” in *Globe and Mail*, 18 January 2002, A4, citing comments made by Michael Byers, Professor of Law, Duke University. The author communicated with Mr Byers, the Canadian expert in international law on research leave at Oxford University, who stated that his remarks were learned during discussions with a “very high ranking” US Air Force officer during an academic conference. Email communication of 11 February 2002.

<sup>346</sup> Michael Ignatieff, *Virtual War*, 104.

<sup>347</sup> Michael Ignatieff, *Virtual War*, 207.

were within 500 meters of a village.<sup>348</sup> It was after the NATO bombing of Belgrade's Interior Ministry in early April, broadcast on global television, that calls for member consultations led to the creation of a "bombing by committee" approach, resulting in foreign ministers from the US, UK, France, Germany and Italy conferring daily on targeting decisions.<sup>349</sup> The Europeans, as during the Cold War, continued to exercise a pacifying affect upon American foreign policy behavior,<sup>350</sup> as German political philosopher Immanuel Kant<sup>351</sup> had predicted federations of democracies would become.

Although Operation Allied Force was seen to be a coalition effort, an absolute political necessity given the 50<sup>th</sup> anniversary of the Alliance in April, the Americans by far conducted most of the fighting, based on their own separate operations centre: flying "over 80 percent of the strike sorties, over 90 percent of the advanced intelligence and reconnaissance missions, over 90 percent of the electronic warfare missions and fired over 80 percent of the precision guided weapons and over 95 percent of the Cruise missiles."<sup>352</sup> Americans have always steadfastly refused to allow other nations and especially the UN to command their troops,<sup>353</sup> thus restricting all airpower coalitions to US might and leadership.

General Clark ensured that the coalition's varying standards would not inhibit Washington's desire to punish Milosevic, "by keeping NATO out of missions using American planes. At Vicenza (the NATO Combined Air Operations Centre in Italy) there were two completely separate targeting teams, called cells, one for NATO warplanes, the other strictly American assets."<sup>354</sup> There have been American concerns about conserving US intelligence from NATO allies. A French officer, part

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<sup>348</sup> Wesley Clark, *Waging Modern War*, 275.

<sup>349</sup> Dana Priest, "France played skeptic on Kosovo attacks."

<sup>350</sup> Thomas Risse-Kappen, *Cooperation Among Democracies: the European Influence on U.S. Foreign Policy*, (Princeton: Princeton University Press, 1995).

<sup>351</sup> Immanuel Kant, "Perpetual Peace: A Philosophical Sketch," in Hans Reiss, ed. *Kant: Political Writings*, (Cambridge: Cambridge University Press, 1991): 93-130.

<sup>352</sup> Michael Ignatieff, *Virtual War*, 206, citing Anthony H. Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*.

<sup>353</sup> In Somalia, US troops answered to the US General who was also UN Deputy Force Commander, not to the Turkish General heading UNOSOM II. See Andrew S. Natsios, *U.S. Foreign Policy and the Four Horsemen of the Apocalypse*. (Westport: Praeger and the Center for Strategic and International Studies, Washington Papers/170, 1997): 79.

<sup>354</sup> Michael Ignatieff, *Virtual War*, 103. A French officer was later accused of sharing NATO secrets with the Serbs. See

of NATO's military committee in Brussels, was convicted in 2001 of having shared NATO target information with Serb agents in 1998.<sup>355</sup>

The US remains reluctant to share military intelligence with even its closest NATO allies, including information regarding new technologies. During the Kosovo campaign, the US kept its B-2 bomber based in Missouri "so that its own allies would not snoop around its advanced and highly secret stealth technology."<sup>356</sup> The separate US targeting cell in Italy denied its alliance members details on US cruise missile strikes and operations conducted by B-2 and F-117 stealth aircraft.<sup>357</sup>

The US also views its obligations to IHL differently because of its far superior level of airpower technology in comparison to its NATO allies and air campaign adversaries. Such airpower technology enables greater discrimination in targeting efficiency and thus a greater capacity for IHL compliance. But some military analysts argue that American technological superiority should not become a legal restriction on the behavior of all its airpower assets. "As the undisputed leader in military technology, the United States has every incentive to ensure that its technological supremacy doesn't evolve into a legal liability."<sup>358</sup>

If the capacity to discriminate is there, will states place legal expectations on PGM use in place of available stocks of dumb bombs? If allies know that US technology exists to pre-detonate a camera-loaded cruise missile accidentally heading for a civilian train, embassy or bomb shelter, and such an option is ignored, what would happen to coalition cohesion and to IHL compliance? IHL may not be a suicide pact for pilots, but a commander's requirement to use all means necessary to avoid civilian objects and populations, Article 57.2, applies, regardless of technology and of questions about available bomb inventories.

Perhaps complementary to legal, technological and humanitarian efforts to limit human suffering caused by air campaigns was the role of the media and its impact upon the conduct of airpower and selection of targets, an argument meriting much further research beyond the scope of this study. One could argue that the presence of foreign media in war zones also weighed heavily on any civilian motivations to oversee targeting decisions. In 1991, the "mass media carried every

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<sup>355</sup> Suzanne Daley, "In Embarrassing Episode, French Officer is Guilty of Aiding Serbs," in *New York Times*, 13 December 2001. The US also does not share security intelligence with UN members.

<sup>356</sup> Michael Ignatieff, *Virtual War*, 103.

<sup>357</sup> William M. Arkin, "Operation Allied Force: 'The Most Precise Application of Air Power in History'," 3.

<sup>358</sup> Michael Schrage, "Too Smart For Our Own Good," in *Washington Post*, 02 June 2002, B03.

detail of the campaign into the homes of a domestic public that, although supportive of their governments, proved to be acutely sensitive not only to the losses of their own armed forces but even to those inflicted on the enemy.”<sup>359</sup> Public televising of the scorched remains of fleeing Iraqi military convoys along the US-bombed “Highway of Death” in late February 1991 is also said to have influenced coalition policy to conclude the war.<sup>360</sup>

There is an absolute correlation between media exposure of civilian casualties, public opinion, political involvement in targeting decisions and subsequent IHL compliance. The relative absence of foreign commercial media in Iraq (except Baghdad<sup>361</sup>) and Afghanistan (except Kabul<sup>362</sup>) mirrored an absence of political interference in air campaigns and thus proportionally higher civilian casualties. Unlike during the Kosovo campaign,<sup>363</sup> foreign journalists and analysts were not capable of providing visual proof of civilian suffering which could have pressured the public and coalition leaders into greater IHL compliance. In mid-November of 2001, a US missile hit the Kabul office of the Al-Jazeera television station.<sup>364</sup>

Milosevic and Hussein both made strategic use of Western media to publicize the mistakes of American bombings<sup>365</sup> in Baghdad and Serbia: “stories of civilians carbonized in bombed trains and media workers incinerated by strikes on

<sup>359</sup> Michael Howard, *War in European History*, 142.

<sup>360</sup> Charles J. Dunlap, “Technology: Recomplicating Moral Life for the Nation’s Defenders,” in *Parameters*, (autumn 1999): 3, <http://carlisle-www.army.mil/usawc/parameters/99autumn/dunlap.htm>

<sup>361</sup> Especially monopolized by *CNN*. Founded in 1980 as the world’s first 24-hour all news channel, *CNN*’s coverage of the war from Baghdad led to the post-Cold War coining of the term “*CNN*-factor,” a phenomenon explaining media influence upon foreign policy.

<sup>362</sup> Although the Taliban had decreed the departure of all foreign journalists, two *Al-Jazeera* correspondents and three Afghan reporters working for *Reuters*, *Agence France Presse* and *Associated Press* had been allowed to stay. See *BBC*, “Al-Jazeera goes it alone,” 08 October 2001, [http://news.bbc.co.uk/1/hi/english/world/monitoring/media\\_reports/](http://news.bbc.co.uk/1/hi/english/world/monitoring/media_reports/)

<sup>363</sup> An Italian journalist was killed during a NATO airstrike in late May of 1999. See Wesley Clark, *Waging Modern War*, 334.

<sup>364</sup> Roberto J. Gonzales, “Pentagon veils true toll of war,” in *San Francisco Chronicle/Deseret News*, 06 January 2002, A7. Viewed by some US officials as propagating anti-Western views, *Al-Jazeera*, the Qatar-based station founded in 1996, broadcast Afghan demonstrators attacking the US embassy in Kabul on 26 September and aired video tapes of Osama Bin Laden statements in October. See *BBC*, “Al-Jazeera Kabul offices hit in US raid,” 13 November 2001. In October, the Pentagon is said to have bought the entire output of satellite photographs on ground movements in Afghanistan. See Roxanne Farmanfarmanian, “The Media and the War on Terrorism: Where Does the Truth Lie?” in *Cambridge Review of International Affairs*, 15, 1 (2002): 160.

<sup>365</sup> US intelligence tracked a senior Yugoslav air defence team to Baghdad in February of 1999 for two days. From *International Herald Tribune*, 31 March 1999, cited in Lawrence Freedman, “The split-screen war: Kosovo and changing concepts of the use of force,” in *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action and International Citizenship*, Albrecht Schnabel and Ramesh Thakur, eds. (Tokyo: United Nations University Press, 2000): 431.



television stations.”<sup>366</sup> In Kosovo, even though only 20 bombs went astray, out of a total of 23,000 launched by NATO against Yugoslavia, their impact was known worldwide, thus underlining the importance of media superiority, “that the PGMs which matter the most are precision-guided messages.”<sup>367</sup>

Such worldwide publicity immediately increased the involvement of civilians in targeting decisions which thus curtailed bombing. Vietnam had already proven to be a dire lesson for the Pentagon, where the media became the conscience of the White House. Besides reasons of safety, it is possibly this foreign presence in the form of relief agency workers which is not highly preferred by the Pentagon during air campaigns, a presence examined in section two of this thesis.

Among the most debated targets struck by NATO during the Kosovo campaign were, in chronological order: 1) a passenger train on 12 April, 2) a civilian convoy on 14 April, 3) the RTS TV station on 23 April, 4) the Chinese embassy on 07 May, and 5) the electric power grid in Belgrade at various times, discussed in the next section on dual-use targets. General Clark stated that the coalition’s three most contentious targeting issues were the TV station, bridges and the electrical system.<sup>368</sup>

The targeting of a civilian passenger train was not intentional as the military target was the bridge being used at the time.<sup>369</sup> The moment at which the train became visible would have required, if technically possible, the option of avoiding civilian casualties by auto-detonation of the Maverick missile which was about to strike the bridge. It is known that the pilot or co-pilot did not have such an option.<sup>370</sup> Incidental loss included over 10 civilians.

Over 70 people were killed when an F-16 fighter jet struck a convoy of internally-displaced civilians in mid-April. The practice of human shielding, or commingling of Serb forces with civilians, a violation of Article 51.7 of Protocol I, had been observed by NATO since the previous September. “This included the practice of military convoys joining columns of refugees.”<sup>371</sup> The ICTY judgment admitted the possibility of human error in determining the protected status of persons

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<sup>366</sup> Michael Ignatieff, *Virtual War*, 52, 192.

<sup>367</sup> Grant T. Hammond, “Myths of the Air War over Serbia: Some ‘Lessons’ Not to Learn,” in *Aerospace Power Journal*, 14, 4 (winter 2000), [www.airpower.maxwell.af.mil/airchronicles/apj/apj00/win00/hammond.htm](http://www.airpower.maxwell.af.mil/airchronicles/apj/apj00/win00/hammond.htm)

<sup>368</sup> Wesley Clark, *Waging Modern War*, 249.

<sup>369</sup> Hilaire McCoubrey, “Kosovo, NATO and International Law,” in *International Relations*, 14, 5 (August 1999): 41.

<sup>370</sup> “ICTY Final Report,” 1273.

<sup>371</sup> Hilaire McCoubrey, “Kosovo, NATO and International Law,” 41.

from 15,000 feet: “While there is nothing unlawful about operating at a height above Yugoslav air defences, it is difficult for any aircrew operating an aircraft flying at several hundred miles an hour and at a substantial height to distinguish between military and civilian vehicles in a convoy.”<sup>372</sup>

The reasons for attacking the TV station would not have been legal if they were simply for purposes of halting propaganda.<sup>373</sup> But the coordinated hitting of the radio relay buildings and towers with electrical power transformer stations intended to stop their dual civilian-military function, thus denying communications to Serb troops and affording NATO military advantage. Two previous warnings of the night-time strike did not prevent the deaths of between 10 and 17 people using the building.<sup>374</sup> On 21 June 2002, the former chief of the Yugoslav television network under Milosevic was sentenced to 10 years in prison for his role in the deaths of 16 television employees killed by a NATO missile. He failed to order the evacuation of the station during NATO air raids, instead “ordering the employees to remain at work so their deaths could be used as a propaganda tool.”<sup>375</sup>

The intentional striking of the location later revealed to be the new Chinese embassy and not the Federal Procurement Directorate was the result of an intelligence failure attributed to old maps used by the CIA.<sup>376</sup> The Rendulic rule applies at this point. The US apologized for the error and paid \$32.5 million in compensation to the Chinese government and families of the three killed journalists and 15 injured civilians.<sup>377</sup>

### **The dilemma of dual-use targets: is necessity legality?**

It is necessary to explain the most important ambiguity in international humanitarian law regarding the targeting of facilities with dual civilian-military functions. This section will examine the ICRC interpretation, critiques of this legal loophole and examples of military interpretation in the four cases.

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<sup>372</sup> “ICTY Final Report,” 1276.

<sup>373</sup> “ICTY Final Report,” 1276.

<sup>374</sup> “ICTY Final Report,” 1277.

<sup>375</sup> *Associated Press*, “Yugoslav TV ex-official sentenced to 10 years,” in *Globe and Mail*, 22 June 2002, A13.

<sup>376</sup> Wesley Clark, *Waging Modern War*, 296-7. Another claim has been made that the Chinese were assisting Milosevic. See <http://www.guardian.co.uk/Kosovo/Story/0,2763,203214,00.html>

<sup>377</sup> “ICTY Final Report,” 1281.

In the legal discourse of Protocol I, words such as “mainly”, “essentially” and “effective” in Article 57.2 c, “feasible” (Article 57.2 b), “reasonable” (Article 57.4) are open to interpretation, requiring contextual considerations. The importance of context is understood in the words of Article 52.2: “in the circumstances ruling at the time.” What is feasible is not defined in the Protocol, leaving the commander to interpret this in the heat of battle.<sup>378</sup>

In 1956, in order to clarify the principle of distinction and thus the meaning of places deemed to be military objectives, referred to in Articles 48, 51 and 52 of Protocol I, a proposed list of categories of military objectives was drafted by the ICRC in order to guide the decisions and actions of commanders. These included: installations, constructions and other works of a military nature, including ministries of war and other organs for the direction and administration of military operations; lines and means of communications (railway lines, roads, bridges, tunnels and canals) which are of fundamental military importance, the installations of broadcasting and television stations; telephone and telegraph exchanges of fundamental military importance; factories or plants...whose nature or purpose is essentially military; installations providing energy mainly for national defence, e.g. coal, other fuels, or atomic energy, and plants producing gas or electricity mainly for military consumption.<sup>379</sup>

In a 1991 field study by the Harvard Study Team in Iraq, doctors called for revision of the term “civilian casualties” to include not only those persons injured as a direct result of bombing, given that “the predominant factor contributing to epidemic waterborne diseases was clearly the destruction of the electrical infrastructure.”<sup>380</sup> The Geneva Conventions allow for incidental losses as a result of immediate, indirect, unintended consequences of attack. They exclude details on timeframes for casualties to occur, such as civilians stepping on landmines years after the end of a conflict. Weapons inflicting gradual pain would be a violation of IHL on cruel and inhuman means of combat.

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<sup>378</sup> Oscar Schachter, “United Nations Law in the Gulf Conflict,” in *American Journal of International Law*, 85, 3 (July 1991): 467, citing W. Hays Parks, “Air War and the Law of War,” 156-8.

<sup>379</sup> “ICTY Final Report,” 1267-8, citing *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Yves Sandoz, C. Swiniarski and B. Zimmerman, eds. (1987): 632-3.

<sup>380</sup> Harvard Team Study, “Special Report: The Effects of the Gulf War on the Children of Iraq,” in *New England Journal of Medicine*, 325, 13 (26 September 1991): 980.

In a 1992 field study report, doctors visiting Iraq questioned the claim that “high-precision weapons with strategic targets, ... were producing only limited damage to the civilian population.” “Casualties of war extend far beyond those caused directly by war.”<sup>381</sup> Accusations by advocacy groups of military and thus political irresponsibility are easy to make in hindsight. It is quite another thing for military commanders, focusing on the military capacities of their adversary, to foresee such effects beyond the heat of battle. The words of Article 52.2 of Protocol I, “in the circumstances ruling at the time,” absolve commanders, to a proportionate degree, of such long-term accountability. Accusations of war crimes have no legal suasion until intentional, direct attacks upon civilians and civilian objectives can be proven.

While the NATO coalition barely touched Serbia’s fielded forces,<sup>382</sup> leaving two-thirds of its weaponry and vehicles intact,<sup>383</sup> “Serbia reported that NATO damaged or destroyed 24 bridges, 12 railway stations, 36 factories, seven airports, 16 fuel plants and storage depots, 17 television transmitters, and several electrical facilities.”<sup>384</sup> All of the above targets served both a civilian and military function. Article 52.3 prohibits the attacking of objects in which there is a doubt as to its effective contribution to military action. “Such objects shall be presumed to be civilian.” Television stations transmit military signals as well as public information. Power stations support military computers, communications batteries and repair facilities for military equipment while supplying water treatment plants and hospital sterilization machines.

An ICRC statement about relief operations made mention of refineries and chemical plants being hit “during” the NATO campaign.<sup>385</sup> NATO strikes caused environmental damage through the contamination of rivers and ground water by the spread of petrochemical substances from destroyed power plants, oil refineries and oil

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<sup>381</sup> Alberto Ascherio, et al, “Special Article: Effect of the Gulf War on Infant and Child Mortality in Iraq,” in *New England Journal of Medicine*, 327, 13 (24 September 1992): 935.

Harvard Team Study, “Special Report: The Effects of the Gulf War on the Children

<sup>382</sup> Jeffrey Record, “Operation Allied Force: Yet Another Wake-up Call for the Army?”, 16.

<sup>383</sup> Dana Priest, “United NATO Front Was Divided Within.”

<sup>384</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 35, citing Dana Priest, “Tension Grew With Divide Over Strategy,” in *Washington Post*, 21 September 1999, A-1.

<sup>385</sup> ICRC News 99/25, *Yugoslavia: Clean water for Novi Sad and Vojvodina*, 24 June 1999.

storage tanks, facilities which are essential to civilian life, thus indirectly and arguably a violation of Article 54 of Protocol I.<sup>386</sup>

One retired US military lawyer, a former Army Judge Advocate and legal advisor for NATO's IFOR operation in Sarajevo, claimed loosely that once a civilian object is put to military use, it loses its protected status.<sup>387</sup> This is not the wording of Protocol I, which uses the word "strictly military objectives". However, any loose interpretation of the Protocol renders too easily most any object used by the military vulnerable to attack. "Were this argument to be taken to its logical conclusion, every civilian object that could possibly be used by the military would become a military objective."<sup>388</sup> Protocol I defines a military object as affording an "effective contribution to definite military advantage." General Clark stated that "civilian populations and purely civilian facilities were not targeted."<sup>389</sup> The word "purely" is also open to legal interpretation.

The targeting of the Belgrade electric power grid was originally desired in the first week of the campaign, as was the case during the Gulf War.<sup>390</sup> The power grid was not hit until Day 40, the point at which NATO had agreed it was time to alter ROE and begin targeting the morale of the population in order to inflict pain sufficient to pressure a change in the actions of political leadership, a strategy used in the two World Wars. NATO was able to cut off power to 70 percent of Yugoslavia, although most of it was back on within a day.<sup>391</sup>

While the targeting of the electric power grid took place six weeks into the NATO campaign against Yugoslavia,<sup>392</sup> the Iraqi national power grid had ceased to function by the seventh day of the campaign.<sup>393</sup> HRW comments on a 30 January briefing by US coalition commander General Norman Schwarzkopf, indicating some recognition of attacks being excessive in relation to their concrete and direct military advantage: "allies had rendered 25 percent of Iraq's electrical-generating facilities

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<sup>386</sup> Sergei Alexeyevich Egorov, "The Kosovo crisis and the law of armed conflict," in *IRRC*, 82, 837 (31 March 2000): from website edition [www.icrc.org](http://www.icrc.org)

<sup>387</sup> James A. Burger, "International humanitarian law and the Kosovo crisis: Lessons learned or to be learned," in *IRRC*, 82, 837 (March 2000): 133.

<sup>388</sup> Peter Rowe, "Zero-casualty warfare," 2.

<sup>389</sup> Wesley K. Clark, *Waging Modern War*, xxiv.

<sup>390</sup> Don D. Chipman, "The Balkan Wars: Diplomacy, Politics and Coalition Warfare," 30 General Short, Clark's Air Force subordinate, had flown in the Gulf War.

<sup>391</sup> Dana Priest, "France played skeptic on Kosovo attacks."

<sup>392</sup> Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, 29.

<sup>393</sup> Ariane DeSaussure, "The Role of the Law of Armed Conflict During the Persian Gulf War," 62.

