

HUMANITAIR

oologsrecht

Joegoslavië II

Despotovic, Ruza

Van: Despotovic Ruza [despot@wishmail.net]
Verzonden: maandag 28 februari 2000 21:31
Aan: Ruza Despotovic
Onderwerp: Natbm200-01 (<http://www.hrw.org/reports/2000/nato/Natbm200-01.htm>)

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200.htm#TopOfPage>> Table Of Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>> Next Page <<http://www.hrw.org/reports/2000/nato/Natbm200-02.htm#TopOfPage>>

Recent Reports <<http://www.hrw.org/reports98/publicns.htm>>
Support HRW <<http://www.hrw.org/about/develop2.html>> About HRW <<http://www.hrw.org/about/about.html>>
Site Map <<http://www.hrw.org/site-map.html>>

Human Rights Watch - Home Page <<http://www.hrw.org>>

THE CRISIS IN KOSOVO

Operation Allied Force began on March 24, 1999 after more than a year of effort by the international community led by NATO to find a negotiated solution in Kosovo. In June 1998, NATO Defense Ministers decided to charge NATO planners with the responsibility to produce a range of options, both ground and air, for military action should the diplomatic process fail to yield the desired results. By the fall, an estimated 250,000 Kosovo Albanians had been driven from their homes and some 50,000 were threatened by approaching winter weather. ² The United Nations Security Council adopted resolution 1199 (UNSCR 1199) on September 23, highlighting the impending human catastrophe and demanding a cease-fire and the start of real political dialogue. A Contact Group meeting in London on October 8 gave U.S. envoy Richard Holbrooke a mandate to secure agreement to the requirements of UNSCR 1199 in a mission to Belgrade. Activation orders for air strikes were agreed on October 13; that same day Holbrooke reported to NATO that Slobodan Milosevic, the president of the Federal Republic of Yugoslavia (FRY), had agreed to the deployment of an unarmed Organization for Security and Cooperation in Europe (OSCE) verification mission to Kosovo and to the establishment of a NATO aerial verification mission. Yugoslavia also agreed to reduce the numbers of security forces personnel in Kosovo to pre-crisis levels.

Despite initial stabilization, violence continued. Following a massacre in the village of Racak on January 15, 1999, NATO increased its state of readiness, issuing a "solemn warning" to Milosevic and the Kosovo Albanian leadership on January 28. ³ This was followed by a second statement on January 30 that reaffirmed NATO's original demands, and delegated to Secretary General Javier Solana authority to commence air strikes against targets on FRY territory.

Parties to talks at Rambouillet in France, in February 1999, attempted to build agreement to protect the rights of all sides. After the first round of talks was suspended on February 23, a second round was convened on March 15. This second round was suspended on March 19 in the light of what NATO intelligence and OSCE observers saw as intensifying violence on the ground instigated by FRY security forces, and a build-up of FRY/Serbian forces in and around Kosovo. OSCE verifiers were withdrawn during the night of March 19-20, and Holbrooke flew to Belgrade on March 22 in a last-ditch effort to persuade Milosevic to back down and avoid a military confrontation. On March 23, following final consultations with allies, Javier Solana directed NATO's Supreme Allied Commander Europe (SACEUR), Gen. Wesley Clark, to initiate a "phased" air operation. ⁴

Operation Allied Force Attacks

Operation Allied Force was initiated at 7 p.m. GMT (8 p.m. local time in Yugoslavia). Of thirteen (out of nineteen) NATO nations that made aircraft available for the operation (Belgium, Canada, Denmark, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States), eight put their planes in action on the first night. Aircraft from the United States, the United

Kingdom, France, Canada, and Spain conducted bombing, carrying out a succession of attack waves with almost exclusively precision-guided munitions (PGMs) against fixed and pre-selected targets. Long-range cruise missiles were fired by the United States and Britain. Though targets were hit throughout Yugoslavia across a mix of target types (for example, airfields, command and control sites, barracks, and headquarters, particularly of the special police), the initial focus was almost exclusively an effort to neutralize the Yugoslav air defense system. In the first day, NATO hit fifty-three targets, largely air defenses and radar sites. ⁵

The mission of Operation Allied Force, in General Clark's words, "was to halt or disrupt a systematic campaign of ethnic cleansing." ⁶ Attacks would be along two lines, a "strategic attack line operating against Serb air defenses, command and control, VJ [Yugoslav Army] and MUP [Ministry of Interior] forces, their sustaining infrastructure, supply routes, and resources," and "a tactical line of operation against the Serb forces deployed in Kosovo and in southern Serbia." ⁷ The initial attacks against air defenses and command and control elements were intended to "set the conditions for moving on up [the hierarchy of targets] to [include] the forces in the field." ⁸

