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## INTERNATIONAL LAW AND KOSOVO

by Anthony D'Amato

The United Nations Charter does not monopolize the use of transboundary military force. Article 51 (not relevant in the Kosovo situation) allows the use of force in self-defense. The provision of the Charter that applies to the bombing of the Federal Republic of Yugoslavia is Article 2(4). It prohibits the use of transboundary military force (1) against the territorial integrity of a state, (2) against the political independence of a state, or (3) in any manner inconsistent with the purposes of the United Nations. Article 2(4) therefore opens a small window for the use of force that falls outside of these three qualifications.

Let us take the easiest one first. The NATO bombing is not directed against the political independence of the Federal Republic of Yugoslavia (clause 2), for there is no attempt to take over its government; indeed, NATO keeps trying to negotiate with its government.

Now let us look at clause 1: territorial integrity. If the phrase instead had been simply "the territory of a state," then of course the bombing would be in violation, because the bombing is directed against the territory of Yugoslavia. But "territorial integrity" is quite different; it has acquired a meaning in treaties and diplomatic history over the past 150 years. [1] The NATO bombing would violate the "territorial integrity" of Yugoslavia if it is directed at permanently taking away a portion of Yugoslavia's territory.

Thus, one important legal constraint on NATO's action is that its goal cannot be political independence for Kosovo. President Clinton and Prime Minister Blair have recently spoken in terms of independence for Kosovo, and there is nothing to stop Milosevic from giving up Kosovo voluntarily. But taking Kosovo away by force would, in my opinion, clearly violate clause 1 of Article 2(4).

Another legal constraint upon NATO's action is clause 3: the action cannot be inconsistent with the purposes of the United Nations. The purposes relevant to the present discussion can be found in Article 1, paragraph 2: "promoting and encouraging respect for human rights."

To come within this language, a transboundary use of force should merit the characterization of "humanitarian intervention." The Israeli raid on the Entebbe airport, and the United States' interventions in Grenada, Panama, and Somalia, all qualify as humanitarian interventions. They fit in with a long line of humanitarian interventions starting with the intervention of France, Great Britain, and Russia in 1827 in the Ottoman Empire, and the major-power interventions in the Balkans in 1804-13 and 1912-13. The customary international law generated by these interventions that is also consistent with Article 2(4) of the Charter suggest the following criteria:

- (1) The people in the target state (here, Kosovo) must be in severe jeopardy from their own government.
- (2) The projected damage caused by the intervention cannot be disproportionate to the jeopardy ("the cure can't be worse than the disease").
- (3) The intervening state must obey the humanitarian laws of war.

(4) The use of force must end when the humanitarian goal is accomplished.

At the time of this writing (18 April 1999), the NATO intervention appears to fall within these categories and therefore can so far be justified under international law. [2]

[1] An exegesis of this phrase in treaty and diplomatic history is contained in chapter 3 of Anthony D'Amato, *International Law: Process and Prospect* 56-72 (rev. ed. 1995).

[2] This article only discusses the Kosovo bombing under existing international law. It is possible that new international law is being created--e.g., a new customary rule to the effect that a nation that commits ethnic cleansing loses its claim to the territory that has been ethnically cleansed.