‘completely inoperative’ and an additional 50 percent ‘degraded’.”<sup>394</sup> According to one legal commentator, “(t)he enormous devastation that did result from the massive aerial attacks suggests that the legal standards of distinction and proportionality did not have much practical effect.”<sup>395</sup> The hitting of dual-use electrical generating plants in Iraq seriously affected food supply, water purification, refrigeration capacities, sewage disposal systems and medical facilities, promoting the spread of disease and contamination.<sup>396</sup> The coalition continued to bomb power stations until the last day, the Al-Hartha power plant, which provided water flow and sewage pumps, being hit twelve more times.<sup>397</sup>

The targeting of dual-use civilian-military infrastructures is not illegal except in the case of those works and installations containing dangerous forces like nuclear stations, dams and dikes (Article 56). It is a matter of legal interpretation whether the long-term effects of targeted dual-use facilities is illegal, given that the anticipated military advantage seeks to end a war before such long-term effects exist.

But the continuous bombing of power plants opened the anti-Iraq coalition to accusations of excessiveness, a violation of Articles 51.5 b, 57.2 a iii, and in particular 54. While none of the principal belligerents were parties to Protocol I, under customary international law, it has been argued that illegal starvation may result indirectly, from “indirect attacks, including attacks on targets of a dual military and civilian nature because of their sustenance value.”<sup>398</sup> Subsequent UNSC sanctions against Iraq are as much to blame for the state of disrepair and subsequent malnutrition of the Iraqi population witnessed by the medical survey teams. It is possibly this view, in hindsight of such excessive pain inflicted upon the Iraqi people, which encouraged the US to add relief drops to its bombing campaign in Afghanistan ten years later.

In both the Gulf and Kosovo conflicts, coalition leaders pledged that the campaign was not aimed at the civilian population. Yet the foregoing of strikes

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<sup>394</sup> Human Rights Watch, *Needless Deaths in the Gulf*, 10.

<sup>395</sup> Oscar Schachter, “United Nations Law in the Gulf Conflict,” 466.

<sup>396</sup> Ariane DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War,” 62, citing Harvard Study Team Report: Public Health in Iraq after the Gulf War, May 1991.

<sup>397</sup> Ariane DeSaussure, “The Role of the Law of Armed Conflict During the Persian Gulf War,” 63, citing Bernd Debusmann, “Allied Motives Queried in Raids on Iraqi Plant,” in *Washington Post*, 28 January 1992, A14.

<sup>398</sup> Rene Provost, “Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait,” in *Columbia Journal of Transnational Law*, 30, 1 (1992): 629, citing Casesse, “The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law,” in *U.C.L.A. Pacific Basin Law Journal*, 55, 3 (1984): 91-2.

against fielded forces in favour of direct attacks upon industrial infrastructure in 1991 and 1999, as during the two world wars, served the dual purpose of destroying both the enemy's ability to fight and his morale.<sup>399</sup> Once all leaders saw the difficulties inherent in combating Serb forces from the air through bad weather and lack of ground intelligence, NATO sorties were given permission to shift ROE from targets in Kosovo to the nerve centre of the war, Belgrade.

### **Conclusions on targeting and airstrike results**

While all states and peoples aspire to the highest fulfillment of human rights in peacetime, in times of war, belligerent obligations to respect basic human rights are safeguarded by IHL which prevents communities from totally sliding towards barbarism devoid of values and human decency. Without IHL, human beings remain vulnerable to lowering their wartime existence to selfish Hobbesian predators, beasts in a lawless jungle. The laws of war separate us from social Darwinism, such as the contest of European societies struggling in the devastating Thirty Years War, ended in 1648. Militaries belong to states which are entities formed by people who have consented to forego certain individual freedoms in exchange for state protection including protection from violence. Thus states have a social contract to ensure the preservation of life within and outside the state. Citizens have a contract with states just as states have an obligation amongst each other to preserve the rights of those whom they represent.

Having reviewed the laws of war and the behavior of airpower in the four case studies, US-led air force coalitions have largely met their legal wartime obligations. The measuring of progress in estimating any success at avoiding civilian casualties remains difficult given the different campaign durations, population densities, access to information and number and type of bombs dropped. The studies revealed roughly the following number of civilian casualties: 3000 Iraqi civilians killed over 44 days, 27 Bosnian Serb civilians killed over 16 days, 500 Yugoslav civilians killed over 78 days and some 1150 Afghan civilians killed over 103 days ending 18 January,<sup>400</sup> the later still contested and awaiting HRW ground investigation

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<sup>399</sup> Kenneth R. Rizer, "Bombing Dual-Use Targets: Legal, Ethical and Doctrinal Perspectives," 12.

<sup>400</sup> Average of PDA study estimate by Carl Conetta, *Operation Enduring Freedom: Why a higher rate of civilian casualties*, 18 January 2002.

results. Until the air campaign against the Taliban, coalition efforts to increasingly avoid civilians were more obvious.

With the exception of the second half of the Kosovo air campaign which witnessed a reduction in PGM-use, an analysis of coalition behavior reveals a general increase in the use of PGMs by airpower coalitions, an expensive investment in the principles of economy of force and distinction between civilian and military objectives. Use of PGMs reached 9 percent in the Gulf War, increasing to 70 percent in Bosnia, dropping to 35 percent in Yugoslavia and rising again to 60 percent in Afghanistan. According to the PDA study, Operation Enduring Freedom “failed to set a new standard for precision in one important respect: the rate of civilians killed per bomb dropped.”<sup>401</sup>

Both the military principle of economy of force and the scientific advent of technological warfare have played a positive role in permitting airpower coalitions greater compliance with the laws of war. The involvement of political restraints and civilian scrutiny in the conduct of war has also greatly limited incidents of collateral damage, as proven by comparing the non-involvement of civilians in target decisions against Iraq and Afghanistan.

Until the Afghan campaign, coalition respect of IHL had demonstrated increased compliance. In 2001, civilian controls were largely waived by the new Bush administration for at least two reasons: the measure of public American resolve for the war after a first attack upon US territory since the Japanese attack on Pearl Harbour in 1941, and the appreciated lessons learned from a largely military-managed Gulf War by the same Presidential entourage as in 1991: Secretary of State Colin Powell and Vice President Dick Cheney, both veteran leaders of Gulf War operations, as the former Chief of Defence Staff and the former Secretary of Defence to President George Bush Sr. These circumstances encouraged the coalition to revert to Gulf War-style targeting decisions largely made by the Pentagon’s Central Command in Florida. Given the attack on American lives on September 11th, an interpretation of military necessity would not match that of any of the other three cases.

Legal evaluations by HRW, free of donor restraint, provided the most available criticism of each case study, including criticism of Operation Enduring

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<sup>401</sup> Ian Traynor, “The unfinished war – Afghans are still dying as air strikes go on,” in *The Guardian*, 12 February 2002, 4.



Freedom. Perhaps the absence of any report on Operation Deliberate Force indicated exemplary coalition adherence to IHL in Bosnia in 1995.

The presence of IHL-trained military lawyers during the Gulf War permitted greater chances of IHL compliance although independent investigations of ground realities, hospital records, visits to bomb sites, were limited. The Bosnia campaign witnessed the greatest efforts to minimize collateral damage. However, in the case of Operation Enduring Freedom, this trend was not evident and has disrupted the continuity of previous progress made.

Western states no longer act alone, a practice which has positively affected IHL compliance. Modern coalition warfare has changed the purpose of warring from total destruction and unconditional surrender to the achievement of politically-defined goals. In a 1997 US survey, while 13 percent of people preferred a pre-eminent role for the US in world affairs, 74 percent said that they wanted the US to share power with other countries.<sup>402</sup> Three of the air campaigns received implicit UN backing, only one explicitly.<sup>403</sup> Three of them were also waged to seek a political solution and not total military victory. Coalition warfare is increasingly less about military victory, and more about seeking solutions.

This paper also challenges the notion among proponents of airpower, particularly in the US Congress and the military industrial complex, that airpower alone can provide solutions to political problems at a lesser political, civilian and humanitarian cost. Airpower enthusiasts since World War II have sung the praises of this revolution in military affairs numerous times, after each campaign in 1991, 1995 and 1999.

The use of PGMs in Yugoslavia could not have won the war without the help of Russian arm-twisting and other factors unknown to NATO.<sup>404</sup> By itself

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<sup>402</sup> Samuel P. Huntington, "The Lonely Superpower," in *Foreign Affairs*, 78, 2 (March/April 1999): 39.

<sup>403</sup> Only UN action against Iraq received explicit UN authorization. Having been directly attacked by Muslim fundamentalists in New York and Washington on 9-11-2001, in addition to previous attacks, upon the USS Cole in 2000 in Yemen, upon 2 US embassies in East Africa in 1998 and upon the World Trade Center in 1993, the US claimed the right of self defence, as sanctioned by Article 51 of the UN Charter, also supported by Article 5 of the NATO charter. Such unilateral action is only temporarily permitted until the UNSC has taken measures necessary to maintain international peace and security. Two UNSC resolutions only implicitly endorse international action, for rather police not military action. The first on 12 September called on all states to work together to bring perpetrators to justice, the second on 28 September called on all states to deny safe haven to terrorists and to cooperate to take action against perpetrators. See Ratna Kapur, "Collateral Damage: Sacrificing Legitimacy in the Search for Justice," in *Harvard International Review*, 24, 1 (spring 2002): 42-3. The link of action to the state of Afghanistan was never worded in UN documents.

<sup>404</sup> Grant T. Hammond, "Myths of the Air War over Serbia: Some 'Lessons' Not to Learn."

airpower was useless against Serb forces<sup>405</sup> but not when combined with the simultaneous Ahtisaari-Chernomyrdin talks in Belgrade, the ground resistance of KLA troops and the threat of Apache-supported ground attack from Albania.

Additionally, PGMs could not have engaged the Serbs or Taliban without a ground force component, the KLA and the Northern Alliance, respectively. British and then American Special Forces were deployed to west Iraq as SCUD busters because airpower was limited by weather and especially by the mobility of SCUD missiles hiding under highway underpasses.<sup>406</sup> NATO planes in 1995 counted on Sarajevo-based Rapid Reaction troops on Mt Igman to inform them of Bosnian-Serb targets. Throughout the Kosovo campaign, General Clark never relented in pushing for use of ground forces supported by the 5000-strong Joint Task Force Hawk and its 24 Apache helicopters already stationed in Albania.

While centuries of warfare reveal geo-political and economic gains, today's air coalitions seek only limited gains by limited military action, like NATO's repeated hitting of some Serb targets, to achieve sufficient enough political pressure formerly unavailable prior to the resort to airpower. Such political pressure backed by airpower does not seek military victory as much as face-saving, sustainable political agreement permitting an end to hostilities and the roots of regional stability.

Another lesson from an examination of the case studies reveals an exaggerated dependence on technological capacities while ignoring the human role involved in understanding the ground situation and properly using the available weaponry accordingly and proportionately. Scientific more than human decisions seem increasingly more capable of meeting IHL standards if properly applied. Human dependence on technology can both have positive and detrimental effects on non-combatants and their property. While General Clark boasted of technologies able to accurately project damage to structures, window breakage, and even eardrum rupture,<sup>407</sup> what use is such sophistication if improperly used?

While mistakes are a human reality, military investments into the training of data analysis personnel and the deployment of essential ground-spotters lag behind

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<sup>405</sup> Freedman, Lawrence, "The split-screen war: Kosovo and changing concepts of the use of force," in *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action and International Citizenship*, Albrecht Schnabel and Ramesh Thakur, eds. (Tokyo: United Nations University Press, 2000): 427.

<sup>406</sup> Peter de la Billiere (Sir Gen.), *Storm Command: A Personal Account of the Gulf War*, (London: Harper Collins, 1992): 224.

<sup>407</sup> Wesley Clark, *Waging Modern War*, 238.

the billions of dollars in technology. The covert deployment of foreign ground spotters was possible in Iraq and Afghanistan. The Vietnam syndrome, the major excuse for investments into airpower technology, seems only partly to have been shaken during the Afghanistan conflict although most American losses have not been due to enemy fire, but rather friendly fire,<sup>408</sup> crashes and accidents, arguably a result of over-dependence upon airpower. The US remains reluctant and fearful of deploying appropriate numbers of ground forces in order to adequately support aerial operations. Reports indicate that the Bush administration had concluded that it had erred in not deploying large numbers of US-led ground forces in their search for Afghan-based terrorists.<sup>409</sup>

The use of computerized technology in television-equipped tanks, munitions and surveillance drones, has greatly increased troop protections. Such TV-directed military hardware retains a vital human ingredient, with strike decisions taken by remote imaging. Training simulations of such combat on TV screens helps prepare troops for later non-Nintendo combat scenarios, possibly enabling lesser collateral damage. Therefore, one is left to wonder when technology will allow humans to abort strike missions or pre-detonate a munition once it is deemed to jeopardize civilians, as in the case of the visually-recorded passenger train attack in Yugoslavia so often repeated on worldwide television. The speed at which camera-wielding munitions travel does not necessarily permit missions to be so handily aborted in order to avoid collateral damage.

While international humanitarian law aims to make political and military decision makers more accountable, electoral pressures upon coalition leaders responsible to voters for legal violations and lost troops abroad make them more so, an area of study worthy of further academic attention. Seeking an end to hostilities before any significant loss of coalition lives occurs is especially important to avoiding political liability at the next election. This argument expands upon the democratic peace argument of Kant, that democracies are less likely to go to war, especially against each other, and that coalition partners do not wish to be held solely accountable for troop actions. Nor do democratic states like to be held accountable

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<sup>408</sup> Even the first-claimed loss of an American GI during early March operations against Al Qaeda and Taliban forces has sparked concern, General Franks having launched an investigation to uncover whether an AC-130 Spectre gunship pilot accidentally fired on its own US forces. See Chronicle News Services, "'Friendly fire' may have killed U.S. soldier," in *San Francisco Chronicle*, 30 March 2002, A10.

<sup>409</sup> Paul Knox, "The risks of collaboration," in *Globe and Mail*, 19 April 2002, A13.

for troops lost in coalitions which demonstrate relatively remote gains in national interest. By sharing the transactions costs, including the loss of life to soldiers involved in coalition actions, it is easier for states to absorb such losses in the name of broad coalitions than in the name of narrow national interests.

Could the democratic equation have explained a lesser political reluctance to embark upon risky military campaigns when US Presidents in 1992 (Somalia) and 1999 (Kosovo) were not seeking re-election? If there is a correlation between a political desire for few troop losses in airpower campaigns and the democratic peace debate, can this be extended to argue that there also exists a correlation between a coalition desire for fewer civilian casualties and the democratic peace debate? That members of a coalition seek the moral high ground produces a healthy contest benefiting all innocent civilians during war. Kant called these alliances “pacific federations” because members pacify each other. NATO behavior in 1999 provides proof of this, to the benefit of civilians susceptible to coalition bombing.

Greater political involvement in targeting decisions was also the result of a foreign media presence in some cases, where the broadcasting of airstrike mistakes impacted upon public demands for greater bombing discrimination. Unlike during the Kosovo campaign, where Milosevic welcomed the scrutiny of foreign correspondents to witness the carnage wrought by NATO bombs upon civilian casualties, an absence of foreign independent journalists to corroborate the targeting accuracy claims of the coalition in Afghanistan has led some to claim that the campaign should be remembered as a “smart-bomb war,”<sup>410</sup> given the much vaunted use of high-tech warfare. It should more likely be remembered as a war absent of independent witnesses able to corroborate any claims of collateral damage.

Once conflict begins, all legal restraints prescribed in the rules of war must be respected, regardless of cause, if a state is to maintain any international standard of acceptable military behavior, when arguing the subjectivity of military necessity. Although continued abuse of the legal ambiguity of targeting dual-use facilities took place during the Gulf War, the same coalition forces, eight years later, under greater political pressure, proved a greater capacity to minimize incidental losses. Conflict against a different belligerent could change that.

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<sup>410</sup> Eric Schmitt and James Dao, “Use of Pinpoint Air Power Comes of Age in New War,” in *New York Times*, 24 December 2001. [www.nytimes.com/2001/12/24/international/24WEAP.html](http://www.nytimes.com/2001/12/24/international/24WEAP.html)

Military commanders, lawyers, politicians and scientific acumen have combined to make the waging of war incredibly survivable. Although no pilots have been killed in air campaigns since the early days of the Gulf War, coalition practices toward minimizing collateral damage had until 2001 changed for the better. The promise of surgical airpower, hailed by politicians wary of body-bags, but in the absence of ground spotters, remains however a non-conclusive means of achieving objectives free of error, a practice which negatively pushes the limits of acceptable military necessity.

## **HUMANITARIAN SECTION: THE CONSEQUENCES OF AIRPOWER UPON THE “HUMANITARIAN SPACE”**

“The hottest places in hell are reserved for those who, in times of great moral crisis, maintain their neutrality.” Dante (1265-1321)

While much research has focused on assistance to victims of conflict who succeed as refugees in escaping war, examination of the access of relief to those who remain in the warzone is insufficient. Because it is important to understand the point at which the use of airpower can conflict with and inhibit, if not prevent, the legal and practical access of impartial humanitarian players on the ground, this section will define the notion and current state of the “humanitarian space” created by the actions and legal rights of some key international humanitarian agencies involved in assisting victims of complex political emergencies: the ICRC, the UN Children’s Fund (UNICEF), the UN High Commissioner for Refugees (UNHCR), the World Food Program (WFP) and to a degree Medecins Sans Frontieres (MSF). This section will argue the necessity of partial and non-civilian bodies to respect the rights of humanitarian agencies entitled to work in conflict zones, whether from the air or not.

While only some of the above international and non-governmental organizations (NGOs) provided relief during the case studies, particular attention will be given to the role of the ICRC, briefly examining its relations with military coalitions, the UN and NATO. The right of initiative and of access of emergency relief organizations will be explained. The options of humanitarian corridors and of demilitarized areas for concentrating, protecting and provisioning aid recipients will be discussed. In light of relief agency dependence upon donor states come airborne belligerents, the limits of agency impartiality will be measured. The humanitarian space will be weighed against state sovereignty and the use of airpower. In discussing the case studies, the humanitarian problematic of UN safe areas and of air-dropped relief will be closely examined.

## Rights of access of humanitarian players during conflict

During the Cold War, when governments were largely aligned to one of two ideological camps, communism or liberal democracy, with a few states temporarily able to tread the waters of non-alignment, the humanitarian space in wartime was extremely limited and largely dependent upon the goodwill and altruism of a few advanced democracies. It remained unthinkable that military forces of any government would involve themselves in emergency relief work unless it met their national political interests. Not much has changed in the 1990s. The massive 1948 Berlin airlift, although a political success story with humanitarian benefits, was mounted by Western military forces, ordered to contain communism and safeguard the future of European liberalism and of West Berlin lives and values in the midst of a Soviet sphere of influence. The 1999 NATO construction of refugee camps adjacent to Kosovo, built under political guidance, was funded directly by belligerents in the neighbouring war against Yugoslavia because “the refugees were too important to be left to UNHCR.”<sup>411</sup>

The establishment of three originally-temporary UN emergency relief agencies eventually took shape following World War II: UNICEF and UNHCR, both established by UN General Assembly (UNGA) resolutions, in 1946 and 1950 respectively, and the WFP, established by parallel UNGA and UN Food and Agriculture Organization resolutions in 1962. These three international organizations specialized in relief operations particularly during natural calamities. Disasters of a political nature required not only the consent of the sovereign state where operations were intended but also sufficient donor support of a political nature. Because political disasters had more to do with superpower proxy wars, there was little global consensus for allowing and funding relief action by these UN agencies. The UN was prevented a major role in crisis management.

The Swiss<sup>412</sup> ICRC continued to be the predominant international relief agency, operating in warzones since 1863 by virtue of its globally-sanctioned legal mandate. Articles 59-61 of the 1949 Geneva Conventions granted the ICRC the right

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<sup>411</sup> Review of independent evaluation of UNHCR during Kosovo refugee crisis, in *Refugees*, 1, 118, 2000, 26-27.

<sup>412</sup> Only in the early 1990s did the organization begin routinely hiring non-Swiss nationals through their relations with national societies of the Red Cross Movement. See Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, (Cambridge, Polity Press, 1996), citing Andrew Natsios, “The International Humanitarian Response System,” in *Parameters*, 25, 1 (1995), 74.

of humanitarian initiative, the right to offer relief schemes to populations under occupation, exempt of taxes and free of charge. Their deliveries were open to search and regulation. Contracting parties (belligerents) were to permit the free passage of these consignments and to guarantee their protection. Article 23 stated that contracting parties, obliged to allow such free passage to medical and hospital stores, agreed that such consignments not be diverted from their destination and not afford definite military advantage.<sup>413</sup> Article 70 of Protocol I repeated the above, adding that such relief actions would not be regarded as interference in the armed conflict, in abidance with UN Charter article 2.7 respecting a state's sovereign rights. ICRC operations were also based on consent of the recipient state and any warring parties. The ICRC, through the Geneva Conventions, and UNHCR, through the 1951 Convention on the Status of Refugees, are the only international relief organizations with a humanitarian mandate under international law, based on treaties ratified by the majority of states.<sup>414</sup>

As a result of UN agency limits, the UN delegated most of its field services either by proxy to host states or through contracts and grants to non-governmental organizations (NGOs).<sup>415</sup> Except for a joint ICRC - UNICEF operation in 1979, after having negotiated access for relief to the new regime in Cambodia, the Red Cross found itself largely cut from all communist countries for over thirty years.<sup>416</sup>

In the late 1980s, the French government made unsuccessful attempts to gain support from the UNGA in accepting the principle of a right of interference, "le droit d'ingerence," in order to bring assistance to victims of natural and industrial disasters and of armed conflict.<sup>417</sup> Although not binding in law, the rights of civilians to international assistance and the role of non-governmental organizations in natural and man-made disasters were globally acknowledged by passage of UNGA resolution

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<sup>413</sup> In 1969, an ICRC relief plane was shot down by Nigerian forces. In a later evaluation, the ICRC admitted that Nigerian authorities had the right to set the terms of inspection for relief flights into Biafra, a rebel zone within its country. 14 ICRC delegates died in the civil war, the first conflict in which Red Cross workers were deliberately targeted. See Caroline Moorehead, *Dunant's Dream: War, Switzerland and the History of the Red Cross*, (London: Harper Collins, 1998): 621-6.