Following the attacks on air defenses and command and control centers, NATO chose targets to isolate Yugoslav forces and constrain their movement. According to Chairman of the Joint Chiefs of Staff Gen. Henry Shelton, this included their "ability to move both horizontally [and] laterally on the battlefield, the road and bridge network, which was key to that, and also...sustainment, particularly the POL [petroleum, oil, and lubricants], to start causing shortages, since this was a predominantly mechanized armored force." ⁹

Although there were expectations on the part of some, including evidently many political leaders in NATO governments, that Allied Force would be a short campaign, the U.S. Department of Defense stated that it "made clear to our allied counterparts that Operation Allied Force could well take weeks or months to succeed." ¹⁰ Regardless of this post-war claim, NATO operations began with just a limited number of cruise missile and air strikes. The carefully planned "phases" were quickly melded together and expanded to accommodate political and public sensitivities, as well as to escalate the intensity of operations to make progress towards forcing Yugoslav submission. According to U.S. Secretary of Defense William Cohen, "soon after the conflict began, entire classes of targets were delegated for approval by NATO's military commanders. And only certain sets of targets, such as those in downtown Belgrade, in Montenegro and those with a high likelihood of civilian casualties, were reviewed by the allied capitals and by higher political authorities." ¹¹

At the NATO summit in Washington on April 23, 1999, one month into the air war, alliance leaders decided to intensify the air campaign by expanding the target set to include military-industrial infrastructure, news media, and other targets considered to be of a strategic nature. ¹² More aircraft and weapons were deployed in the theater of operations, and there was an intensification not only in the rate at which targets were hit, but also a shift from an initial eight-hour day to a twenty-four-hours a day campaign. ¹³

With an increasing force and greater intensity of attacks, there were also increasing attacks on Yugoslav forces in and around Kosovo. However, by and large, the focus into the second month of bombing continued to be attacks on objects that would cut the supply lines and support infrastructure of the military forces. Not only was poor weather a prohibitive factor in mounting attacks on mobile forces, but NATO had to "learn" the Kosovo geography and the organization of Yugoslav forces. It was many weeks before it was able to track forces on the ground, identify key elements, predict their movements and activities, and attack them in urban settings. Nevertheless, NATO's air attacks, both against "strategic targets" and in the south, slowly had an accumulating impact on Yugoslav military operations. Air activity forced Yugoslav forces to remain largely hidden from view, traveling only under limited circumstances. ¹⁴ Over time, attrition of heavy equipment accelerated, peaking at about the last week in May.

In the first month of Operation Allied Force, NATO reported that it averaged around 350 sorties per day, with nearly 130 attack sorties. By the fourth week, it was flying nearly two-and-a-half times the number of attack sorties per day than it flew during the first three weeks. ¹⁵ NATO reported in early July that it had flown a total of 37,465 sorties, of which 14,006 were strike and suppression of air defense (SEAD) sorties and 10,808 were strike-attack sorties. ¹⁶ By the end of the conflict, NATO had attacked over 900 targets. ¹⁷

As more NATO forces were introduced and the attacks continued, the percentage of PGMs being used also declined. In the early days of Allied Force, "smart" weapons constituted more than 90 percent of the ordnance employed. By mid-May, this had declined to only 10 or 20 percent of the total, with guided weapons constituting about 35 percent of the 26,000 weapons employed throughout the course of the war. ¹⁸

From the very beginning of Operation Allied Force, minimizing civilian casualties was a major declared NATO concern. According to NATO, consideration of civilian casualties was fully incorporated into the planning and targeting process. All targets were "looked at in terms of their military significance in relation to the collateral damage or the unintended consequences that might be there," General Shelton said on April 14. "Then every precaution is made...so that collateral damage is avoided." ¹⁹ According to Lt. Gen. Michael Short, "collateral damage drove us to an extraordinary degree. General Clark committed hours of his day dealing with the allies on issues of collateral damage." ²⁰

Though a couple of dozen incidents would dog NATO throughout the war in its press and propaganda battles with the Yugoslav government, from another perspective, the limitation of "collateral damage" was a political imperative to successful conclusion of an alliance war. In the words of Lt. Gen. Marvin R. Esmond, the senior Air Force operations officer, "NATO's success with precision engagement and minimal collateral damage was a key factor in holding the Alliance firmly together during the bombing." ²¹