<sup>414</sup> Ramsbotham and Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, 15.

<sup>415</sup> Andrew S. Natsios, *U.S. Foreign Policy and the Four Horsemen of the Apocalypse*, 85.

<sup>416</sup> Francois Bugnion, "From the end of the Second World War to the dawn of the third millennium: The activities of the ICRC during the Cold War and its aftermath: 1945-1995", in *IRRC*, (March-June 1995): 215.

<sup>417</sup> Philippe Guillot, "France, Peacekeeping and Humanitarian Intervention," in *International Peacekeeping*, 1, 1 (spring 1994), 31.



43/131 of 08 December 1988.<sup>418</sup> Two years later, on 14 December, 1990, the French sponsored another UNGA resolution, 45/100, to reaffirm the formerly-stated rights and to emphasize the specificity of humanitarian corridors called corridors of “tranquility” for the right of passage by humanitarian workers.<sup>419</sup> Such a corridor of tranquility was opened up in Liberia by ECOWAS in the early 1990s.<sup>420</sup>

The Director for Principles, Law and Relations with the Red Cross Movement, Yves Sandoz, clarified that the right of victims to receive humanitarian assistance depends also on the nature of the agency and the character of the aid being offered, meaning whether it was impartial, apolitical and encompassing the whole of a state’s territory and all parties to a conflict. He also expanded upon the definition of the humanitarian right of initiative: “the parties to a conflict are bound to give a formal reply to any request to conduct an international relief operation,... This requirement does not, however, give them the right arbitrarily to refuse essential relief”.<sup>421</sup> This right of initiative has no relation to any right of military intervention, *jus ad bellum*, for humanitarian purposes, obviously because such forced means of access do not meet Convention standards on the nature of the agency.

Born out of a will to circumvent the limits of sovereignty, in the name of voiceless suffering, MSF reserved the right to choose when to recognize state sovereignty given its duty or “*devoir d’ingérence*” to provide relief. In establishing emergency programs of medical neutrality, it entered territory and refused to recognize the sovereignty of Afghanistan, Iraq, El Salvador and Eritrea.<sup>422</sup> MSF attempts to simultaneously embody the traits of both a humanitarian and human rights organization, a Red Cross and an Amnesty International in one. To MSF, the rights of victims of disaster and conflict, the right to render medical assistance takes precedence over a state’s rights to control its territory. “Neutrality to MSF does not

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<sup>418</sup> Thomas G. Weiss and Jarat Chopra, “Sovereignty under Siege: From Intervention to Humanitarian Space,” in *Beyond Westphalia? State Sovereignty and International Intervention*, Gene M. Lyons and Michael Mastanduno, eds. (Baltimore: Johns Hopkins University Press, 1995), 95.

<sup>419</sup> Mario Bettati, “The right of humanitarian intervention or the right of free access to victims,” in *The Review, International Commission of Jurists*, 49 (1992): 6.

<sup>420</sup> The Economic Community of West African States has Chapter VIII status as a UN-authorized regional arrangement for responding to UNSC resolutions. See Martin Griffiths, Iain Levine and Mark Weller, “Sovereignty and Suffering,” in *The Politics of Humanitarian Intervention*, John Harriss, ed. (London: Pinter and Save the Children Fund, 1995): 48.

<sup>421</sup> Yves Sandoz, *The right to intervene on humanitarian grounds: limits and conditions. Towards a new concept of national sovereignty*, Public hearing, Committee of Foreign Affairs and security of the European Parliament, Brussels, 25 January 1994, 2. See also Ramsbotham and Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, 15.

<sup>422</sup> Ramsbotham and Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, 119.

mean working with consent of both parties in a conflict area, nor does it bring with it the concept of confidentiality.”<sup>423</sup>

In arguing the right of passage to assist those in need, one is reminded of articles 1 and 2 of the 1994 Code of Conduct, co-sponsored by the International Movement of Red Cross and Red Crescent Societies and NGOs in disaster relief: that the humanitarian imperative comes first, and that aid will not be used to further a particular political or religious standpoint.<sup>424</sup>

In establishing the Department of Humanitarian Affairs (DHA)<sup>425</sup> in December of 1991, UNGA resolution 46/182 called upon states whose populations were in need of humanitarian assistance to facilitate the access of impartial organizations, all the while recognizing the need for consent to such actions by the affected state.<sup>426</sup> In 1992, the UNSG appointed a UN representative for IDPs. In 1998, OCHA published guiding principles for internal displacement, fully supported by the Inter-Agency Standing Committee (IASC)<sup>427</sup>, in order to address the growing number of IDPs. In a clear challenge to the idea that sovereignty grants states immunity from responsibility for the well-being of its citizenry, the guidelines “set forth the rights of the internally displaced and the obligations of government and insurgent groups toward these populations.”<sup>428</sup> Principle 25 reflects the same rights granted to the ICRC and others in the Article 59 of the Conventions, the right of initiative or “droit d’ ingerence”:

Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance. All authorities shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.<sup>429</sup>

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<sup>423</sup> Roelf Padt, “The Meaning of Neutrality and its Consequences: The Medecins Sans Frontieres Experience,” in *Violation of Medical Neutrality*, G.L. Wackers and C.T.M. Wenekes, eds. (Amsterdam, Thesis Publishers, 1992), 51.

<sup>424</sup> Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, (Geneva: June 1994): 5-6.

<sup>425</sup> Replaced in 1997 by the Office for the Coordination of Humanitarian Affairs (OCHA).

<sup>426</sup> UNGA resolution 46/182, 78<sup>th</sup> Plenary Meeting, 19 December 1991, [www.reliefweb.int/ocha\\_ol/about/resol/resol\\_e.html](http://www.reliefweb.int/ocha_ol/about/resol/resol_e.html)

<sup>427</sup> IASC was established at the time of the DHA to share knowledge of emergency relief operations. Today, it brings together the UN family of agencies, the International Organization for Migration, the Red Cross movement and three groupings of major international non-governmental organizations.

<sup>428</sup> Inter-Agency Standing Committee, *Humanitarian Action in the 21<sup>st</sup> Century*. (New York: OCHA, 2000), 62.

<sup>429</sup> OCHA, *Guiding Principles on Internal Displacement*, 1998, [www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html)

While the ICRC has been assisting IDPs for decades, UNHCR has occasionally adopted responsibility for IDPs on behalf of the UN family, given the proximity of its mandate toward voluntarily-repatriated refugees, given the strength of the agency's donors, given its donor-driven moves into post-conflict development for the benefit of returnees, and especially given its lead agency status in the Balkans and Great Lakes crises.<sup>430</sup> UN General Assembly resolution 48/116 established criteria in 1993 to guide decisions by UNHCR when the agency invoked interpretation of article 9 of its 1950 Statute: to engage in such activities determined by the UNGA.<sup>431</sup>

The above instructions, though legally non-binding, however normatively contradicted the right of a state to invoke UN Charter Article 2.7 forbidding foreign intervention in a state's domestic affairs, including the situation of IDPs. In September of 1999, the UNSC unanimously adopted resolution 1265 on the protection of civilians in times of armed conflict. Article 7 underlined the "importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including refugees and internally displaced persons, and the protection of humanitarian assistance to them".<sup>432</sup>

One can therefore conclude that international legal instruments entitled impartial aid organizations to reach victims of conflict during the four air campaigns, and where possible, with the consent of warring parties. Later examination will reveal whether relief agencies were able to claim this right of initiative in the cases.

### **Everything is labelled humanitarian: blurred impartiality**

Humanitarian law, which advocates humanitarian work in a neutral space, has for decades challenged the notion of sovereignty; "the history of IHL documents a progressive erosion of the preserve of national sovereignty in favour of humanitarian action."<sup>433</sup> However, the citing of humanitarian grounds as justification by a military coalition for the using of force reached historic distortions in March of 1999 when NATO airpower was launched against Yugoslavia without the consent of the UNSC.

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<sup>430</sup> According to the current head of USAID, UNICEF is the only UN agency that will work in conflicts without the express consent of the government. See Andrew S. Natsios, *U.S. Foreign Policy and the Four Horsemen of the Apocalypse*, 103.

<sup>431</sup> UNHCR, "Chapter 9: War and humanitarian action: Iraq and the Balkans," in *The State of The World's Refugees 2000: Fifty Years of Humanitarian Action*, (Geneva: UNHCR, 2000): 215. <http://www.unhcr.ch/refworld/pub/state/2000/toc.htm>

<sup>432</sup> UNSC Press Release SC/6730, 17 September, 1999, Reliefweb weblink [www.reliefweb.int/w/Rwb.nsf/s/1C2A085455E31FB4C12567F200387C37](http://www.reliefweb.int/w/Rwb.nsf/s/1C2A085455E31FB4C12567F200387C37)

<sup>433</sup> Yves Sandoz, *The right to intervene on humanitarian grounds*, 20.

As a consequence, the humanitarian space within Kosovo vanished entirely, all aid agencies forced to leave the Yugoslav province before NATO bombardment.

In an ICRC clarification, the organization denounced the use of international humanitarian law as an excuse for military intervention.<sup>434</sup> ICRC President Cornelio Sommaruga publically corrected state members of the Peace Implementation Council during the NATO air campaign for labeling the crisis a humanitarian catastrophe when it was “predominantly a political and social catastrophe which indeed ha(d) immense humanitarian implications.”<sup>435</sup>

According to a former ICRC delegate, writing after the NATO building and managing of Kosovar refugee camps, the humanitarian space should be defined as “a concept in and through which impartiality and non-partisanship govern the whole of humanitarian action.”<sup>436</sup> While many emergency relief agencies operate during crises, their culturally-sensitive relations with local partners, nurtured over years of cooperation, carry on far beyond the transitional crisis-response phase into the development phase, to meet long-term needs including capacity-building, institutional training and conflict-prevention projects, functions which soldiers are incapable of fulfilling because their governments withdraw them quickly.

Although the end of the Cold War had brought greater donor and political consensus for the support and actions of a multiplicity of new and old NGOs and especially the three UN relief agencies, a growth industry of humanitarian players also exposed relief agency turf wars, donor competition, duplication of services and frustrated coordination. One could argue that a lack of inter-agency cooperation or an inability or undesirability for UN agencies to coordinate efforts has prompted great powers to deploy their troops on humanitarian airlift missions in Somalia, Bosnia and Rwanda,<sup>437</sup> thus blurring the humanitarian space.

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<sup>434</sup> Anne Ryniker, “The ICRC’s position on ‘humanitarian intervention’,” in *IRRC*, 842, (30 June 2001): 530.

<sup>435</sup> Cornelio Sommaruga, *Humanitarian Issues Working Group of the Peace Implementation Council*, ICRC statement, (Geneva: 06 April 1999).

<sup>436</sup> Beatrice Megevand Roggo, “After the Kosovo conflict, a genuine humanitarian space: A utopian concept of an essential requirement?” *IRRC*, 82, 837 (March 2000): 39.

<sup>437</sup> The US presidential decision to begin military airlifts of relief to Somalia in August of 1992 became the greatest public boost to the worldwide relief effort, its value in media terms was “worth a hundred press conferences.” See Andrew S. Natsios, *U.S. Foreign Policy and the Four Horsemen of the Apocalypse*, 108-9.

Based on its mandate under the Refugee Convention, UNHCR was obligated to provide protection to a half-million Iraqi-Kurds on the border of Turkey in 1991.<sup>438</sup> But it soon found its program managed by Western coalition forces intent on rapid repatriation. “Nongovernmental workers from all parts of the world joined with military forces to make this effort successful. Even U.N. representatives joined in the race against time to get the Kurdish people out of the mountains.”<sup>439</sup> It was not to be the last time that UNHCR would find itself a pawn to donor and political designs.<sup>440</sup> Iraqi officials under military duress did not have a right to search incoming relief convoys, thus jeopardizing the impartiality of aid operations. In such a case would a UN agency qualify as an impartial humanitarian agency under Article 59?

In Bosnia and Somalia, UN agencies and NGOs had insufficiently prepared themselves to work in war-like conditions, alongside military units with political agendas. Unlike the ICRC, their experience at wartime relief was limited. UNHCR, as the designated lead agency for UN relief in the former Yugoslavia, was learning the importance of impartiality during its first ever open-conflict experience.<sup>441</sup> The ICRC never allowed UN military convoys to escort its trucks in Bosnia.<sup>442</sup>

While the ICRC could and did suspend operations in the Balkans for security reasons<sup>443</sup>, UNHCR attempts to do likewise<sup>444</sup> were vetoed by the UNSG in February of 1993,<sup>445</sup> evidence of a degree of donor pressure<sup>446</sup> and the use of aid as a weapon in the absence of effective conflict resolution efforts. Although UNSC resolution 776 of

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<sup>438</sup> Inside Iraqi Kurdistan, UNICEF was designated the lead relief agency. See Andrew S. Natsios, *U.S. Foreign Policy and the Four Horsemen of the Apocalypse*, 88.

<sup>439</sup> Col. James L. Jones, “Operation Provide Comfort: Humanitarian and Security Assistance in Northern Iraq,” in *Marine Corps Gazette*, November, 1991, 107. See also Cpt Michael E. Harrington, “Operation Provide Comfort: A Perspective in International Law,” in *Connecticut Journal of International Law*, 8, 3, (Spring, 1993): 635-655.

<sup>440</sup> NATO members owed Turkey increased domestic stability in return for a Gulf War effort partially based from its soil.

<sup>441</sup> Kristen Young, “UNHCR and ICRC in the former Yugoslavia: Bosnia-Herzegovina,” in *IRRC*, 83, 843 (30 September 2001): 781.

<sup>442</sup> Interview with ICRC delegate Balthazar Stahelin, in Sarajevo, Bosnia, during Pearson Peacekeeping Centre field course, May, 2001. See also Kristen Young, “UNHCR and ICRC in the former Yugoslavia: Bosnia-Herzegovina”, 801.

<sup>443</sup> After the death of a delegate in May, the ICRC pulled out of Bosnia, returning in July. See Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War*, (Washington DC: Brookings Institute, 1995): 286.

<sup>444</sup> UNHCR lost over 50 personnel in Bosnia. See Kristen Young, “UNHCR and ICRC in the former Yugoslavia: Bosnia-Herzegovina”, 792.

<sup>445</sup> Kristen Young, “UNHCR and ICRC in the former Yugoslavia: Bosnia-Herzegovina”, 789.

<sup>446</sup> In 2001, Western liberal democracies were by far the largest donors to both the UNHCR (95%) and the ICRC (85%). See David Forsythe, “Humanitarian protection: The International Committee of the Red Cross and the United Nations High Commissioner for Refugees,” in *IRRC*, 843 (30 September 2001): 676.

September 1992 invoked the concept of negotiated safe passage,<sup>447</sup> with warring parties free to search relief convoys, the impartiality of UN humanitarian work was increasingly lost during three-years of joint UNHCR-UNPROFOR escorts, a critical element in the security of associated aid workers.<sup>448</sup>

### ICRC relations with military coalitions

A certain friction has always existed between the humanitarian community and coalition forces, a result of their very different cultures, training and paymasters, the former based on discipline and hierarchy, the latter on initiative and self-reliance. Although the issue of humanitarian-military relations is not the primary focus of this research, it is impossible to ignore its importance while trying to determine how coalition airpower affects the work of relief agencies and how relief organizations gain access to war victims. When did the two wartime professions begin to sit at the same table and attempt to understand each others' mandates?

Although both missions were authorized by the UNSC, the US-led coalition in Korea in the 1950s flew the UN flag<sup>449</sup> while that in the Gulf War in 1991 did not. Questions have long existed as to the legal obligations of contributing states to coalitions initiated by the UNSC. The UN was not even involved in the drafting of the 1949 Geneva Conventions because the International Law Commission had naively considered war to have been sufficiently outlawed.<sup>450</sup> The UN is not once mentioned in the Conventions<sup>451</sup> although the UN is referred to in Article 89 of Protocol I. So how are military coalitions or international organizations<sup>452</sup> like the UN and NATO

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<sup>447</sup> Sadaka Ogata, "UNHCR in the Balkans: Humanitarian Action in the Midst of War," in *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia*, Wolfgang Biermann and Martin Vadset, eds. (Aldershot: Ashgate, 1998): 189.

<sup>448</sup> The dangers of such escorts led in 1994 to a UNGA resolution on the Convention on the Safety of UN and Associated Personnel, later discussed.

<sup>449</sup> Simon Chesterman, *Just War of Just Peace? Humanitarian intervention and international law*, (Oxford: Oxford University Press, 2000): 241.

<sup>450</sup> Hans-Peter Gasser, *The United Nations and International Humanitarian Law: The ICRC and the United Nations' involvement in the implementation of international humanitarian law*, Paper presented at the International Symposium on the occasion of the fiftieth anniversary of the United Nations, (Paris: Editions Pedone), University of Geneva international conference, (Geneva, 19-21 October 1995): 5, citing Yearbook of the International Law Commission, (1949): 281.

<sup>451</sup> Comment by Professor Rene Provost, IHL law seminar, McGill University, 2002.

<sup>452</sup> During deliberations toward the Additional Protocols, an ICRC suggestion, for inclusion of a provision to allow accession of international organizations to Protocol I, was rejected. See Marten Zwanenburg, "The Secretary General's Bulletin on Observance by United Nations Forces of International Humanitarian Law: Some Preliminary Observations," in *International Peacekeeping*, 5, 4-5 (July-October 1999): 134, citing D. Schindler, "United Nations Forces and International

legally bound to international law? Member states are bound, regardless of participation in a coalition.

The granting of observer status to the ICRC in 1990 greatly enabled the promotion of IHL among UN members and their peacekeepers.<sup>453</sup> It was especially important to emphasize to all states the difference between UN and ICRC work in war-torn countries: that “ICRC humanitarian work and UN peacekeeping operations have completely different basis in law and are conducted under different mandates.”<sup>454</sup> The ICRC meets on a monthly basis with the President of the UNSC.<sup>455</sup> In 1995, the organization finally opened a delegation office in Washington DC. The US government was reported to be the biggest donor to the ICRC in 1997.<sup>456</sup> There was already an office in New York.

The interaction of humanitarian agencies with military organizations and the use of military logistics for humanitarian purposes is not a new development.<sup>457</sup> As early as 1992, NATO had welcomed a humanitarian-military dialogue. Organized by the Department of Humanitarian Affairs (now OCHA) and the International Federation of the Red Cross, and hosted at NATO headquarters in Brussels, the secondment by states of their military and civil defence assets (MCDA) for emergency relief purposes was agreed during humanitarian-military workshops.<sup>458</sup>

The 1994 Convention on the Safety of UN and Associated Personnel, adopted by UNGA resolution 49/59, finally affirmed, by articles 8 and 20, direct UN

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Humanitarian Law,” in Chr. Swinarski, ed. *Etudes et Essais sur le Droit International Humanitaire et sur les Principes de la Croix-rouge en l’Honneur de Jean Pictet*, 521 (1984), 525.

<sup>453</sup> Christian Koenig, “Observer Status for the International Committee of the Red Cross at the United Nations, a legal viewpoint,” in *IRRC*, 280 (January-February 1991): 38.

<sup>454</sup> Christian Koenig, *Observer Status for the International Committee of the Red Cross at the United Nations*, 41.

<sup>455</sup> David P. Forsythe, “The International Committee of the Red Cross and humanitarian assistance – A policy analysis,” in *IRRC*, 314 (31 October 1996): 513.

<sup>456</sup> Michael Ignatieff, “Unarmed Warriors,” in *The New Yorker*, 24 March 1997, 57. For many years the US has been far and away its largest donor, according to Andrew S. Natsios, *U.S. Foreign Policy and the Four Horsemen of the Apocalypse*, 91.

<sup>457</sup> The ICRC made use of military equipment in the 1980s and early 1990s, particularly in Ethiopia. See Meinrad Studer, “The ICRC and civil-military relations in armed conflict,” in *IRRC*, 842 (30 June 2001): 382. The UN has implemented a mechanism for the future delegation of military assets of states in anticipation of relief crises. See

[www.reliefweb.int/ocha\\_ol/programs/response/mcdunet/0mcduninf.html](http://www.reliefweb.int/ocha_ol/programs/response/mcdunet/0mcduninf.html)

<sup>458</sup> [www.reliefweb.int/ocha\\_ol/programs/response/mcdunet/0mcduninf.html](http://www.reliefweb.int/ocha_ol/programs/response/mcdunet/0mcduninf.html) In 1994, during a meeting of states and agencies in Oslo, a non-binding document was drafted to establish guidelines for MCDA secondments, the Oslo Guidelines. During the Somalia intervention in 1993, the US military opened channels of communication with relief organizations. For the first time in history, CENTCOM invited US NGOs to its war room for extensive briefings by senior commanders. See Andrew S. Natsios, *U.S. Foreign Policy and the Four Horsemen of the Apocalypse*, 112.

responsibility for ensuring respect for international humanitarian law by UN forces.<sup>459</sup> This explains why, among the four air campaigns, the greatest respect of IHL was executed by UN-NATO Operation Deliberate Force with exacting precision and legal accountability to IHL.<sup>460</sup> Until 1994, the ICRC was in a constant dialogue with UN lawyers who would put forward various arguments against the application of IHL to troops.<sup>461</sup>

In May of 1996, the UN received ICRC guidelines for UN forces, outlining obligations by UN forces to act according to international customary law and the obligations of member states to the Geneva Conventions. “Until now the situation was ill-defined, since it is the States, not the UN, that are party to the humanitarian law treaties.”<sup>462</sup>

Also in 1996, the ICRC and NATO signed a memorandum of understanding “aimed at giving their relationship a specific structure based on training in international humanitarian law”.<sup>463</sup> The ICRC has been regularly participating in NATO exercises and training courses.<sup>464</sup> NATO itself is not a legal entity. Its member states are individually accountable for the actions of their armed forces under the Geneva Conventions.<sup>465</sup> In response to ICRC urging, and with the advice of former commanders of UN peace-keeping missions,<sup>466</sup> on 06 August, 1999, the UN Secretary General issued guidelines to UN members deployed to potential conflict zones: “Observance by United Nations forces of international humanitarian law”.<sup>467</sup>

### **The operational dilemma: the perils of relief during airpower**

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<sup>459</sup> Antoine Bouvier, “Convention on the Safety of United Nations and Associated Personnel: presentation and analysis,” in *IRRC*, 309 (November-December 1995): 651.

<sup>460</sup> Member states can file legal claims against the UN for property damages suffered by UN operations.

<sup>461</sup> Antoine Bouvier, Convention on the Safety of United Nations and Associated Personnel, 651.

<sup>462</sup> ICRC News 96/19, *UN-ICRC: Guidelines for UN Forces*, (Geneva: 15 May 1996).

<sup>463</sup> Cornelio Sommaruga, Visit to the North Atlantic Treaty Organization: Statement by the International Committee of the Red Cross, (Brussels, 22 December 1999), in *IRRC*, 837, 82 (March 2000): 259.

<sup>464</sup> Jean-Daniel Tauxe, *The ICRC and civil-military cooperation in situations of armed conflict*, 45<sup>th</sup> Rose-Roth Seminar, Montreux, (2 March 2000): 3.

<sup>465</sup> When Yugoslavia brought legal action against NATO for the 78-day bombing campaign, it had to file cases against each state. See Jeremy T. Burton, “Depleted Morality: Yugoslavia V. Ten NATO Members and Depleted Uranium,” in *Wisconsin International Law Journal*, 19, 1 (fall 2001): 17-40.

<sup>466</sup> Meinrad Studer, “The ICRC and civil-military relations in armed conflict,” in *IRRC*, 842 (30 June 2001): 372.

<sup>467</sup> Dietrich Schindler, “Significance of the Geneva Conventions for the contemporary world”, in *IRRC*, 836, 81 (December, 1999): from ST/SGB/1999/13.



Having argued the rights of relief organizations and the legal obligations of coalition forces in wartime, this section will present the logistical challenges and operational consequences of conducting humanitarian action during the four coalition bombing campaigns. The actions of key emergency relief agencies will be examined in order to determine the limits of their access. The intention is to evaluate whether progress is being made by airpower coalitions toward respecting the rights of humanitarian agencies. In light of the 1956 ICRC clarification on objectives deemed legally vulnerable to military attack, the issue of relief convoy vulnerability during air campaigns will be addressed, highlighting the difficulties of making use of such facilities as roads, bridges, railways, airstrips, fuel and electricity supply. A brief examination of UN safe area policy will explain reasons for the use of airpower in Bosnia.

In comparing relief actions in the four cases, the following issues, concerns and obstacles will be analyzed: pre-air campaign agency status and contingencies, presence of foreign aid workers, level of access to aid recipient populations, communications with local staff and partners, operational role of local staff, accountability for aid distribution, security risks/casualties of staff and associated partners, perceptions by local forces of aid workers as agents for airpower targeting, armed/escorted relief convoys in a hostile environment, theft/banditry/misuse of abandoned relief warehouses/vacated agency compounds by belligerents, neutrality of aid agency, consequences to relief agency of donor's association to air campaign belligerent.

It should be noted that the socio-economic development and humanitarian needs of states prior to coalition bombings varied greatly. In 1988, the UN had brokered a peace in the eight-year war between the semi-industrialized, oil-exporting states of Iraq and Iran. By mid-1995, Bosnia was ending its third Summer of civil war. In early 1999, despite political oppression and unemployment, Kosovars enjoyed relative health in an educated and technologically-advanced society where IDPS and refugees had access to cell phones.<sup>468</sup> In the Fall of 2001, the five-year old Taliban regime had come to power in an impoverished, landmine-contaminated state

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<sup>468</sup> Unlike the average humanitarian crisis in Asia and Africa, Kosovar Albanians, having lived in the most advanced Communist society in Europe, "did not conform to clichés of destitution". See Michael Ignatieff, *Virtual War*, 43. The majority of such refugees stayed with relatives, not in camps. See Ian Christoplos, "Reviewing International Experience and Lessons from Kosovo," in Kosovo and the Changing Face of Humanitarian Action, Uppsala University conference, 08 May 2001, [www.kus.uu.se](http://www.kus.uu.se)

ravished by war since the Soviet invasion of 1979. The UN human development index for Afghanistan was far below that of Iraq, Bosnia and Kosovo.

### *Iraq: the ICRC alone*

The US-led military build-up to Operation Desert Storm gave itself five months between Iraq's invasion of Kuwait in August of 1990 and the ultimatum for withdrawal of Iraqi forces from Kuwait on pain of force, beginning on 16 January, 1991. Although aid agencies had ample time to organize their operations, only the ICRC remained in Iraq.<sup>469</sup> After having built relations during the Iran-Iraq war, 9 delegates remained in Baghdad on 16 January, restricted to their premises for security reasons.<sup>470</sup>

UN resolutions failed to remind member states of their obligations to IHL, including the right of impartial and unimpeded access of relief under Article 23: "one of the early sanctions resolutions violated the rule that requires free passage for many sorts of humanitarian aid intended for civilians, even civilians of an adversary."<sup>471</sup> The UN Sanctions Committee established by the UNSC strictly limited and controlled all UN and other relief efforts into Iraq. The ICRC informed the UN Sanctions Committee and the Iraqi government that it would notify the committee of its humanitarian shipments but would not seek its approval to do so.<sup>472</sup>

The UNSC measure transformed UN agencies into complicit parties favouring a belligerent. When Iraq asked the UN to send a humanitarian mission to Baghdad to evaluate food shortages and medical needs, these agencies refused to act until the cessation of hostilities.<sup>473</sup> The image of UN relief agencies suffered greatly from association with the UNSC decision to use force. Attempts by UN humanitarian staff to distance themselves from the political aspects of the UNSC were unsuccessful, causing protests in front of the UNDP offices in Jordan.<sup>474</sup>

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<sup>469</sup> Leonard Doyle, "Crisis in the Gulf: Stance of UN stops it helping Iraqi civilians," in *The Independent*, 26 January 1991.

<sup>470</sup> Paul Watson, "Iraq blocking aid, Red Cross says 'political problems' are cited," in *Toronto Star*, 18 February 1991, A12.

<sup>471</sup> Roy Gutman and David Rieff, eds. *Crimes of War*, (New York: W.W. Norton, 1999): 361-2.

<sup>472</sup> Larry Minear, *United Nations Coordination of the International Humanitarian Response to the Gulf Crisis 1990-1992*, 23.

<sup>473</sup> *Los Angeles Times*, "The Gulf War; The Battle Front; Humanitarian Mission," 24 January 1991, A8.

<sup>474</sup> Larry Minear, U.B.P. Chelliah, Jeff Crisp, John MacKinlay and Thomas G. Weiss, *United Nations Coordination of the International Humanitarian Response to the Gulf Crisis 1990-1992*, (Providence: Brown University, Occasional Paper 13, 1992): 22.

ICRC mobility was hampered by low fuel availability and communications problems. The only means of communicating with ICRC delegates in Baghdad since Day 2 of bombardments was during their few visits to the Iranian border, a 150-mile drive.<sup>475</sup> The ICRC was however able to launch the war's first relief operation on 31 January with the support of both national Red Crescent societies of Iran and Iraq, convoys entering from Iran with nineteen tonnes of emergency medical supplies for Iraqi civilians.<sup>476</sup> A week later, another Red Cross convoy was organized.<sup>477</sup>

On 12 February, a visit to Baghdad via Tehran by Angelo Gnaedinger, the ICRC Director of Operations from Geneva, was made to discuss the prisoner situation and relief access.<sup>478</sup> Unable to gain access to the Foreign Ministry, he was however able to meet the Iraqi Health Minister and the Iraqi Red Crescent Society to win formal agreement for relief. On 17 February, for the ninth time since the UN trade embargo issued in August, 1990, a convoy of Jordanian Red Crescent trucks left for Baghdad, carrying medicine, doctors and infant milk.<sup>479</sup> On 23 February, once the ICRC Baghdad team became more mobile, a sanitary engineer went to Baghdad to begin an assessment, after which a programme was launched.<sup>480</sup>

In an effort to distance itself from the US-led coalition sanctioned by the UN, American UNICEF Director James Grant, in an effort to repeat their successful cooperation during the Cambodian crisis, visited the ICRC on 26 January for talks.<sup>481</sup> In early February, the UNICEF head officially petitioned the coalition and Iraq to allow safe passage to a convoy of medical supplies through a "corridor of peace" or "fire-free zone" from the Iranian border to Baghdad.<sup>482</sup> The roads and bridges from the Jordan border, a much greater distance, had been severely damaged by coalition strikes.<sup>483</sup> Grant referred to the pledges made in 1990 by states at a World Summit for

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<sup>475</sup> Rone Tempest, "Red Cross says Iraq blocking efforts on POWs," in *Los Angeles Times*, 04 February 1991, A5.

<sup>476</sup> David Travers, "A Chronology of Events," in *The Gulf War 1990-91 in International and English Law*, Peter Rowe, ed. (London: Routledge, 1993): 20.

<sup>477</sup> CICR, *Golfe 1990-1991, De la crise au conflit*, Communications a la presse 91/9, 7 fevrier, 1991.

<sup>478</sup> Christophe Girod, *Tempete sur le desert*, 168.

<sup>479</sup> *The Independent*, "Crisis in the Gulf: Convoys leave Jordan," 18 February 1991, 2.

<sup>480</sup> Yves Etienne and P. Giorgio Nembrini, "Establishing water and sanitation programmes in conflict situations: The case of Iraq during the Gulf War," in *Social and Preventive Medicine*, 40, 1 (01 January 1995): 18-26. [www.icrc.org/ihrceng.nsf/4dc394db5b54f3fa4125673900241f2f/dee32cbe2370b1f412](http://www.icrc.org/ihrceng.nsf/4dc394db5b54f3fa4125673900241f2f/dee32cbe2370b1f412)

<sup>481</sup> Christophe Girod, *Tempete sur le desert: Le comite de la Croix-rouge et la guerre du Golfe 1990-1991*, (Paris: Bruylant-Bruxelles, 1995): 166.

<sup>482</sup> Olivia Ward, "U.N. seeks 'peace corridor' to bring in supplies," in *Toronto Star*, 09 February 1991, A12.

<sup>483</sup> Paul Lewis, "War in the Gulf: Relief; Allies Asked to Guarantee Safe Transit on Medical Aid," in *New York Times*, 09 February 1991, 7.

Children conference, at which article 20, paragraph 8 of a summit declaration called for recognition of “periods of tranquility and special relief corridors.”<sup>484</sup> On 16 February, UNICEF and the World Health Organization jointly organized a convoy of medical supplies intended for women and children.<sup>485</sup> MSF was cooperating with Oxfam in Syria in preparing refugee camps along the border, seeing Syria for the first time welcome voluntary relief agencies into its country.<sup>486</sup>

Out of concern for its citizens held in Baghdad, the British government publicly jeopardized the neutrality of the ICRC by linking the organization to ill-informed British bribing statements: “any response to its humanitarian needs depends on Iraq living up to its obligations under the Geneva Conventions and allowing the Red Cross to visit PoWs.”<sup>487</sup> The ICRC survived Thatcher’s attempt to make it a pawn of political leverage.

The post-conflict situation revealed Iraqi and coalition cooperation with the Red Cross over prisoner exchanges, with coalition and Iraqi prisoners being repatriated in Red Cross planes.<sup>488</sup> Still the ICRC went to great effort in distancing its operations from coalition policy toward Baghdad and from the militarization of humanitarian assistance to the displaced Kurdish people of northern Iraq<sup>489</sup> where it conducted its own separate civilian-needs assessments.<sup>490</sup>

Contrary to popular belief, although commonly known as a safe haven by American officials and media, the Kurdish zone of northern Iraq was never declared a protected safe area or protected zone by the UNSC. Resolution 688 of April, 1991, made no such mention, calling on Iraq to “allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq.”<sup>491</sup>

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<sup>484</sup> Leonard Doyle, “Crisis in the Gulf: UNICEF wants Iraq aid corridor,” in *The Independent*, 01 February 1991, 2.

<sup>485</sup> David Travers, *A Chronology of Events*, 22.

<sup>486</sup> Frances Williams, “Crisis in the Gulf: ‘Respect Geneva Conventions’,” in *The Independent*, 18 January 1991.

<sup>487</sup> Leonard Doyle, “Crisis in the Gulf: Food aid linked to care of PoWs,” in *The Independent*, 31 January 1991, 3.

<sup>488</sup> Rick Atkinson, “15 Americans Among Second Group of POWs Flying to Freedom,” in *Washington Post*, 07 March 1991, A25.

<sup>489</sup> In the wake of a defeated Iraq, coalition forces arrived in northern Iraq where returnees and IDPs were to be protected from Iraqi Republican Guards by the threat of airpower. See Nicholas Wheeler, *Saving Strangers*, 151.

<sup>490</sup> David Forsythe, “The International Committee of the Red Cross,” 5 of web version.

<sup>491</sup> Weiss and Collins, *Humanitarian Challenges and Intervention*, 75.

Given the heavy presence of armed forces from a dozen states by mid-1991.<sup>492</sup> The Kurdish enclave did not meet the standards of the Geneva Conventions on protected zones. The US-led coalition threatened the use of airpower to safeguard the coalition-declared Kurdish safe haven. US-led airstrikes enforcing a no-fly zone in northern and southern Iraq continue to this day.

### ***Bosnia: “safe areas” and airpower***

Although there is no specific mention of humanitarian corridors in the 1949 Geneva Conventions, Article 14 permits the establishment of hospital and safety zones, while Article 15 enables neutralized zones, where non-combatants can seek refuge for medical attention and relief provisions in areas restricted to those not taking part in hostilities. A protecting power or the Red Cross may offer its good offices in order to facilitate recognition. Articles 59 and 60 of Protocol I provide greater detail to such non-defended localities and demilitarized zones. Devoid of hostilities, respect of these areas shall be mutually agreed to by the parties. An impartial humanitarian organization may assist in reaching agreement on such a zone.

During the Gulf War, the ICRC proposed the establishment of safe towns<sup>493</sup> or security zones.<sup>494</sup> During previous conflicts, the UN had organized “corridors of peace” or “periods of tranquility” such as during Operation Lifeline Sudan, during an agreement between the Angolan government and UNITA rebels and during fighting between governments and rebel forces in Central America.<sup>495</sup>

In Bosnia, the ICRC called for the establishment of protected zones in October of 1992.<sup>496</sup> Six months later, UNSC resolution 819 declared Srebrenica to be a “safe area”.<sup>497</sup> But the resolution’s vague wording did not even make mention of a

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<sup>492</sup> Over 23,000 US-commanded troops from NATO states, in addition to Australia. See Cpt. Michael J Harrington, “Operation Provide Comfort: A Perspective in International Law,” in *Connecticut Journal of International Law*, 8, 2 (spring 1993): 650.

<sup>493</sup> Paul Watson, “Iraq blocking aid, Red Cross says ‘Political problems’ are cited,” in *Toronto Star*, 18 February 1991, A12.

<sup>494</sup> Mark Fineman, “Baghdad Turns Deaf Ear to Red Cross Plea to See POWs,” in *Los Angeles Times*, 18 February 1991, A5.

<sup>495</sup> Leonard Doyle, “Crisis in the Gulf: UNICEF wants Iraq aid corridor,” in *The Independent*, 01 February 1991, 2.

<sup>496</sup> Jean-Philippe Lavoyer, “International Humanitarian Law, Protected Zones and the Use of Force,” in *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia*, Wolfgang Biermann and Martin Vadset, eds. (Aldershot: Ashgate, 1998): 270. See also ICRC, “*Saving Lives: the ICRC’s mandate to protect civilians and detainees in Bosnia-Herzegovina*,” (Geneva: ICRC, 1995): 5.

<sup>497</sup> The ICRC and UNHCR deployed personnel there within a week. See Lt. Gen. Lars-Eric Wahlgren, “Start and End of Srebrenica,” in *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia*, Wolfgang Biermann and Martin Vadset, eds. (Aldershot: Ashgate, 1998): 174.

requirement of demilitarization by the parties.<sup>498</sup> The term “safe area” caused much confusion to the UNPROFOR commander who, given the guidance of the Geneva Conventions, ultimately decided to apply the Geneva Convention definition of a demilitarized zone according to Article 60 of Protocol I.<sup>499</sup> Five more towns were later declared safe areas by the UNSC, including Sarajevo.<sup>500</sup>

Citing the need to protect<sup>501</sup> remaining Muslims in the safe area of Gorazde, NATO states at the London conference counted the failed safe areas of Zepa and Srebrenica among strong reasons stimulating implementation of NATO’s Operation Deliberate Force in August.<sup>502</sup> The operation necessitated the withdrawal of UN forces from the enclave in order to avoid previous hostage taking embarrassments, a move criticized by MSF as a “blatant contradiction of the various international commitments on protecting the enclave.”<sup>503</sup>

The UNSC objective in the safe areas was strategic, a measure whose intention was to influence the course of the war by allowing minorities concerned to remain in place, while still permitting states concerned to avoid confrontation.<sup>504</sup> It was never clear whether the safe areas were designed to protect territory or people.<sup>505</sup>

It could be argued however that the UN’s dependence on NATO airpower to deter Bosnian Serb attacks upon the safe areas led to the fall of Srebrenica in the first place. The use of airpower without the requisite ground support to inform, target, surround and consolidate airstrike gains proved insufficient until combined with a Rapid Reaction Force of ground troops surrounding Sarajevo in the war’s third summer. “The failure of air power to deliver the Security Council’s promise to protect the safe areas proved yet again that air power is no substitute for an effective

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<sup>498</sup> Jean-Philippe Lavoyer, “International Humanitarian Law, Protected Zones and the Use of Force,” 274.

<sup>499</sup> Lars-Eric Wahlgren, “Start and End of Srebrenica,” 170.

<sup>500</sup> UNSC Resolution 824, 06 May 1993.

<sup>501</sup> A 1999 ICRC survey of public opinion toward modern war determined that people in France, the UK and the US generally believed that specific interventions by the international community to protect civilians are a good idea: “80 percent support the idea of ‘protected areas’.” See Greenberg Research, *People on War: country report France, United Kingdom, United States, ICRC worldwide consultation in the rules of war*, (Geneva: October 1999): iii, [http://www.icrc.org/eng/onwar\\_reports](http://www.icrc.org/eng/onwar_reports)

<sup>502</sup> John Darnton, “Accord in London,” *New York Times*, 22 July 1995, A1, and Craig R. Whitney, “Allies Extending Shield to Protect All Bosnian Havens,” *New York Times*, 2 August 1995, A1. Both cited in Chapter three of Brian W. Greene, *Towards Humanitarian Intervention: The Intersection of International Norms and State Identity*, (draft Ph.D. dissertation, McGill University, 2002).

<sup>503</sup> Christopher Bellamy, “Ukrainian UN troops quit Gorazde ‘safe haven’,” in *The Independent*, 25 August 1995, 9.

<sup>504</sup> Jean-Philippe Lavoyer, “International Humanitarian Law, Protected Zones and the Use of Force,” 272.

<sup>505</sup> Sadaka Ogata, “UNHCR in the Balkans,” 192.

force on the ground.”<sup>506</sup> One UNPROFOR commander admitted the limits of airpower for humanitarian purposes: “It simply is not militarily possible to secure safe areas or enforce the passage of convoys by the use of air power alone.”<sup>507</sup>

Operation Deliberate Force, begun on 30 August, 1995, seems to have largely targeted weapons, ammunition depots, tanks, radar bunkers and air defense systems while excluding such dual-use facilities as electrical stations, power plants, transport vehicles and oil refineries. Airstrikes did hit Bosnian Serb communications facilities,<sup>508</sup> as well as bridges and roads near Gorazde.<sup>509</sup> Airstrikes did not present a serious logistical barrier to humanitarian ground operations as most UNHCR-led relief convoys to safe areas had largely been blocked by fighting.<sup>510</sup> After striking anti-aircraft installations at Banka Luka, Red Cross personnel were confined to their premises by Serb authorities, which prevented them from assessing humanitarian needs and confirming alleged reports of civilian casualties caused by US Tomahawk Cruise missile strikes.<sup>511</sup>

After Bosnian Serbs agreed to withdraw the bulk of their heavy weapons to the 20-kilometer exclusion zone around Sarajevo, the 15 September UN statement of agreement included humanitarian transit rights through Serb-held territories in order to access Sarajevo.<sup>512</sup> The Sarajevo airport was soon reopened to humanitarian flights for the first time in five months.<sup>513</sup>

### ***Kosovo: a late trickle***

Following the failure of mediation attempts and the decision to withdraw international monitors, NATO recommended that UNHCR and other UN personnel

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<sup>506</sup> Nicholas Wheeler, *Saving Strangers*, 255.

<sup>507</sup> Lt Gen Sir Michael Rose, “A Year in Bosnia: What has been achieved,” in *RUSI Journal*, (June 1995): 24.

<sup>508</sup> Liam McDowall, “Bosnian Serbs Reject U.N. Demands; NATO Issues Ultimatum”, from *Associated Press*, 02 September 1995.