Documenting and Assessing the Civilian Toll

Because of keen public interest in the civilian toll from Operation Allied Force, Human Rights Watch assumed a major undertaking to document and evaluate the impact and effects of the NATO military operation. Human Rights Watch military consultant William M. Arkin and researcher Bogdan Ivanisevic conducted extensive research into the operation. During the war, they compiled a master chronological database from military sources, Yugoslav media and Internet reports, collating these with press and governmental reporting from the NATO countries. Tanjug (official Yugoslav news agency) and Yugoslav television and radio dispatches were monitored on the Internet and via the Foreign Broadcast Information Service (FBIS) and BBC Summary of World Broadcasts. The researchers corresponded with Yugoslav civil defense, military, and information ministry officials via E-mail, and scoured Yugoslav websites, particularly those maintained by official agencies. They also comprehensively monitored the Yugoslav press from March-June 1999, including: *BLIC* (Belgrade independent daily), *Politika* (Belgrade pro-government daily), *Politika Ekspres* (Belgrade pro-government), *Vecernje Novosti* (Belgrade pro-government daily), *Glas Javnosti* (Belgrade independent), *Dan* (Montenegrin pro-Belgrade/SPS daily), *Pobjeda* (Montenegrin pro-Podgorica government daily), and *Vijesti* (Montenegrin independent daily). ²²

Between August 2 and August 20, 1999, Arkin and Ivanisevic conducted a bomb damage assessment mission in Serbia and Montenegro. Human Rights Watch Executive Director Kenneth Roth accompanied the team on August 2-5. In twenty days, the team drove approximately 5,000 kilometers, visited ninety-one cities, towns, and villages, and inspected well over 250 sites (targets, reported targets, areas of civilian damage, stray craters, etc.). They met with officials from a dozen ministries in Belgrade, and in other locations met with regional, municipality, factory, and utility representatives. Taking eyewitness testimony and inspecting bomb damage, they were able to verify individual events and assess the veracity of wartime and post-war reporting.

Human Rights Watch confirmed ninety incidents in which civilians died as a result of NATO bombing (see Appendix A). The field mission visited forty-two of the ninety confirmed incident locations and collected primary source information on thirty other incidents. Sufficient corroborating information existed on twenty-two others to recognize their credibility (including five in which NATO has officially confirmed that it attacked nearby targets at the same time). Eight additional reported and claimed incidents have been eliminated altogether, three because they could not be verified or there was little corroborative reporting, ²³ and five because the reported deaths are actually presumed to be paramilitary policemen or soldiers (see Appendix C). ²⁴

Human Rights Watch has also assessed the veracity of information compiled by the Yugoslav government, including autopsy reports, death certificates, and photographic evidence of bomb damage and casualties. The government's two-volume *White Book, NATO Crimes in Yugoslavia*, provides information on seventy-five of ninety incidents. Other releases by the Ministry of Foreign Affairs and the Ministry of Health document, in a less comprehensive manner, other aspects of the civilian effects of the bombing. Human Rights Watch also met with representatives of the governmental Committee for Compiling Data on Crimes Against Humanity and International Law, which is compiling dossiers on each instance of civilian casualties, as well as the government Reconstruction Commission, which is responsible for repair of the public infrastructure.

The findings of Human Rights Watch's field operation facilitated a critical review of governmental and private reports from both sides of the conflict. Systematic on-site inspections facilitated the cross-checking of information compiled from press and Internet reports, as well as providing the basis for evaluating the detailed reporting on casualties by the Yugoslav government and private agencies. Our inspection of bomb

damage and interviews with witnesses, survivors, and others enabled us to assess the accuracy of detailed reporting on deaths and bomb damage produced on the same incidents, for example, by the Yugoslav and other government sources. On the basis of spot-checking in the course of our own field research and correlation with other sources, some of these documentation sets, notably the *White Book* and the Ministry of Health photographic record, have been found to be largely credible. 25

Civilian Deaths as a Result of Attacks

Human Rights Watch concludes that as few as 489 and as many as 528 Yugoslav civilians were killed in the ninety separate incidents in Operation Allied Force. In sixty-nine of the ninety incidents, the precise number and the names of the victims are known (see Appendix B). In another nine incidents, the number of victims is known and some of the names have been confirmed. In nine incidents, the number of victims is known but the names are unknown. In three incidents, the names and precise numbers of victims are unknown. 26

Between 62 and 66 percent of the total registered civilian deaths occurred in just twelve incidents (see Table 1). These twelve incidents accounted for from 303 to 352 civilian deaths, based on the best available information. These were the only incidents among the ninety documented in which ten or more civilian deaths were confirmed.