<sup>509</sup> Liam McDowall, “A New Peace Bid for Bosnia – U.S. Announces Talks After NATO Suspends Airstrikes on Serbs,” in *Seattle Times*, 01 September 1995, A1.

<sup>510</sup> Over 80 percent of all emergency supplies distributed to civilians in Bosnia during the war were delivered by UNHCR. UNHCR, “Chapter 9: War and humanitarian action: Iraq and the Balkans,” in *The State of The World's Refugees 2000: Fifty Years of Humanitarian Action*. UNHCR: Geneva, 2000): 227. <http://www.unhcr.ch/refworld/pub/state/2000/toc.htm>

<sup>511</sup> Julian Borger and David Hearst, “Russians Seek to Halt NATO Raids,” in *The Guardian*, 12 September 1995, 3.

<sup>512</sup> Maud S. Beelman, “NATO Halts Strikes,” of *Associated Press*, 15 September 1995.

<sup>513</sup> Robert Fox, “Bosnia: Cheers and Doubts Greet Sarajevo Aid Flight,” in *Daily Telegraph*, 16 September 1995, 13.

leave Kosovo.<sup>514</sup> Until 23 March, the WFP had been dropping and distributing food to some 210,000 Kosovars “facing food shortages because of Serb repression.”<sup>515</sup> The WFP had stockpiled food in the border regions of Kosovo’s neighbours.<sup>516</sup>

Prior to NATO action, the ICRC had 70 staff in Kosovo while UNHCR provided assistance to some 400,000 people in Kosovo with relative freedom.<sup>517</sup> With the initiation of airstrikes on 24 March, the ICRC office in Pristina closed 5 days later, citing security reasons.<sup>518</sup> On 26 April, the ICRC President visited Belgrade, its delegation office never having closed, where he met with the Yugoslav President and received his personal assurances for the organization’s freedom of mobility and safety in Kosovo.<sup>519</sup> Re-opening on 24 May, 17 days before the end of NATO airstrikes, delegates returned to Kosovo after having received Yugoslav assurances and encouragement from NATO.<sup>520</sup> In May, joint ICRC and Yugoslav Red Cross (YRC) activities provided relief to airstrike victims in six towns throughout the territory.<sup>521</sup> While not accusing NATO of violations for targeting dual-use facilities, the ICRC stated that it was rebuilding the water supply network of a northern city where the water supply was cut to 90,000 people.

The ICRC found it difficult to work in the extremely hostile environment that had become Kosovo during the last three weeks of joint ICRC-YRC operations.<sup>522</sup> The operations were able to avoid being struck by airstrikes by keeping open, transparent channels with all sides in the conflict. The ICRC has had regular contacts with NATO for years, with both organizations coming to consensus on communication channels and procedures. Before the launch of NATO airstrikes, the ICRC had communicated warehouse and office locations in Yugoslavia. During the bombing, the ICRC head office in Belgrade would provide the full-time ICRC delegate in Brussels with 48-hours notice of an intended relief convoy operation for

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<sup>514</sup> William Shawcross, *Deliver Us from Evil*, 364.

<sup>515</sup> Tracey Lawson, “Trapped Albanian Villagers Face Starvation in the Hills,” in *The Scotsman*, 15 April 1999, 10.

<sup>516</sup> Paul Valley and Christopher Brading, “War in the Balkans: Famine Stalks the Fleeing Hordes as Relief Agencies Struggle to Keep Up,” in *The Independent*, 01 April 1999, 3.

<sup>517</sup> Michael Pugh, “Civil-Military Relations in the Kosovo Crisis: An Emerging Hegemony?” in *Security Dialogue*, 31, 2 (June, 2000): 233, citing Nicholas Morris, “UNHCR and Kosovo: A Personal View From Within UNHCR”, in *Forced Migration Review*, 5 (August 1999): 15.

<sup>518</sup> ICRC Position Paper, 01 July 1999.

<sup>519</sup> ICRC Press Release 99/23, *Crisis in the Balkans: Yugoslav authorities give ICRC President assurances for a return to Kosovo*, 26 April 1999.

<sup>520</sup> Cornelio Sommaruga, “Kosovo: All Sides Must Let the Red Cross Work in Kosovo,” Extract from *International Herald Tribune*, 26 May 1999.

<sup>521</sup> ICRC News 99/19, *Balkans crisis: Aid stepped up for air strike victims in Yugoslavia*, 12 May 1999.

<sup>522</sup> Interview by author with field worker, 21 March 2002.



transmission to NATO. NATO would be informed of field information on convoy times of departure, intended routes, number and nature of vehicles, all in clearly-marked Red Cross-emblazed vehicles. The actual distribution of relief stocks was carried out by the Yugoslav Red Cross, under ICRC monitoring, throughout the territory of Yugoslavia, in both Serbia and Montenegro, while responding to the effects of bombings on the population. Security concerns within Kosovo itself were compounded by combat between the KLA and Yugoslav/Serbian armed forces.

To underline the need for relief operations beyond border areas, the Pope called on the Belgrade government to create a humanitarian corridor to improve relief to IDPS and refugees.<sup>523</sup> The UN High Commissioner for Refugees however stated that the option of calling upon the services of a neutral third-party for delivery of relief within Kosovo was not viable in such an intense conflict, and that any UNHCR aid workers would only return once Yugoslav forces had withdrawn and international peacekeepers had been deployed.<sup>524</sup> Her political pronouncement immediately disqualified UNHCR from Article 59 status as an impartial relief agency because it made the agency sound like it was working for NATO. In the face of Serb-led minority oppression, KLA activities and NATO threats, MSF,<sup>525</sup> UN agencies<sup>526</sup> and other NGOs found themselves unable to maintain a sense of independence from all parties<sup>527</sup> during the civil war, the result of which was the abandoning of the internally displaced inside Kosovo and the rest of Serbia.

However, third-party intervention was attempted in a limited capacity. A joint humanitarian assistance operation called "Operation Focus" was organized and conducted by four countries during the bombing: NATO member Greece, Switzerland, Russia and later Austria.<sup>528</sup> On 28 April, the Greeks, having distanced themselves from NATO bombings, launched relief operations into Kosovo while the

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<sup>523</sup> BBC, "Pray for Peace," 04 April 1999.

<sup>524</sup> Douglas Hamilton, "Brussels – No air drop, no convoys for Kosovo stranded," from *Reuters*, 14 April 1999.

<sup>525</sup> Michael Pugh, "Civil-Military Relations in the Kosovo Crisis: An Emerging Hegemony?" in *Security Dialogue*, 31, 2 (June 2000): 236, from Elizabeth Becker, "With NATO in Charge, Relief looks Less Neutral", in *New York Times*, 10 April 1999, citing Joelle Tanguy of MSF.

<sup>526</sup> In September of 1998, a UNHCR convoy was turned back by a KLA checkpoint. See Wendy Lubetkin, "UN Appeals for Funds to Avert Catastrophe in Kosovo this Winter," 08 September 1998, USIA European Correspondent, from Human Rights Watch, *Humanitarian Law Violations in Kosovo*, (New York: Human Rights Watch, 1998): 86.

<sup>527</sup> In July of 1998, KLA forces temporarily confiscated an MSF vehicle. See "Kosovo Rebels Confiscate an MSF Vehicle," *Agence France Presse*, 24 July 1998, from Human Rights Watch, *Humanitarian Law Violations in Kosovo*, (New York: Human Rights Watch, 1998): 86.

<sup>528</sup> Christoph I. Lang, Swiss Ministry of Foreign Affairs, Department of Humanitarian Aid and SHA, Bern, email communication of 28 February 2002.

Russians were based in Belgrade, the Swiss in Podgorica, Montenegro, and Skopje, Macedonia, and the Austrians in Nis, Serbia.<sup>529</sup> Non-ICRC Swiss operations were coordinated from Bern.<sup>530</sup>

Five relief trucks entered Kosovo from the Greek border on 06 May, followed by four more trucks on 28 May.<sup>531</sup> Attempts to then distribute aid stored in Gracanica, 12 kms from Pristina, were blocked by Serb authorities who arrested the Greek aid coordinator, putting him under house arrest for nine days.<sup>532</sup> Because the Greek relief convoy had not been cleared by Serb customs, their distribution was halted until eventually given to local branches of the Yugoslav Red Cross.<sup>533</sup> Under Article 59 of the 1949 Conventions, belligerents are allowed to search relief convoys.

On 05 May, another Greek-based relief effort by international NGO Doctors of the World<sup>534</sup> (Medecins du Monde or MDM) entered Kosovo with three trucks and a jeep carrying medicines and a Greek neurosurgeon.<sup>535</sup> Although having received Yugoslav approval, and bearing clearly-visible signs of its humanitarian nature, the convoy was almost directly struck by a munition, exploding some 100 meters away, while nearing the town of Urosevac, 25 miles from Pristina.<sup>536</sup> Nobody was injured. While Serbia's Tanjug state media blamed NATO for the "attack," claiming 2 of the 3 trucks to be damaged,<sup>537</sup> NATO denied hitting the convoy, adding that the NGO had publically stated that it did not know the origin of the explosion, whether a munition had been dropped from the air or fired from the ground. The NGO's Greek spokesperson in Athens did state that the convoy had suffered damage, that it "had been hit."<sup>538</sup>

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<sup>529</sup> Konstantinos Georgiou, head of Operation Focus Greek mission into Kosovo, Greek Ministry of Foreign Affairs, Athens, email to author, 18 March 2002, with collaboration from the Greek embassy in Ottawa.

<sup>530</sup> Christoph Lang, 28 February 2002.

<sup>531</sup> Konstantinos Georgiou, 18 March 2002. Hellenic Radio (ERA) announced on 26 April that 6 Greek relief trucks arrived from Thessaloniki in Pristina that day accompanied by Greek Ambassador to Belgrade Panayotis Vlasopoulos. Operation Focus was not mentioned. See [www.hri.org/news/greek/eraen/1999/99-04-26.erean.html#07](http://www.hri.org/news/greek/eraen/1999/99-04-26.erean.html#07)

<sup>532</sup> Konstantinos Georgiou, 18 March 2002.

<sup>533</sup> Interview by author with field worker, 21 March 2002.

<sup>534</sup> After co-founding MSF, French doctor Bernard Kouchner helped found MDM along similar principles of *droit d'ingérence*: the right of humanitarian initiative being more important than state sovereignty.

<sup>535</sup> *Associated Press*, "Relief Convoy struck by bomb in Kosovo," from *USA Today*, 05 May 1999, [www.usatoday.com/news/index/kosovo/koso520.htm](http://www.usatoday.com/news/index/kosovo/koso520.htm).

<sup>536</sup> *Associated Press*, "Relief Convoy struck by bomb in Kosovo," 05 May 1999.

<sup>537</sup> Tanjug news agency. See via [www.fas.org/man.dod-101/ops/kosovo\\_n99-05-05.htm](http://www.fas.org/man.dod-101/ops/kosovo_n99-05-05.htm)

<sup>538</sup> *Associated Press*, "Relief Convoy struck by bomb in Kosovo," 05 May 1999.

Operation Focus relief trucks were able to avoid NATO bombs by their communications with NATO coordinators in Skopje, informed of the times of travel and routes employed by the Greek trucks.<sup>539</sup> Operation Focus trucks also avoided potential NATO targeting by placing distinctive orange textile sheets on their convoys.<sup>540</sup> The Greek humanitarian relief coordinator acknowledged that Operation Focus succeeded in its political intention of distancing Greece from its NATO members by adopting a humanitarian approach, not unlike the public relations objective of US military aid drops over Afghanistan, later discussed.

During these relief operations, humanitarian-military liaising took place at US CENTCOM in Florida in order to share information intended to avoid the bombing of these relief operations.<sup>541</sup> NATO wanted to know in advance the movements of these relief operations.<sup>542</sup> General Clark mentioned his concern about hitting the relief convoys arriving from Greece, thus complicating his airstrike plans against Serb forces.<sup>543</sup> Clark also admitted two near misses upon ICRC convoys during NATO airstrikes in mid-May.<sup>544</sup>

On 16 May, a UN humanitarian assessment team, including UNHCR, WFP, UNICEF and six other specialized agencies, arrived in Yugoslavia, spending ten days visiting areas of Yugoslavia, including various locations in Kosovo.<sup>545</sup> The mission excluded the ICRC, never having left Yugoslavia, but included Save the Children, said to represent all NGOs.<sup>546</sup> The mission succeeded in convincing Yugoslav authorities to allow UN convoys to re-enter the country.<sup>547</sup> But no such activity took place until Yugoslavia signed an agreement on 09 June committing the withdrawal of its forces from Kosovo.<sup>548</sup> While all UN relief convoys thereafter

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<sup>539</sup> Konstantinos Georgiou, 18 March 2002.

<sup>540</sup> Konstantinos Georgiou, 18 March 2002.

<sup>541</sup> Lang acted as Swiss government liaison with NATO for the security of humanitarian relief operations of the Greek-led Operation Focus during the Kosovo air campaign.

<sup>542</sup> Christoph Lang, 28 February 2002.

<sup>543</sup> Wesley Clark, *Waging Modern War*, 277.

<sup>544</sup> Wesley Clark, *Waging Modern War*, 298.

<sup>545</sup> Agence France Presse, *UN Mission to Meet Milosevic as Yugoslavia Gets Respite From Bombing*, 17 May 1999.

<sup>546</sup> OCHA, *Report of the Inter-Agency Needs Assessment Mission Mission dispatched by the Secretary General of the United Nations to the Federal Republic of Yugoslavia*, 10 June 1999.

<sup>547</sup> Agence France Presse, *Yugoslavia agrees to UN aid convoys for Kosovo*, 02 June 1999.

<sup>548</sup> There was no available information on NATO coordinating its airstrikes to avoid the traveling ten-day UN mission.

followed NATO troops back into Kosovo, WFP returned to Belgrade to open its office on 13 June.<sup>549</sup> UNHCR relief operations resumed in Kosovo on 13 June.<sup>550</sup>

### *Afghanistan: the WFP in action*

As in 1998, the Taliban decreed the departure of all humanitarian aid agencies from Afghanistan following the events of September 11, 2001. All expatriate aid workers left, mostly for Pakistan, including 34 expatriates working for the WFP.<sup>551</sup> However, many local Afghan staff of UN agencies, MSF<sup>552</sup> and over 1,000 from the ICRC<sup>553</sup> continued to work.<sup>554</sup> Given the continued mobility of WFP food convoys by local partners and their privately-contracted truckers, the ICRC made its food stocks available to WFP distribution plans while its own medical stocks in Kabul continued to be replenished by means of ICRC convoys from Pakistan.<sup>555</sup> The WFP had almost no communications with local staff at UN offices in Afghanistan but were able to resume daily trucking operations after a brief halt in September.<sup>556</sup>

US-led airstrikes began on 07 October, directed from the US Central Command (CENTCOM) in Tampa, Florida. On the second day, a UN-funded demining office was hit, killing four demining technicians<sup>557</sup> and injuring two guards. On 09 October, the WFP and UNICEF began sending convoys of trucks to Kabul, Herat and the North West, carrying food and other supplies into Afghanistan on a test basis.<sup>558</sup> But on 15 October, shrapnel from a US bomb wounded an aid worker loading grain from a WFP warehouse for an Oxfam delivery at the Kabul airport.<sup>559</sup>

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<sup>549</sup> WFP Emergency Report No. 24, 18 June 1999.

<sup>550</sup> Anthony H. Cordesman, *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*, Westport: Praeger, 2000): 54.

<sup>551</sup> WFP Press Release, 7 December 2001, [www.wfp.org/newsroom/in\\_brief/afghanistan07\\_12.html](http://www.wfp.org/newsroom/in_brief/afghanistan07_12.html)

<sup>552</sup> Tim Pitt, MSF coordinator, Islamabad, email communication to author, 18 March 2002.

<sup>553</sup> ICRC Press Release 01/32, *Afghanistan: ICRC expatriates on standby in Pakistan*, 16 September 2001. See also ICRC Press Release 01/56, *Afghanistan: ICRC reinforces team*, 19 November 2001.

<sup>554</sup> ICRC Press Release 01/48, *Bombing and occupation of ICRC facilities in Afghanistan*, 26 October 2001.

<sup>555</sup> ICRC Press Release 01/38, *Afghanistan: ICRC resumes relief distributions*, 05 October 2001.

<sup>556</sup> Peter Popham, "Alarm over aid drop in 'world's biggest minefield'," in *The Independent*, 09 October 2001, [www.independent.co.uk/story.jsp?story=98478](http://www.independent.co.uk/story.jsp?story=98478)

<sup>557</sup> Human Rights Watch, *Afghanistan and Refugees: Need for Humanitarian Action*, Statement to the Senate Foreign Relations Committee, New York, 10 October 2001, [www.hrw.org/press/2001/10/afghan-testi-1010.html](http://www.hrw.org/press/2001/10/afghan-testi-1010.html)

<sup>558</sup> DFID Afghanistan Crisis: Situation Report No. 8, October, 2001, cited in *Operation Enduring Freedom and the Conflict in Afghanistan: an Update*, Research Paper 01/81, International Affairs and Defence Section, House of Commons Library, (London: 31 October 2001) [www.parliament.uk/commons/lib/research/rp2001/rp01-081.pdf](http://www.parliament.uk/commons/lib/research/rp2001/rp01-081.pdf)

<sup>559</sup> Human Rights Watch, *Afghanistan: Attacks on Aid Increasing*. New York, 18 October 2001, [www.hrw.org/press/2001/10/aid1018.htm](http://www.hrw.org/press/2001/10/aid1018.htm)

The coalition target was said to be a military parking lot near the WFP warehouse in Kabul.<sup>560</sup> A part of the dual-use problematique, airports are always among the first military targets of conflict, but also a familiar and convenient location for the storage of humanitarian supplies.

On 16 October, a clearly-marked ICRC warehouse 1.5 kilometers from the Kabul airport was struck by a US Navy jet, injuring one guard.<sup>561</sup> Previous to the air campaign, the US had been notified of all ICRC facilities, clearly marked by the Red Cross emblem.<sup>562</sup> The Pentagon claimed that the Taliban had been storing military equipment there.<sup>563</sup> Although the warehouse was then included on a no-strike list,<sup>564</sup> a pilot was apparently not informed of this list and targeted the same ICRC warehouse compound on 26 October, despite previous ICRC transparency.<sup>565</sup>

A lack of ground intelligence about the humanitarian situation, a result of Taliban decrees against foreign aid workers and journalists<sup>566</sup> and the possession of satellite phones, challenged the ability of aid agencies to coordinate relief operations from outside the country. Oxfam called for a pause in airstrikes, at least in some areas, to permit the replenishing of pre-winter food stocks,<sup>567</sup> while CARE USA called for greater sharing of information with the Coalition Humanitarian Liaison Center (CHLC) in order to safeguard its facilities, people and operations.<sup>568</sup>

A CHLC had opened in Islamabad in late October<sup>569</sup> with the intention of providing aid agencies with security information on safe routes inside Afghanistan. Although denying that the creation of the CHLC had any relation to the US bombing of the ICRC warehouse, the office was staffed with British and American soldiers with civil and special operations experience from previous multinational operations in

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<sup>560</sup> Khaled Mansour, WFP Public Affairs Officer in Islamabad, email communication to author, 15 March 2002. The casual worker/porter was released from hospital a day later.

<sup>561</sup> ICRC Press Release 01/43, *ICRC warehouses bombed in Kabul*, 16 October 2001.

<sup>562</sup> Interview by author with field worker, 25 February 2002.

<sup>563</sup> Joe Havelly, "The Pentagon has admitted that its bomb had 'inadvertently' targeted the warehouse," in *CNN Hong Kong*, 17 October 2002.

<sup>564</sup> Jamie McIntyre, "Pentagon probes bombing of Kabul Red Cross," in *CNN*, 19 March 2002. [www.cnn.com/2002/03/19/ret.pentagon.redcross/index.html](http://www.cnn.com/2002/03/19/ret.pentagon.redcross/index.html)

<sup>565</sup> ICRC Press Release 01/48, *Bombing and occupation of ICRC facilities in Afghanistan*, 26 October 2001.

<sup>566</sup> Unlike in Iraq and Yugoslavia, where some journalists were present in some of the targeted areas. See Paul Koring, "First strikes aim to cripple Taliban," in *Globe and Mail*, 08 October 2001, A4.

<sup>567</sup> Oxfam Briefing Note, *Food has now run out for many Afghan people*. 01 November 2001, [www.oxfam.org/news/docs/011101\\_2.htm](http://www.oxfam.org/news/docs/011101_2.htm)

<sup>568</sup> CARE USA, *Afghanistan: Options for humanitarian access*, 25 October 2001, [www.care.org/info\\_center/afghanistan/afghanistanpolicy2.asp](http://www.care.org/info_center/afghanistan/afghanistanpolicy2.asp)

<sup>569</sup> Interview by author with field worker, 25 February 2002.

Kosovo, Sierra Leone and East Timor.<sup>570</sup> The UN Regional Humanitarian Coordinator met regularly with the coalition in Islamabad.<sup>571</sup>

Although humanitarian workers faced communications problems and coordination challenges from across the Pakistani border, small UNICEF-funded teams within the country still managed to implement a country-wide polio eradication program from 21 to 25 September.<sup>572</sup> Involving thousands of teams, traveling by hired car, donkey or foot, visiting house to house,<sup>573</sup> oral vaccines were successfully administered to millions children under 5 years old.<sup>574</sup> While not making specific requests for security arrangements with CENTCOM, UNICEF communicated its intention to conduct the scheduled campaign by liaising with the coalition through OCHA.<sup>575</sup> There were some difficulties for the coalition in considering the risks of such a geographically-expansive program given UNICEF's inability to inform CENTCOM of all the teams' movements.<sup>576</sup> No special precaution was used to identify traveling polio vaccination teams.<sup>577</sup>

In late October, the WFP continued food distribution operations with the cooperation of local Afghan staff from 19 international NGOs in Afghanistan.<sup>578</sup> UNICEF operations also continued, a convoy entering from Iran reaching the Western city of Herat.<sup>579</sup> All WFP food was distributed by commercial means, hired truckers of the same ethnicity as the intended aid recipients, paid by the WFP to reach warehouses where local Afghan NGO partners distributed the food on behalf of the WFP.<sup>580</sup> Aside from a temporary two-week halt in distributions following the events of September 11, largely a result of lorry firm concerns for safety under the Taliban, WFP convoys were conducting more operations in October than in the month before

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<sup>570</sup> Pakistan Link, *Humanitarian liaison center opens in Islamabad*, 06 December 2001, [www.pakistanlink.com/headlines/Dec/06/15.htm](http://www.pakistanlink.com/headlines/Dec/06/15.htm)

<sup>571</sup> Christoph Lang, 28 February 2002.

<sup>572</sup> Mohammad Jalloh, Polio campaign spokesperson, UNICEF office New York, email communication with author, 02 April 2002.

<sup>573</sup> Oliver Ulich, Afghanistan task force, UN OCHA, New York, email of 18 March 2002.

<sup>574</sup> Mohammad Jalloh, 02 April 2002. The campaign, in partnership with the UN World Health Organization, Rotary International, the US Centers for Disease Control and Prevention and many other agencies, had been pre-authorized by the Kabul government at the time and was not restricted to Taliban-held territory.

<sup>575</sup> According to Mohammad Jalloh, UNICEF did not have a representative at CENTCOM in Tampa.

<sup>576</sup> Col. David Blackledge, CENTCOM Public Affairs office, Tampa, Florida, phone conversation, 14 March 2002.

<sup>577</sup> Mohammad Jalloh, 02 April 2002.

<sup>578</sup> WFP Press Release, 24 October 2001. [www.wfp.org/newsroom/press\\_releases/2001/](http://www.wfp.org/newsroom/press_releases/2001/)

<sup>579</sup> Cahal Milmo, "Air Strikes On Afghanistan: Humanitarian Operation – Aid Agencies Race Against Time to Feed 7.5 Million," in *The Independent*, 13 October 2001.

<sup>580</sup> Oliver Ulich, Afghanistan task force, UN OCHA, New York, phone interview of 08 March 2002.

the 07 October coalition attacks.<sup>581</sup> During the months of October and November, while relief may have reached storage locations in urban centers, few local NGO partners were available to enable redistribution because insecurity had become prohibitive.<sup>582</sup> Nevertheless, the month of November witnessed a doubling of food tonnage delivered in October by the WFP, with December roughly doubling November figures.<sup>583</sup>

In a late October interview, the WFP stated that US bombing was not significantly inhibiting its ground relief operations.<sup>584</sup> But on 10 November, a 22-truck WFP convoy en route to Bamian was struck by two US bombs while parked along a highway.<sup>585</sup> While nobody was hurt, two vehicles were destroyed while others were damaged; 80 percent of the food was said to be no longer useable.<sup>586</sup> Traveling in unmarked trucks, in an area of central Afghanistan then under Taliban control, the convoy had not coordinated its travel with the coalition, according to CENTCOM.<sup>587</sup> But a WFP spokesperson stated that aid agencies had been careful to inform the US military of their travel times and routes.<sup>588</sup> On 16 November, a WFP warehouse in Kandahar was also struck by US bombs.<sup>589</sup>

After the unexpected Northern Alliance sweep of central Afghanistan, including Kabul on 13 November, expatriate aid workers began to return to Afghanistan, including those from the ICRC, WFP, UNHCR, MSF.<sup>590</sup> A mid-November bulletin by the UNJLC reported that more than 200 locally-hired trucks operated in the country every day delivering relief.<sup>591</sup> Relief convoys made use of “literally all the roads in Afghanistan” before snow arrived.<sup>592</sup> In addition to the access of relief convoys, the first significant land shipment of aid arrived by barge

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<sup>581</sup> David Harrison, “Fact behind the food crisis,” in *Sunday Telegraph*, 21 October 2001, 19.

<sup>582</sup> Tim Pitt, MSF coordinator, Islamabad, email communication to author, 20 March 2002.

<sup>583</sup> Oliver Ulich, 08 March 2002.

<sup>584</sup> David Harrison, “Fact behind the food crisis,” in *Sunday Telegraph*, 21 October 2001, 19.

<sup>585</sup> Alissa J. Rubin, “Humanitarian Aid a War Victim,” in *Los Angeles Times*, 13 November 2001.

<sup>586</sup> Alissa J. Rubin, “Humanitarian Aid a War Victim.” See also Afghanistan - OCHA Situation Report No. 20, 12 November 2001,

[www.pcpafg.org/news/Situation\\_rep/Afghanistan\\_Crisis\\_OCHA\\_Situation\\_Report...](http://www.pcpafg.org/news/Situation_rep/Afghanistan_Crisis_OCHA_Situation_Report...)

<sup>587</sup> Thom Shanker, “A Nation Challenged: Inquiries; Convoy Struck In November Found to Lack U.N. Markings,” in *New York Times*, 11 April 2002.

<sup>588</sup> Alissa J. Rubin, “Humanitarian Aid a War Victim.”

<sup>589</sup> WFP Press Release, 22 November 2001, [www.wfp.org](http://www.wfp.org) Confirmed by Col. David Blackledge, 14 March 2002.

<sup>590</sup> David R. Sands, “US, global groups plan mass humanitarian relief effort,” in *Washington Times*, 16 November 2001, A17.

<sup>591</sup> [www.unjlc.org/Bulletins/07/Bulletin07.htm](http://www.unjlc.org/Bulletins/07/Bulletin07.htm)

<sup>592</sup> Christoph Lang, 28 February 2002.

across a river from Uzbekistan on 15 November.<sup>593</sup> MSF was the first NGO on location in many instances including Kandahar as soon as the Taliban was absent.<sup>594</sup>

Because the air campaign went through several phases of action, relief operations did likewise. The first UN flight into Afghanistan in 65 days included the Regional Humanitarian Coordinator appointed by OCHA in June, Michael Sackett, a former WFP country director in Afghanistan.<sup>595</sup> Since late October, the WFP had chartered a C-130 aircraft capable of airdropping food as a contingency plan.<sup>596</sup> The WFP only began dropping food for the first time in remote areas on 23 November.<sup>597</sup>

The first ICRC flights into Afghanistan since September landed in Chaghcharan, Ghor province, arriving from Iran on 15 December, followed by regularly airlifted food resuming to the remote, mountainous, snowy region from 20 January onward.<sup>598</sup> These relief flights into Afghan airspace were cleared “for military traffic deconfliction” with all parties: coalition offices in Islamabad and CENTCOM, as well as the Regional Air Movement Control Center (RAMCC) based in Qatar since January and the Afghan Department of Civil Aviation when it opened.<sup>599</sup>

As bombing circumstances dictated, and as some cities and warlord domains varied in their pro-Taliban hostility, with the Taliban seizing WFP warehouses in Kabul and Kandahar,<sup>600</sup> WFP convoys began bypassing urban areas with partner warehouses, heading directly to recipient villages.<sup>601</sup> Commercial truckers for the WFP felt it safer not to be visibly identifiable by any markings because they did not want to attract attention from either Taliban or coalition forces.<sup>602</sup> The presence of US Special Operations ground spotters played a role in validating which convoys were known to be Taliban or genuine relief convoys.<sup>603</sup>

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<sup>593</sup> David R. Sands, “US, global groups plan mass humanitarian relief effort,” in *Washington Times*, 16 November 2001, A17.

<sup>594</sup> Tim Pitt, MSF coordinator, Islamabad, email communication to author, 20 March 2002.

<sup>595</sup> UN News Centre. *Press briefing by the UN offices in Kabul*. 17 November 2001. [www.reliefweb.net](http://www.reliefweb.net)

<sup>596</sup> [www.unjlc.org/Bulletins/04/Bulletin04.htm](http://www.unjlc.org/Bulletins/04/Bulletin04.htm)

<sup>597</sup> WFP Press Release, 23 November 2001. Corroborated by Christoph Lang email, 28 February 2002.

<sup>598</sup> Email communication to author by foreign aid worker, 05 June 2002. See also ICRC News 02/22, “Afghanistan – Ghor airlift ends,” 30 May 2002.

<sup>599</sup> Email communication to author by foreign aid worker, 13 June 2002.

<sup>600</sup> David Harrison, “Fact behind the food crisis,” in *Sunday Telegraph*, 21 October 2001, 19.

<sup>601</sup> Oliver Ulich, 08 March 2002.

<sup>602</sup> Col. David Blackledge, 14 March 2002.

<sup>603</sup> Col. David Blackledge, 14 March 2002.



On 11 October, liaising had taken place in Florida between CENTCOM and UN emergency relief agencies: OCHA, WFP, UNICEF and UNHCR.<sup>604</sup> Pentagon and US State Department officials met with relief agencies to discuss airlifts and aid drops.<sup>605</sup> Humanitarian-military discussions enabled an assessment of operational requirements and attempted to create a methodology for CENTCOM and WFP to conduct their respective operations. UN Joint Logistics Centres (UNJLC) had been activated in Rome and Islamabad on 25 September.<sup>606</sup> Liaising between the coalition and UN agencies, through a UNJLC liaison officer in Florida,<sup>607</sup> benefited the coordinated use of military assets for the airlifting of relief to the region.<sup>608</sup>

As the air campaign progressed, greater freedoms in humanitarian-military information-sharing took place, including coalition information on locating the dropping of cluster bomb units (CBUs) which permitted OCHA to deploy its explosive ordnance experts for clearance projects.<sup>609</sup> In November, such cooperation included the sharing of coalition satellite imagery free of charge for the detection of camps for the internally-displaced.<sup>610</sup> After US explosive ordnance experts repaired and cleared the bombed Mazar-I-Sharif airfield, the first ICRC relief flight landed there on 10 December.<sup>611</sup>

Although the coalition had established a mechanism by which to maintain open channels with relief organizations, not all UN agencies responded in the same way to the US initiative.<sup>612</sup> The ICRC did not station a representative at CENTCOM because of its liaison offices already in Washington and New York.<sup>613</sup> While the coalition wanted to know in advance all the movements of relief operations in Afghanistan, this was not entirely possible, given the many actors on the ground in Afghanistan.<sup>614</sup> Even if movements were reported, the coalition gave no assurances

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<sup>604</sup> [www.unjlc.org/Bulletins/02/Bulletin02.htm](http://www.unjlc.org/Bulletins/02/Bulletin02.htm)

<sup>605</sup> Elizabeth Becker and Eric Schmitt, "US Planes Bomb a Red Cross Site for Second Time," in *New York Times*, 26 October 2001.

<sup>606</sup> Christoph Lang, 28 February 2002. Lang took part in UNJLC liaising with the military in Islamabad in October before being posted to the same effort at CENTCOM in Florida in November. See also [www.unjlc.org/Bulletins/01/Bulletin01.htm](http://www.unjlc.org/Bulletins/01/Bulletin01.htm)

<sup>607</sup> Christoph Lang was this person in November. Email to author, 28 February 2002.

<sup>608</sup> The UK, through a DFID staff secondment to UNJLC Rome, coordinated the use of military assets. See [www.unjlc.org/Bulletin/02/Bulletin02.htm](http://www.unjlc.org/Bulletin/02/Bulletin02.htm)

<sup>609</sup> Oliver Ulich, 08 March 2002.

<sup>610</sup> [www.unjlc.org/Bulletins/09/Bulletin09.htm](http://www.unjlc.org/Bulletins/09/Bulletin09.htm)

<sup>611</sup> Sgt William Patterson, "Civil Affairs teams re-establish Afghan relief," in *Army Link News*, 21 December 2001, [www.dtic.mil/armylink/news/Dec2001/a20011221cateams.html](http://www.dtic.mil/armylink/news/Dec2001/a20011221cateams.html)

<sup>612</sup> Interview by author with field worker, 25 February 2002, and Christoph Lang, 28 February 2002.

<sup>613</sup> Christoph Lang, 28 February 2002.

<sup>614</sup> Christoph Lang, 28 February 2002.

of safety.<sup>615</sup> When the coalition representative in Islamabad asked NGOs and UN agencies to provide the precise GPS grid references of their compounds so as to avoid targeting mishaps, MSF did not comply since this measure had obviously not benefited ICRC warehouses.<sup>616</sup>

According to the terms of reference of the UNJLC representative at CENTCOM, the UNJLC was mandated to coordinate the requesting (from UN agencies) and seconding (from the coalition) of all military and civil defence assets (MCDA), all the while keeping in mind the delicate issue of the perceived independence of the humanitarian community.<sup>617</sup> The UNJLC was also charged with informing the coalition of relief activities which may be affected by military operations, sharing UN agency information with the coalition to improve the safety of personnel working in conflict zones, and updating UNJLC on developments within the coalition pertaining to security of personnel and the storing and moving of relief.<sup>618</sup>

While the UNJLC in Islamabad coordinated relief agency activities into Afghanistan, the CHLC in Islamabad kept open communications with the UNJLC, each visiting each other's offices to share information, although the CHLC never physically stationed a liaison officer at the UNJLC.<sup>619</sup> When possible, the CHLC would record all pertinent information on expected relief convoy activities, such as route to be taken, time of departure, destination, expected return.<sup>620</sup> This information was shared with CENTCOM who in turn notified pilots who were sometimes given strict ROE to not strike any moving targets because WFP convoys were using commercial trucks as was the Taliban.<sup>621</sup> At times, the Taliban and Northern Alliance commandeered commercial and UN agency trucks.<sup>622</sup>

While the CHLC began to gain improved visibility on WFP activities, the CHLC had less success in gaining information on the movement of some NGOs like

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<sup>615</sup> Christoph Lang, 28 February 2002.

<sup>616</sup> Tim Pitt, MSF coordinator, Islamabad, email communication to author, 18 March 2002.

<sup>617</sup> Annex 2 of 12 November 2002 UNJLC Bulletin, [www.unjlc.org/Bulletins/06/Bulletin06.htm](http://www.unjlc.org/Bulletins/06/Bulletin06.htm)

<sup>618</sup> Annex 2 of 12 November 2002 UNJLC Bulletin, [www.unjlc.org/Bulletins/06/Bulletin06.htm](http://www.unjlc.org/Bulletins/06/Bulletin06.htm)

<sup>619</sup> Col. David Blackledge, 14 March 2002.

<sup>620</sup> Col. David Blackledge, 14 March 2002.

<sup>621</sup> Col. David Blackledge, 14 March 2002.

<sup>622</sup> UNICEF spokesperson Chulho Hyun stated that the Northern Alliance commandeered 10 of their trucks in mid-November, while the Taliban did so in Mazar-I-Sharif. See Alissa J. Rubin, "Humanitarian Aid a War Victim." Corroborated by Col. David Blackledge, 14 March 2002.

MSF which kept an arms length with the military.<sup>623</sup> MSF stated that this liaising was more of a one-way channel, for the military to know where any aid trucks were headed than for relief agencies to learn anything about military operations.<sup>624</sup>

When pilot ROE changed due to evolving ground circumstances in the conflict, the CHLC would notify the UNJLC in Islamabad.<sup>625</sup> CENTCOM targeting decisions largely spared the main entry roads recognized for accessing major population centers, these being the Peshawar-Jalalabad-Kabul route from the East, the Western entry from Iran to Herat and the Northern access route toward Mazar-I-Sharif.<sup>626</sup>

Although the Russians had established another CHLC in Kabul in mid-December,<sup>627</sup> the new interim Afghan government voiced its displeasure in January that the US still had no airstrike liaison officer stationed in Kabul's Ministry of Defence, especially given repeated reports of US bombs going astray in December.<sup>628</sup>

#### **The aid drop option: a humanitarian space over Bosnia, Kosovo and Afghanistan:**

In light of the growing militarization of humanitarian action, and consequent blurring of humanitarian-military roles during complex political emergencies, this section will expose the advantages and disadvantages of the use of aid drops by coalition forces. With the definition of the "humanitarian space" in mind, the conflicting views of aid agencies regarding military aid drops will be reviewed. The question of humanitarian-military cooperation and information-sharing on airdropped relief will be addressed. After briefly comparing military aid drops during other conflicts, can one conclude that the provisioning of aid from the air is compatible with the protection of civilians by relief agencies during conflict?

The dropping of aid by parachute should not be confused with the terms humanitarian airlifts or air bridges which see relief flights landing to enable orderly distribution to intended recipients. WFP policy on the airdropping of food is only recommended when landing strips are not available in remote areas and logistics

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<sup>623</sup> Col. David Blackledge, 14 March 2002.

<sup>624</sup> Tim Pitt, MSF coordinator, Islamabad, email communication to author, 18 March 2002.

<sup>625</sup> Col. David Blackledge, 14 March 2002.

<sup>626</sup> Oliver Ulich, 08 March 2002.

<sup>627</sup> USAID, *Central Asia Region – Complex Emergency Fact Sheet #35*, 12 December 2001, [www.usaid.gov/hum\\_response/ofda/situation.html](http://www.usaid.gov/hum_response/ofda/situation.html)

<sup>628</sup> *Reuters*, "Afghans Seek Better U.S. Bombing Coordination," in *New York Times*, 08 January 2002.

officers are unable to coordinate ground operations for food distribution.<sup>629</sup> Such aid is not dropped in the same manner as military aid drops which for security reason are launched from much higher altitudes.<sup>630</sup> Another important difference with military aid drops regards the long-term benefits of WFP involvement during aid drops and distribution: from improvements to local infrastructure like warehouses, roads, bridges and communications to upgraded ports, railway lines and airstrips,<sup>631</sup> none of which military aid drops offer. Unlike military food drops, WFP tries to limit the effects of incoming food deliveries on the price of commodities in the region, by attempting to locate and purchase regional supplies.

During the Gulf War, there were no reports of humanitarian or military aid drops. After the war, President Bush ordered US aid drops over the Kurdish enclave during Operation Provide Comfort.<sup>632</sup> These were later deemed technically ineffective and halted due to the sheer numbers of IDPs and refugees in need of food and especially because of “several incidents in which Kurds were injured or killed when they crowded underneath the parachute-dropped pallets as they landed.”<sup>633</sup> In July of 1994, despite criticism from CARE International and others, US aid drops requested by UNHCR provided supplies to Rwandan refugees camps in Zaire.<sup>634</sup>

During the Somalia crisis, given the urgency to feed the population and the security threats to relief convoys,<sup>635</sup> some Western governments recommended that their air forces conduct aid drops as a safer option for relief deliveries.<sup>636</sup> However, several NGOs<sup>637</sup> and the ICRC opposed the delegation of aid to air delivery without means of controlling recipient target groups.<sup>638</sup> The insecurity of clan warfare was

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<sup>629</sup> WFP estimates recovery rates from airdropped food at 99.5 percent. [www.wfp.org/index.asp?section=5](http://www.wfp.org/index.asp?section=5)

<sup>630</sup> Oliver Ulich, 08 March 2002.

<sup>631</sup> [www.wfp.org/index.asp?section=5](http://www.wfp.org/index.asp?section=5)

<sup>632</sup> Rick Atkinson, “Bosnia Airlift Delivers the Goods; NATO, U.N. Credit Flights With Saving Lives in Sarajevo, Enclaves,” in *Washington Post*, 17 March 1994, 32.

<sup>633</sup> Thomas K. Adams, *US Special Operations Forces in Action: The Challenge of Unconventional Warfare*, (London: Frank Cass, 1998): 246.

<sup>634</sup> Johnathan C. Randal, “U.S. Airdrops Food As Rwandans Start To Return Home; Relief Workers, U.S. Officials Disagree on Effort’s Effectiveness,” in *Washington Post*, 25 July 1994, A1.

<sup>635</sup> In mid-1991, WFP and UNICEF withdrew their staff on several occasions. See United Nations Department of Public Information, *The Blue Helmets: A Review of United Nations Peacekeeping*, (New York: United Nations, 1996), 288.

<sup>636</sup> James S. Corum, “Airpower and Peace Enforcement,” in *Airpower Journal*, 10, 4 (winter 1996): 6, [www.airpower.maxwell.af.mil/airchronicles/apj/win96/corum.html](http://www.airpower.maxwell.af.mil/airchronicles/apj/win96/corum.html)

<sup>637</sup> James S. Corum, “Airpower and Peace Enforcement.”

<sup>638</sup> The military airlift did not increase the aggregate amount of food in the country as it merely replaced an airlift operated by the ICRC and the WFP. See Andrew S. Natsios, “Humanitarian Relief

such that a number of aid agencies left Somalia. Having mounted a humanitarian airlift to the region, but not wanting to “actually land in the country, (the US) proposed dropping parcels of food from the air. The ICRC said that this would disrupt its humanitarian networks among the various factions.”<sup>639</sup>

The military parachuting of aid drops to remote areas of Bosnia became widespread after Bosnian Serbs began blocking humanitarian convoys, especially unable to access the UN-declared safe areas. The “UN’s convoys were blocked and turned back by the Serbs almost daily”.<sup>640</sup> At the request of UNHCR,<sup>641</sup> US-led Operation Provide Promise began dropping relief in February of 1993. Supplied from NATO air bases in Germany and Italy, later joined by German and French planes<sup>642</sup> under the cover of darkness, US C-130 Hercules transports received protection from US AWACS surveillance planes monitoring Bosnian skies for threats.<sup>643</sup> Dropped from at least 10,000 feet, preferred during the cover of cloudy skies, the recovery rate of parcels was estimated at between 20 and 100 percent.<sup>644</sup>

After the unexpected mass exodus of Kosovars from Yugoslavia in 1999, US Senator Edward Kennedy, speaking to a Senate panel addressing refugee relief proposals, suggested three options: aid drops, a humanitarian corridor and use of a neutral third-party to reach the internally-displaced inside Kosovo.<sup>645</sup> In early April, NATO allies had ruled out the aid drop option citing concerns of feeding Serb forces.<sup>646</sup> Although Clinton was considering the aid drop option, pursuant to a request

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Interventions in Somalia: the Economics of Chaos,” in *International Peacekeeping*, 3, 1 (spring 1996): 76.

<sup>639</sup> Kurt Mills, “United Nations intervention in refugee crisis after the Cold War,” in *International Politics*, 35, 4 (December 1998): 397.

<sup>640</sup> Martin Bell, *In Harm’s Way*, 194.

<sup>641</sup> Michael R. Gordon, “U.S. Will Increase Airdrops to Besieged Bosnian Town,” in *New York Times*, 20 March 1993, 4.

<sup>642</sup> The UN-sanctioned aerial operation became the longest-running humanitarian air bridge in history. See Michael C. Williams, *Civil-Military Relations and Peacekeeping*, (London: Oxford University Press, Adelphi Paper #321, 1998): 37.

<sup>643</sup> Chuck Sudetic, “Pilots on the Bosnia Food Run Hope for Bad Weather,” in *New York Times*, 20 March 1994, 10.

<sup>644</sup> Rick Atkinson, “Bosnia Airlift Delivers the Goods; NATO, U.N. Credit Flights With Saving Lives in Sarajevo, Enclaves,” in *Washington Post*, 17 March 1994, 32.

<sup>645</sup> US Committee for Refugees, *Senate Panel Looks at Kosovo Refugee Situation*, 24 May 1999.

<sup>646</sup> Bradley Graham and Dana Priest, “Allies to Begin Flying Refugees Abroad,” in *Washington Post*, 05 April 1999.

by the KLA chief,<sup>647</sup> General Clark, commanding the NATO air campaign, ruled out any such option.<sup>648</sup>

WFP director, Catherine Bertini, stated her position against the dropping of aid as a viable options because of the difficulties in locating recipients, the required scale of an effective operation and the associated dangers of low-flying planes trying to drop such aid.<sup>649</sup> The WFP had labeled the aid drops “another kind of little bomb”<sup>650</sup> in the absence of ground teams to ensure safety from such falling hazards. Even the head of the largest European aid donor, Emma Bonino of the European Community Humanitarian Office (ECHO), characterized previous experiences with the managing of food drops “a nightmare”.<sup>651</sup>

By mid-April, NATO unity on the aid drop option became shattered by the French President. Chirac publically suggested that the alliance reconsider, much to the opposition of the UNHCR, arguing that the precedent for military relief drops during three years of war in Bosnia depended on successfully locating recipients in controlled enclaves, contrasted against Kosovars who were scattered in unknown places.<sup>652</sup> In order to reduce the incentive of further Greek aid convoys into Kosovo, General Clark reconsidered the air drop option but this decision was blocked by the Pentagon.<sup>653</sup> A NATO experiment in aid drops was said to have failed because of its cost and practicality, given the huge demand for aid within Kosovo. Pentagon officials cited the Bosnia success as having to do with lower flying planes and a different situation.

In an unprecedented example of humanitarian resolve during the final days of the air campaign, and much to the dislike of some US Air Force personnel,<sup>654</sup> the

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<sup>647</sup> William Drozdiak and William Branigin, “Concern Grows for ‘Internal Refugees’,” in *Washington Post*, 02 April 1999, A1.

<sup>648</sup> Ben Fenton, Toby Helm and Ben Rooney, “NATO reinforces as Serbs burn Albania villages,” in *Daily Telegraph*, 14 April 1999.

<sup>649</sup> Paul Valley and Christopher Brading, “War in the Balkans: Famine Stalks the Fleeing Hordes as Relief Agencies Struggle to Keep Up,” in *The Independent*, 01 April 1999, 3.

<sup>650</sup> Paul Valley and Christopher Brading, “War in the Balkans: Famine Stalks the Fleeing Hordes as Relief Agencies Struggle to Keep Up,” in *The Independent*, 01 April 1999, 3.

<sup>651</sup> Steve Boggan and Rachel Sylvester, “Kosovo Pleads: Send Air Drops or We Die,” in *The Independent*, 11 April 1999, 1.

<sup>652</sup> Agence France Presse, *NATO considers parachute drops into Kosovo*, 19 April 1999.

<sup>653</sup> Wesley Clark, *Waging Modern War*, 277. In mid-May, NATO announced that it had tested the dropping of relief from B-52 bombers and F-15Es from high altitude to evade Serb ground fire. See CNN, “Officials ponder ways to get food to homeless in Kosovo,” 13 May 1999, [www.cnn.com/US/9905/13/air.drop/](http://www.cnn.com/US/9905/13/air.drop/)

<sup>654</sup> David Ensor and Kevin Bohn, “U.S. group to begin Kosovo food drops Monday,” from CNN, 28 May 1999. Corroborated in phone interview with Col. David Blackledge, 14 March 2002.

US-based International Rescue Committee (IRC), funded by the US Agency for International Development (USAID), dropped food aid over Kosovo on 30 May in coordination with NATO.<sup>655</sup> The IRC<sup>656</sup> had contracted a Canadian company, Skylink Air, hiring Moldovan pilots to fly Russian Antonov 26 cargo planes from Moldova which had been painted a distinctive white with orange stripes.<sup>657</sup> Previous to the aid drops, the IRC had dropped multi-lingual leaflets to inform people of the pending drops, in order to avoid injuries from falling items. General Clark required NATO aircraft to divert action from the aid drop area.<sup>658</sup> After the halt of NATO airstrikes ten days later, the IRC had planned to step up drops in order to supplement the problematic rush of aid convoys into Kosovo.<sup>659</sup>

In Afghanistan, on 07 October, 2001, the US military began a simultaneous dropping of yellow-wrapped food rations<sup>660</sup> and bombs, including CBUs containing hundreds of yellow bomblets.<sup>661</sup> The HDR initiative was undertaken with advice and data from USAID which maintained a representative at CENTCOM.<sup>662</sup> Many international relief organizations were outraged at the mixing of humanitarian-military operations by the US, including Jean Ziegler, the UN rapporteur for the right to food,<sup>663</sup> MSF,<sup>664</sup> the Federation of Red Cross and Red Crescent Societies,<sup>665</sup> Christian Aid,<sup>666</sup> CARE and Oxfam.<sup>667</sup> Following the 1999 militarisation of Kosovar refugee camps managed by NATO troops, the further use of military assets as seemingly benevolent during a conflict they were waging proved too publically hypocritical and contradictory, a threat to the profession and distinctive rights of

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<sup>655</sup> William Branigin, "Airdrops Planned for Starving in Kosovo," in *Washington Post*, 02 June 1999, A16.

<sup>656</sup> A specialized crisis relief NGO founded in the US in 1933.

<sup>657</sup> See News Release [www.usembassy.it/file9906/alia/99060208.htm](http://www.usembassy.it/file9906/alia/99060208.htm)

<sup>658</sup> Wesley Clark, *Waging Modern War*, 349.

<sup>659</sup> *Washington Post*, "NATO May Join in Airdrops to Refugees in Hiding," 12 June 1999, A16.

<sup>660</sup> Called Humanitarian Daily Rations or HDR drops by CENTCOM.

<sup>661</sup> US-dropped CBUs in Indo-china also contained yellow bomblets. The CBU opens during free fall, spreading its bomblets over targeted enemy terrain. The author did previous research for Handicap International in Laos in the mid-1990s where stories abounded of rural children being injured by curiosity to the colour.

<sup>662</sup> Communication to author from Oliver Ulich of UN OCHA New York citing information received from Steve Catlin, USAID representative at CENTCOM during the HDR drop program, 22 April 2002.

<sup>663</sup> *Agence France Press*, "US military food airdrops condemned as 'catastrophe': UN official," 15 October 2001.

<sup>664</sup> Medecins Sans Frontieres, *MSF refuses notion of coalition between humanitarian aid and military strikes*, 08 October 2001, [www.msf.org](http://www.msf.org)

<sup>665</sup> *China Daily*, "New Red Cross chief criticizes aid drops in Afghanistan," 09 November 2001, [www.chinadaily.net/news/2001-11-09/42869.html](http://www.chinadaily.net/news/2001-11-09/42869.html)

<sup>666</sup> [www.christian-aid.org.uk/afghanistan/0110food.htm](http://www.christian-aid.org.uk/afghanistan/0110food.htm)

<sup>667</sup> Jonathan Steele and Felicity Lawrence, "Main aid agencies reject US air drops," in *The Guardian*, 08 October 2001.

humanitarianism. Suggesting the option of safe corridors in which no military operations could take place, the IRC, which had launched the Kosovo aid drops in clearly distinguishable civilian airplanes, expressed concern over the blurring of the humanitarian space by the military.<sup>668</sup> UN agencies did not officially denounce the CENTCOM practice of mixing humanitarian and military mandates.<sup>669</sup>

The UNJLC sought to declassify coalition information on the military aid drops.<sup>670</sup> The UN succeeded early in the campaign to convince CENTCOM to declassify information on the location of intended aid drops.<sup>671</sup> The WFP never ruled against the military drops, admitting the need as a last resort.<sup>672</sup> One WFP logistician stated support for the HDR drops.<sup>673</sup> While US military drops were completely independent of the WFP and were not coordinated with them,<sup>674</sup> initial HDR target selections were developed by USAID/OFP in cooperation with the WFP, also seated at CENTCOM, and took account of known IDP-concentrations in remote areas with troubled ground access.<sup>675</sup> With 19 sites chosen, the USAID representative at CENTCOM said that all but three HDR drop sites were in areas under Northern Alliance control. WFP maps and figures on the locations of hunger-stricken people were already in the public domain.<sup>676</sup>

The US linking of humanitarian and military operations was blamed for October attacks on UNHCR and UNICEF offices in Quetta, Pakistan, on the Afghan border<sup>677</sup> as well as upon several UN de-mining workers beaten up by the Taliban, according to UN officials.<sup>678</sup> Taliban sympathizers mostly in Pakistan associated

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<sup>668</sup> John Sifton, "Afghan Aid in Jeopardy," 09 October 2001, [www.iwpr.net/index.pl?archive/rca/rca\\_200110\\_73\\_6\\_eng.txt](http://www.iwpr.net/index.pl?archive/rca/rca_200110_73_6_eng.txt)

<sup>669</sup> A search of the websites of the WFP, UNICEF and UNHCR revealed no statements. The US contributed 80 percent of funds for WFP operations in Afghanistan. See US Department of State Fact Sheet, Office of the Spokesman, 23 November 2001, [www.state.gov/r/pa/prs/ps/2001/index.cfm?docid=6303](http://www.state.gov/r/pa/prs/ps/2001/index.cfm?docid=6303)

<sup>670</sup> [www.unjlc.org/Bulletins/02/Bulletin01.htm](http://www.unjlc.org/Bulletins/02/Bulletin01.htm)

<sup>671</sup> Oliver Ulich, Afghanistan task force, UN OCHA, New York, phone interview of 08 March 2002.

<sup>672</sup> Refugees International, *Afghanistan: Little time left to save lives*, 01 November 2001, [www.reliefweb.int](http://www.reliefweb.int); BBC, "U.N. says US 'feeding Taleban'," 15 October 2001, [http://news.bbc.co.uk/1/hi/english/world/south\\_asia/newsid\\_1600000/1600694.stm](http://news.bbc.co.uk/1/hi/english/world/south_asia/newsid_1600000/1600694.stm)

<sup>673</sup> Tim Weiner, "A Nation Challenged: The Aid; Relief Effort Races Winter To Save Millions," in *New York Times*, 07 November 2001, B1.

<sup>674</sup> Khaled Mansour, WFP in Islamabad, 15 March 2002.

<sup>675</sup> Communication to author from Oliver Ulich of UN OCHA New York from information received from Steve Catlin, USAID representative at CENTCOM during HDR aid drop program, 22 April 2002.

<sup>676</sup> Khaled Mansour, WFP in Islamabad, 15 March 2002.

<sup>677</sup> William Shawcross, "Killing with kindness in Afghanistan," in *Financial Times*, 09 October 2001, [www.crisisweb.org/projects/showreport.cfm?reportid=470](http://www.crisisweb.org/projects/showreport.cfm?reportid=470)

<sup>678</sup> Andrew Demaria, "Aid agencies compromised by military strikes," 11 October 2001, in *CNN*, [www.cnn.com/2001/WORLD/asiapcf/south/10/11/ret.aid.agencies/](http://www.cnn.com/2001/WORLD/asiapcf/south/10/11/ret.aid.agencies/)



anything to do with foreigners including humanitarian assistance to be an American imperialist plot. After the attacks on UN personnel, WFP convoys put away their UN flags, previously a source of protection.<sup>679</sup> As previously stated by the ICRC, “(m)ixing mandates risk(ed) turning humanitarian workers into perceived enemy agents and thus jeopardizing their personal safety.”<sup>680</sup>

Afghan deminers, who had reported their map coordinates to UN authorities, hoping that their operations would be spared US bombing, reported that some workers had found food packets in areas contaminated by landmines.<sup>681</sup> On 01 November, the Pentagon announced a colour change in HDR drops from yellow to blue as a result of confusion with yellow-coloured bomblets used against Taliban forces.<sup>682</sup> On 29 November, UN officials reported that 2 children were killed and three wounded when they ran into a minefield to collect rations.<sup>683</sup>

In addition to encouraging starving people into dangerous or mined areas, regional warlords fought each other over the food and clothing dropped by US planes.<sup>684</sup> A report by retired American Special Forces officers stated that warlords sold collected rations for profit.<sup>685</sup> The report was based on a two-week survey in northern Afghanistan during November.

The same report mentioned that food rations soon became spoiled,<sup>686</sup> plastic food packs rupturing on impact due to the high altitude from which they were dropped, some from between 30,000 and 40,000 feet.<sup>687</sup> One aid group warned that food rations based on Western dietary values like peanut butter, fruit bars and baked beans caused some digestive problems due to the extreme state of malnourishment of

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<sup>679</sup> Tyler Marshall and Megan Garvey, “U.S. Strikes Back; Humanitarian Aid; Relief Efforts Trumped by Air War,” in *Los Angeles Times*, 17 October 2001, A1.

<sup>680</sup> Meinrad Studer, “The ICRC and civil-military relations in armed conflict,” in *IRRC*, 842 (30 June 2001): 374-5.

<sup>681</sup> Tyler Marshall and Megan Garvey, “U.S. Strikes Back; Humanitarian Aid; Relief Efforts Trumped by Air War,” in *Los Angeles Times*, 17 October 2001, A1.

<sup>682</sup> *Reuters*, “U.S to change food-parcel colour,” in *Globe and Mail*, 02 November 2001.

<sup>683</sup> Elizabeth A. Neuffer, “Food drops found to do little good,” in *Boston Globe*, 26 March 2002, A1. [www.nytimes.com/2002/01/06/weekinreview/06BECK.html](http://www.nytimes.com/2002/01/06/weekinreview/06BECK.html)

<sup>684</sup> David Filipov, “Idle Combatants Now Wage Battle for US Aid Drops,” in *Boston Globe*, 29 November 2000, A1.

<sup>685</sup> Elizabeth A. Neuffer, “Food drops found to do little good.”

<sup>686</sup> Food poisoning could have been caused from broken, sun-baked corn-beef packets although it is possible that people tried to eat the crystallized chemical contents meant to heat meals when water was added. The author ate US military rations, called MREs or Meals Ready to Eat, during months in remote Cambodia and Haiti.

<sup>687</sup> Elizabeth A. Neuffer, “Food drops found to do little good.”

some recipients.<sup>688</sup> The US Defense Security Cooperation Agency admitted that the rations had not been designed for airdropping at all.<sup>689</sup>

While an obvious propaganda tool in order to win the “hearts and minds of Afghans and of Americans, US aid drops provided a Presidential posture of benevolence balanced against the dropping of bombs. The measure was deemed politically necessary to satisfy domestic pressure and to maintain vital regional Arab support of the anti-terrorism coalition.

The US military actually claimed that their aid drops played a “major role”, even a “critical role,” in averting a humanitarian disaster in Afghanistan.<sup>690</sup> USAID chief Andrew Natsios however stated that US aid drops actually represented a mere one-quarter of one percent of the food needed to feed the Afghan people.<sup>691</sup> One US Defence reporter spoke, in Pentagon jargon, of US “deconflicting”<sup>692</sup> of combat airspace for “humanitarian” operations, as if it was possible to endow munition handlers with a humanitarian ethos.

Legitimizing the NGO argument that relief must be properly distributed to have effect and avoid endangering people, an Afghan woman was killed when a US relief pallet crushed her house on 29 November, after which the US suspended aid drops.<sup>693</sup> Military aid drops were ended on 13 December.<sup>694</sup> Between 07 October and 22 December, the US Department of Defence flew 162 missions, dropping 2.5 million daily rations, 816 tons of wheat and 73,000 blankets.<sup>695</sup>

## Conclusions on humanitarian access

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<sup>688</sup> *UK Sunday Mail*, “US food drops ‘useless’ for hungry hordes,” Boston Research Centre, 2001, [www.brc21.org/resources/res\\_food.html](http://www.brc21.org/resources/res_food.html)

<sup>689</sup> Elizabeth A. Neuffer, “Food drops found to do little good.”

<sup>690</sup> Jim Garamone, “U.S. aid helps avert famine in Afghanistan,” in *Defense Link: American Forces Press Service*, 4 January 2002, [www.defenselink.mil/news/Jan2002/n01042002\\_200201043.html](http://www.defenselink.mil/news/Jan2002/n01042002_200201043.html)

<sup>691</sup> Elizabeth Becker, “The Danger of Doing Good Deeds.” Relief agencies also claimed the US drops to be worth under one percent of the Afghan need. See Marc Kaufman, “Taliban Seizes Relief Food, Two Main UN Warehouses,” in *Washington Post*, 18 October 2001, A23.

<sup>692</sup> Jim Garamone, “U.S. aid helps avert famine in Afghanistan,” in *Defense Link: American Forces Press Service*, 4 January 2002, [www.defenselink.mil/news/Jan2002/n01042002\\_200201043.html](http://www.defenselink.mil/news/Jan2002/n01042002_200201043.html)

<sup>693</sup> *Associated Press*, “Airdropped relief kit kills Afghan civilian,” in *Globe and Mail*, 30 November 2001.

<sup>694</sup> *Agence France Presse*, “US ending food, supply drops as relief comes in by road, rail: Pentagon,” 13 December 2001.

<sup>695</sup> Jim Garamone, “Humanitarian mission averts Afghan starvation,” in *Defense Link: American Forces Press Service*, 24 January 2002, [www.defenselink.mil/news/Jan2002/n01242002\\_200201242.html](http://www.defenselink.mil/news/Jan2002/n01242002_200201242.html)

Having examined the operations of some key humanitarian relief agencies during the four air campaigns, this thesis has shown that air force coalition respect for the legal, operational presence of a “humanitarian space” in the midst of war has made progress since the Gulf War but remains a formidable challenge. The national interests of coalition powers continue to take precedence over the operational rights of such agencies as well as the rights of war victims to receive relief, despite UNGA resolutions and internationally-sanctioned relief agency mandates. There is no doubt that airpower presents dangers to any human activity, including the accessing of victims of armed conflict. In all case studies however, no foreign aid workers were killed, largely because they had left the targeted regions.

Although not totally operational, ICRC delegates remained in cities targeted by coalition airstrikes (Baghdad,<sup>696</sup> Pale, Banja Luka and Belgrade) during three of the four air campaigns, a testament to the value of its impartiality, diplomatic approach and transparent relations with all warring parties. Although it publically reminded belligerents of their legal obligations as signatories of the Geneva Conventions, the ICRC never criticized coalition targeting practices in any of the campaigns, except in 2001 when US bombs twice hit its warehouses near Kabul. Because it maintains confidential relations with warring parties in order to preserve its access to warzones, it has seldom been ICRC practice to publically list violations of IHL. Given such relations with all sides in the Gulf War and Kosovo campaign, its operations did manage to claim a *droit d'ingerence*, resuming before the end of the air campaigns and before those of any other relief agency.

In Bosnia, aid agency operations had been curbed even before Operation Deliberate Force, frustrated by factional road blocks. In Kosovo, except for the ICRC, all international aid agencies had left the region before bombing began.<sup>697</sup> In the last three weeks of the Kosovo campaign, the ICRC no longer remained confined to their premises, becoming actively involved in distributing relief throughout Yugoslavia. In the fourth case study, the ICRC left because of a Taliban decree against the presence of all relief agencies in the country.

Until the Afghan campaign, the ICRC had proven to be the most capable relief agency during air campaigns. In Afghanistan, after the use of airports by relief

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<sup>696</sup> After the 8-year Iran-Iraq war, the ICRC had already been based in Baghdad negotiating POW releases and exchanges.

<sup>697</sup> Paul Valley and Christopher Brading, “War in the Balkans: Famine Stalks the Fleeing Hordes as Relief Agencies Struggle to Keep Up,” in *The Independent*, 01 April 1999, 3.

agencies became impossible, the WFP and its international and Afghan NGO partners proved the most capable relief operation at reaching recipients by road. Being the most impressive example of humanitarian capabilities during any of the four air campaigns, WFP operations were possibly due to a decades-old Afghan habit of living amidst prolonged civil war. WFP impartiality among belligerents was not a big factor because it delivered food by commercial means in unmarked trucks, a manner which has also at times been used by the ICRC, although the ICRC never delegates distribution.<sup>698</sup> Security threats to WFP convoys<sup>699</sup> were more related to warlord activities<sup>700</sup> than to risks associated with stray bombs.

Can relief agencies effectively operate during airstrikes? They can only be effective when they are in contact with all belligerents. The transparency of relief efforts to all sides in a conflict can best maintain an agency's impartial nature and thus potential for accessing aid recipients. For relief agencies operating during air campaigns, remaining steadfastly aloof of available coalition information-sharing avenues for the sake of distancing association with and identification to coalition practices, as did MSF in Afghanistan, meant that valuable opportunities for accessing war victims and for safeguarding aid worker activities may have been lost.

Given its traditional disregard for political borders and state consent during the Cold War, professed through its *droit d' ingerence*, MSF would normally have remained in or re-entered regions suffering bombardments in the four cases. Except possibly in Bosnia, MSF workers did not play such a role.

In Afghanistan, in addition to the bombing of ICRC and WFP warehouses and of a demining office, causing the deaths of four UN-paid clearance specialists, there was one reported incident of a relief convoy being struck by coalition bombs. US actions against an adversary with greater logistical means, a more sophisticated military and more modern infrastructure might have witnessed more aggressive coalition ROE and thus greater consequences for relief operations and civilians. A Serb-like army or Iraqi-type Presidential Guard operating in Afghanistan would have possibly resulted in a necessary striking of many more dual-use assets like roads and

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<sup>698</sup> Interview by author with field worker, 13 June 2002.

<sup>699</sup> Even before the commencement of coalition airstrikes against the Taliban regime, the WFP had initiated air drops due to security problems on roads. See Donald Urquhart, "UN seeks funds to charter aid ships," in *Business Times Singapore*, 10 October 2001.

<sup>700</sup> World Food Program, *Updates from the field*. [www.wfp.org/newsroom/in\\_brief/afghanistan](http://www.wfp.org/newsroom/in_brief/afghanistan)

bridges. It should also be noted that, unlike the other cases, the Gulf War was a high intensity conflict, rendering relief efforts by anyone highly vulnerable.

During the air campaigns over Kosovo and Afghanistan however, the Pentagon still seems not to have learned that humanitarian organizations will eventually find the means to re-enter, if not remain in, a territory during bombing operations, given their right to do so, the zeal of local staff and the energies of foreign volunteers, at times in close proximity to war correspondents. Civilian relief operations have resumed through the door of the host state or its neighbour (ICRC in the first three cases, UNICEF into Iraq from Iran, Operation Focus into Kosovo from Greece), the implementation of their own aid drop operations (the IRC in Kosovo), or by delegating local indigenous partners to distribute relief (ICRC in Iraq and Kosovo, WFP in Afghanistan). Unlike during the Cold War, when relief agencies were largely paralysed by global politics, they have become regular players, even living room news, during conflict, having quickly learned operational survival lessons previously known only to ICRC delegates.

But instead of having the military conduct aid drops over Afghanistan, USAID could have recruited the experienced IRC again to drop aid to the Afghans with potentially greater media exposure and longer-term humanitarian benefits. The biggest problem with military involvement in humanitarian work is that soldiers never stay engaged in such activities for long, leaving relief agencies to pick up the pieces of often hastily-conceived public relations projects like HDR drops. The direct use of military logistics cannot substitute for effective, impartial, long-term, culturally-sensitive, ground-coordinated and capacity-building relief operations by experienced agencies coordinating with other regional efforts. Short of this, such unguided military aid drops are but band-aids on massive wounds in a country like Afghanistan. Similar to unguided bombs, the usefulness of expensive aid drops without the requisite ground intelligence for reaching intended recipients, is questionable, largely wasteful and in some cases fatal.

Aside from the Bosnian case, given the brevity of its air campaign, all cases revealed some degree of humanitarian relief taking place during bombings. The extent of agency access to the field can be measured by the amount of transparency the humanitarian and military communities are willing to sacrifice to a UNJLC-type or OCHA-type body. Given that Operation Focus was led by Greece, a NATO

member with close historical and commercial ties to Yugoslavs sharing a common religion, the safety of its convoys was an important consideration for General Clark.

The example of relief access in Afghanistan, facilitated by humanitarian-military liaising at Tampa and Islamabad, did not take place in Kosovo and thus in part explained the resulting mass exodus of Kosovars to neighbouring states which forced NATO troops to organize refugee camps. One could argue that this NATO lesson in 1999 stimulated CENTCOM's aid drop program in 2001. While some military analysts claimed that the air campaign exacerbated the humanitarian crisis in Afghanistan,<sup>701</sup> an unprecedented degree of humanitarian-military information-sharing contributed to the averting of a massive post-conflict crisis.

Humanitarian-military information-sharing during Operation Enduring Freedom offers some hope to future relief work during airstrikes. That NATO and the US CENTCOM wanted to know in advance the movements of relief operations in Kosovo and Afghanistan, respectively, something which proved difficult during the Afghanistan campaign given the much greater number of relief operations,<sup>702</sup> indicates increased coalition respect for the right of humanitarian initiative dictated by Articles 23 and 59 of the Geneva Conventions.

But why do states turn to their air forces to conduct humanitarian functions like aid drops? Because it wins political points for coalition leaders at home. During complex political emergencies in Bosnia and Somalia, where airpower was comparatively absent, relief agency access was not made any easier by the presence of ground-based military security efforts. Under public and media pressure for politicians to be seen to be doing something, great powers deployed troops on much-publicized airlift missions to Somalia, Bosnia and Rwanda with aid drop missions over Bosnia and Afghanistan. Future research could better address the influence of the media upon the conduct of aid drops by coalition forces.<sup>703</sup> This research has focused primarily on the effects of airpower and militarized aid from the air on relief agencies than on its origins.

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<sup>701</sup> Carl Conetta, Project on Defense Alternatives. See Ian Traynor, "The unfinished war – Afghans are still dying as air strikes go on," in *The Guardian*, 12 February 2002, 4.

<sup>702</sup> Christoph Lang, 28 February 2002.

<sup>703</sup> In today's global village of instant access to world events, foreign crisis management has become better covered by the media, resulting in increasing opportunities for highlighting popular initiatives which conveniently deflect the voter from domestic political woes.

## GENERAL THESIS CONCLUSIONS

This section will briefly discuss the lessons learned after a decade of airpower and of relief operations during bombing campaigns, examining the following issues: the impact of IHL upon the conduct of airpower, the consequences of airpower for IHL, the consequences of air campaigns upon civilian populations and civilian objects, increased technological capacities to comply with IHL, the targeting decision process, relief agency access to victims of air campaigns, the consequences of militarized aid from the air. Has the use of airpower increasingly limited civilian casualties since the Gulf War? If so, why? Have aviation and weapons technologies positively evolved in their capacity to avoid collateral damage and incidental loss of life? Are humanitarian operations possible during coalition air campaigns? Is the provisioning of military aid from the air compatible with the protection of civilians? If civilian chances of surviving an air campaign in the last decade have proportionally increased, is credit due to greater coalition respect for the laws of war, increased technological capacities or more accessible relief agency operations, or a combination thereof?

The first major conclusion of this thesis is that, until Operation Enduring Freedom in Afghanistan, the use of airpower by US-led coalitions had witnessed a proportional, general progress in diminishing numbers of civilian casualties since the Gulf War.<sup>704</sup> Efforts to comply with IHL were legally met during the four air campaigns, with increasing percentages of PGM use in proportion to campaign duration. Independent public investigations of bombing mistakes have not revealed evidence of a deliberate targeting of civilian populations or strictly civilian objectives, although HRW findings of coalition airpower conduct in Afghanistan will be published in late Summer. The anti-Taliban coalition campaign, although it used a greater percentage of PGMs, resulted in proportionally greater numbers of civilian casualties, an indication that there does not exist a trend in air campaign coalitions meeting higher degrees of IHL compliance.

There remains a legal obligation by states to take all reasonable precautions at their disposal to minimize incidental loss of life, Article 57.4 of Protocol I. Although the Geneva Conventions, last updated in 1977, do not explicitly specify an obligation by states to use PGMs, enhanced by GPS, or even better, to deploy aircraft with laser-

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<sup>704</sup> See summary of statistics on air campaign civilian casualties and PGM use in section conclusion on pages 66-7.

wielding forward air controllers, ground-based if possible, these means, when available, could be argued to be legally required depending on the circumstances at the time. The counter argument also requires consideration of the military necessity to only use PGMs instead of dumb, gravity-driven bombs when there is no possible way of knowing if PGMs, in limited stock, should also be reserved or restricted to the most important combat missions, possibly yet to come, during the whole of a conflict's duration. NATO's PGM reserves, largely concentrated in the first five weeks of the 1999 campaign were said to have become increasingly exhausted. IHL also does not require that pilots and ground spotters sacrifice their lives and a state's full inventory of aircraft and materials to preserve every civilian life endangered in the midst of conflict.

As a second conclusion, research has also identified three areas which merit legal clarification and emphasis in future state deliberations to update the laws of armed conflict, at least pertaining to air warfare. 1) There is a need to clarify the legality of targeting and striking certain dual-use civilian-military facilities and infrastructure, referred to in Article 52.2 of Protocol I, as they present the greatest challenge to the protection of non-combatants and to the effective work of humanitarian organizations. In the Bosnia and Kosovo cases, research showed that the targeting of dual-use facilities was highly unpopular to coalition leaders. In Iraq and Afghanistan, such political concerns were largely unimportant or unreported.

The counter argument would reveal that it is militarily impossible to codify the innumerable circumstances under which the targeting of such infrastructure would be deemed illegal, given the fog of war and the vulnerability of all law to state re-interpretation. While roads, bridges, ports, airstrips, energy sources and communications networks remain vital to relief agency operations, use of such facilities by belligerents makes them a legal target for destruction.

2) There is also a need to strengthen airpower coalition member obligations to provide, as per Article 57.2 (c) of Protocol I, clear, public, repeated and accessible warnings of imminent bombing missions and their areas of concentration, for the benefit not only of civilians in those areas but also to permit the access of impartial humanitarian agencies, NGOs and their local partners. Coalitions must be much more forthcoming in making such IHL compliance evident. Unlike in 1995 and 1999, the 2001-02 coalition failed numerous times to issue such warnings. Afghan aid workers were killed and injured as a result. The coalition also allowed itself to fall victim to



high dependence on local warlords with political agendas void of IHL concerns at the expense of civilian lives.

3) As particularly evident in the fourth case study, there remains a need for legal clarification in Article 44.3 of Protocol I on the obligations of identification of non-uniformed combatants. It is unrealistic to expect states to increase IHL compliance while non-state or extra-state entities find comfort in legal ambiguities. For the sake of protections owed to all civilians, there must be no room for turn-style civilians-come-combatants-come-civilians. The era of liberation movements during the UN's decolonization period, under which the 1977 Protocols were negotiated, has passed. There is a fine legal line between coalition military operations to combat armed, non-uniformed, non-state, international terrorists and international police operations (CIA, Interpol) to apprehend criminals. The new International Criminal Court could also address the issue of IHL obligations for such civil police actions.

As a third conclusion, research has determined a number of reasons for which, until the Afghanistan air campaign, civilian casualties had proportionally fallen and PGM-use had risen.

a) The principle reason: increased political involvement in targeting decisions. Coalition politicians have limited a commander's freedom to determine what is militarily necessary to accomplish military objectives. This joint civilian-military management of air campaigns greatly restrained airpower use from ideas of military victory to more political objectives enabling diplomatic success while salvaging vital coalition cohesion and minimizing further political embarrassments from targeting failures and human error. In 1999, the political survival of coalition leaders and of coalition unity was as important as any military success. IHL compliance benefited immensely from the input of political concerns regarding targeting. The cases revealed that, regardless of technology, there were fewer civilian casualties when Rules of Engagement became politicized.

It must be acknowledged that not all case studies are comparable. The 1995 air campaign against Bosnian Serbs and the 2001 air campaign against the Taliban regime revealed different political agendas. While in 1995, politicians gave no permission to strike fielded soldiers or their barracks, strikes permitted under the Geneva Conventions, in 2001, the US, having been directly attacked, led a coalition which was the least politically restrained air campaign since the Gulf War. While in 1995 and 1999, politicians sought the use of airpower for reaching political victory

and international accommodations with a belligerent, in 2001 airpower sought the unconditional military termination of a belligerent. This was not the case against the regimes of Iraq, Republika Srpska and Yugoslavia, whose preservation was a political objective. ROE and decisions about military necessity were not the same in each case. Unlike in 1995 and 1999, the coalition in 2001 lacked political pressure to avoid incidents of collateral damage. The timing of coalition member elections and of the role of democratic norms in the targeting decisions of elected coalition leaders remain fruitful areas for further research.

b) The second reason: technological advances in airpower. Bombing and aircraft technology have exponentially enabled a simultaneous and complimentary economy of force and a minimizing of civilian casualties, accomplishing with fewer bombs the destruction of targets previously requiring, as during the Gulf War, more numerous strike sorties and more risks to pilot and civilian. Airstrike technologies have become cheaper over the last decade. No US or coalition pilots have been lost to enemy fire since the Gulf War although the Serbs downed two US planes in 1999.

The human element in managing such technology however remains paramount. The deployment of coalition ground spotters enabled greater targeting accuracy in Iraq, Bosnia and Afghanistan. In populated areas of Iraq and Yugoslavia, an absence of ground-based intelligence, accentuated by weather obstructions, weakened the ability of such technology to totally avoid collateral damage to civilians and non-military objectives. Despite incredible advances in science, communications, bombing equipment, aviation, naval base support and space technologies, military capabilities have still proven fallible. Given NATO's deliberate striking of a government procurement facility later revealed to be the Chinese embassy in Belgrade, even the use of PGMs absent requisite human intelligence has its limits. Mistakes will always be possible, such as the deaths of 4 Canadian soldiers killed by a US-dropped PGM in Afghanistan in April 2002.

However, Afghan air defences, made irrelevant within days, were a far cry from Iraqi and Serb anti-aircraft systems which had forced coalition pilots higher and which increased the susceptibility of civilians to bombs. Given a weaker enemy in the Taliban, coalition planes capable of flying at lower altitudes could have resulted in fewer civilian casualties. The presence of ground spotters to facilitate accurate targeting should also have meant fewer civilian casualties. Although fighter jets carry fewer bombs, bombing by means of fighter jet, assisted by laser-pointing ground

spotters, or pilot-calibrated lasers, could have afforded the greatest likelihood of bombing accuracy and reduced vulnerability to civilians at a fraction of the cost of \$28 billion dollar B-1 bombers.

c) The third reason: increased legal obligations by principle airpower coalition members. Both Britain and France have ratified Protocol I since the Gulf War. The US and Turkey remain the only non-ratifying NATO members.

d) The fourth reason: the importance of coalition cohesion. Regardless of the varying legal obligations of coalition members, the case studies revealed the influence of incidents of collateral damage upon coalition cohesion and IHL compliance. Coalition cohesion positively affected the targeting decisions of commanders and politicians, resulting in greater concerns about civilian casualties. After coalition strikes upon the Amiriya site in Baghdad in 1991 and the Chinese embassy in Belgrade in 1999, the repercussions upon coalition unity from public reports of collateral damage weighed heavily upon the minds of politicians and commanders, thus increasing the employ of PGMs in order to minimize embarrassing airpower mistakes.

Civilian coalition leaders emphasized the importance of using PGMs instead of dumb bombs not only because of concerns for IHL compliance but also due to the importance of hitting particular targets in order to maintain coalition cohesion. PGMs can best avoid the potential repercussions, political and strategic, of missing key objectives. For instance, during SCUD-busting missions in west Iraq, PGMs were employed in non-urban areas due to the political importance of preventing further Iraqi attacks upon key coalition allies and their civilians in Saudi Arabia and Israel.

Maintenance of coalition cohesion was paramount in 1991 as it was in 1995 and 1999. Larger coalitions have resulted in greater IHL compliance by playing a pacifying role upon the military conduct of each other. The small 2-member anti-Taliban coalition failed to meet higher expectations of IHL compliance, meaning fewer civilian casualties, earlier reached in 1999 and especially in 1995. While the US refused to compile statistics on numbers of civilian casualties or incidents with collateral damage, coalitions eventually became sensitive to such public figures.

e) Increased communications and formal relations between the ICRC and coalitions, particularly with NATO members since the Gulf War. These measures expanded state understanding of the purposes and obligations of the Geneva Conventions, of the right of war victims to receive provisions and protection, and of

the right of access of humanitarian organizations during conflict. Relations between humanitarian agencies and military coalitions have only been a minor area of concentration in this thesis and remain a potential area for further study.

f) Increased presence and influence of global media during air campaigns, especially upon the targeting decisions of politicians given public opinion about airpower mistakes committed by pilots. There has also been an increased vigilance by humanitarian and human rights organizations of coalition conduct during air campaigns. Decisions and results on airpower targeting and the consequences thereof have never been so accessible to the general public. The role and impact of the media during air campaigns remains a vast area deserving of further examination.

The thinking after the Gulf War and particularly after the bombing operations of NATO campaigns over Bosnia and Kosovo, advanced by such respected advocacy and watchdog organizations as Amnesty International and HRW, has been to expect air forces to wage war totally free of civilian casualties and incidental effects upon civilian property, something never advocated in the Geneva Conventions and their Additional Protocols. Waging war in 1999 from 15,000 feet without one casualty by one of the belligerents was an exception to the type of warfare envisioned by the Geneva Conventions. The expectation by human rights organizations of belligerents waging war free of any incidents against non-combatants on all sides is an unrealistic prospect given conclusions about human and scientific fallibility. But their exposure of airpower conduct remains a credit to humanity.

As a fourth conclusion, thesis analysis of humanitarian operations during air campaigns has proven that humanitarian action by international relief organisations is not impossible but has only positively evolved most recently in the last case study. Such relief action was briefly attempted in Kosovo and was greatly increased during the bombing of Afghanistan.

While the UN sanctions committee against Iraq strictly regulated and politicized relief efforts into Iraq, and there existed no CHLC-type body available to relief agencies needing to enter Yugoslavia, CENTCOM established an information-sharing centre for relief organizations based in Pakistan. General Clark demonstrated respect for Operation Focus during the Kosovo campaign, wishing to avoid striking its convoys from Greece. His managing of airstrikes in Yugoslavia was also tempered by other coalition members and by the publically-invited presence of ICRC and UN

officials, surveying the humanitarian situation in May of 1999. Impartial aid drops were only finally permitted by NATO in the last days of Operation Allied Force.

However, until the bombing of Afghanistan, the legal access of impartial relief agencies to areas under bombardment and the right of victims to receive provisions and protection were largely not respected and remained highly and inadequately misunderstood by air force coalitions, their military commanders and political leaders. Thousands of civilian lives affected by air campaigns depended on this legal understanding. The US CENTCOM seems to have changed in this regard, much to the benefit of WFP operations in Afghanistan during coalition bombing.

The creation and respect of genuine, neutral, demilitarized zones for civilians, as outlined in Article 15 of the 1949 Geneva Conventions, did not take place in any of the air campaigns, evidence that humanitarian-military relations require greater mutual understanding of each other's weaknesses and opportunities. The militarization of aid drops in 2001 proved useless, wasteful and detrimental in the end. It is coalition leaders more than soldiers who remain most responsible for the blurring of humanitarianism. After politicians first mandated relief agencies to help war victims during the Cold War, they then called upon their soldiers to intrude upon the other's mandate.

Of all case studies, it was the anti-Taliban coalition which best managed relations with the humanitarian community. Humanitarian relations may have also benefited from the deliberate establishing of a small British-American coalition given lessons learned from the complexities of managing the large NATO coalition in 1999.

Although humanitarian-military relations and information-sharing exercises have increased between relief agencies and airpower coalitions since the Gulf War, particularly in 2001, both retain a different doctrinal approach to humanitarian action, causing tensions about mixed mandates, blurred identities and missed divisions of labour to balance each other's strengths and weaknesses during air campaigns. Although conflicts are never similar, the increased presence of global, specialized relief agencies during air campaigns reveals that some progress has been made by the humanitarian community in convincing coalitions of the importance of their access.

It should be recognized that neither humanitarian actors nor the military community wish to be seen to be associated with the donor/state politics and mandate of the other, thus rendering any profound study of humanitarian-military cooperation difficult to assess during the heat of war. Military intelligence and ICRC

confidentiality present a certain contradiction to any formal sharing arrangements. Just as the ICRC refuses to be coordinated by any UN agency, one cannot speak about coordination between military and relief agencies, but rather about information-sharing which took place in a generic way in Tampa and Islamabad.<sup>705</sup> While all ICRC operations are fully transparent to all parties to a conflict, ICRC confidentiality with combatants constitutes a limiting factor upon any public ICRC statements about close ties to belligerents, something well understood in military circles.<sup>706</sup> The ICRC and WFP cannot expect to earn coalition respect and information for the safety of their convoys if they later denounce coalition activities, which they did not. Such open channels permit impartial relief to reach greater numbers of war victims and IDPs.

It will be necessary for the international community to better address the implications of military aid drops for humanitarian policy during future air campaigns. The harnessing of military zeal for aid drops into greater cooperation with relief agencies, as evident in Kosovo in 1999, could make coalitions a much lesser threat to the humanitarian space.

A combination of pressures and capacities, from legal obligations, political involvement in targeting decisions and technology to humanitarian-military relations, concerns for coalition unity and media access to air campaigns, have contributed to making the conduct and effects of airpower safer for civilians and aid workers since the Gulf War, although unfortunately less so in the case of civilians during Operation Enduring Freedom.

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<sup>705</sup> Christoph Lang, 28 February 2002.

<sup>706</sup> Meinrad Studer, "The ICRC and civil-military relations in armed conflict," in *IRRC*, 842 (30 June 2001): 381.

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