Information drawn from the ninety incident reports allows a general picture to be drawn of the civilian deaths by the time, place, and circumstances in which they occurred. The deaths resulted from attacks on a range of targets, under different circumstances, and from a variety of munitions. Fifty-five of the incidents occurred in Serbia (including five in Vojvodina), three in Montenegro, and thirty-two in Kosovo. But between 279 and 318 of the dead—between 56 and 60 percent of the total number of deaths—were in Kosovo. In Serbia, 201 civilians were killed (five in Vojvodina) and eight died in Montenegro. A third of the incidents—thirty-three—occurred as a result of attacks on targets in densely populated urban areas.

Human Rights Watch was able to determine the intended target in sixty-two of the ninety incidents (68 percent). Of these, the greater number of incidents was caused as a result of attacks on military barracks, headquarters, and depots; thirteen were a result of attacks on bridges (and one tunnel); six resulted from attacks on telecommunications and air defense facilities; five each resulted from attacks on industrial facilities, oil installations, and airfields; and seven were as a result of attacks on convoys or on what were perceived to be military forces in the field. These latter incidents were the most deadly, while two of the ten worst incidents occurred as a result of attacks on bridges.

Almost half of the incidents (forty-three) resulted from attacks during daylight hours, when civilians could have been expected to be on the roads and bridges or in public buildings which may have been targeted. Overall, forty incidents occurred in April, forty-five occurred in May, four in June, and one in March. May 29 saw the most incidents (five), followed by April 14, May 30, and May 31 (four each).

Human Rights Watch was able to determine the weapon involved in the cause of the civilian deaths in only twenty-eight of the ninety incidents. Of these, twenty-one are incidents in which it can be confirmed that precision-guided munitions (PGMs) were used (though there could be others). This includes all of the attacks on bridges or targets in and around the Belgrade area. Cluster bomb use can be positively determined in seven incidents (another five are possible but unconfirmed). 27 In almost all of the other instances, we have been unable to establish the weapon used.

Countervailing Claims

One disturbing aspect of the matter of civilian deaths is how starkly the number of incidents and deaths contrasts with official U.S. and Yugoslav statements. Speaking on September 9, 1999, Secretary of Defense William Cohen said: "Of the thousands of bombs that were dropped and the missiles that were fired, nearly all of them hit their intended target. Of all those thousands of weapons that were dropped and expended, approximately 20 had unintended consequences or were not on target." 28 Gen. Wesley Clark, commander of NATO forces, in the war, stated on August 31 that there were just "20 incidents of collateral damage" in the entire war. 29 Deputy Secretary of Defense John Hamre testified before Congress on July 21 that "Out of the 9,300 strikes [sic], we had 30 where we killed people...30 where we had damage we hadn't intended." 30 In October, General Clark again repeated that there had been twenty incidents: "I just want to emphasize the incredible precision of the bombing; the fact that on 78 days, with over 23,000 weapons dropped or fired, there were only 20 incidents of collateral damage...that's an incident rate of less than 1/10th of 1 percent." 31

However, the number of confirmed deaths is considerably smaller than both U.S. and Yugoslav public

estimates. The post conflict casualty reports of the Yugoslav government vary, but coincide in estimating a civilian death toll of at least some 1,200 and as many as 5,700 civilians. On May 22, Margit Savovic, president of Yugoslav Committee for Cooperation with UNICEF said that "more than 1,200 civilians were killed and more than 5,000 [were] wounded." ³² On July 14, Milovan Zivkovic, director of the Federal Office of Statistics, said at press conference that "estimations [of] about 1,200 killed have appeared, and some sources talk about more than 5,000 victims, some go even up to 18,000." ³³ According to the BETA independent news agency, Zivkovic also said that the 1,200 number publicized by the Yugoslav Committee for Cooperation with UNICEF pertained only to those killed during the two and a half months of the air campaign. "But the 5,000 and 5,700 numbers are exact as well, only they cover a longer period of time and various ways of losing life," he said. ³⁴ Ambassador Djorde Lopicic, chief of international law at the Ministry of Foreign Affairs (MFA), told Human Rights Watch on August 5, 1999, that 2,000 civilians had died and over 10,000 were injured from NATO bombing. At the lower end, even the 1,200 figures is more than twice the civilian death toll of around 500 that Human Rights Watch has been able to verify for the ninety known incidents involving civilian deaths.

While there have been various pronouncements from the Yugoslav government regarding the number of civilian deaths, NATO has been far more silent. There has been only one informal U.S. government or NATO statement regarding the number of Yugoslav civilian deaths from the bombing. General Joseph W. Ralston, vice chairman of the Joint Chiefs of Staff, said in September that "Despite the weight of bombs dropped, Serbian civilian casualties were amazingly light, estimated at less than 1,500 dead." ³⁵ This estimate is three times the number calculated by Human Rights Watch.

In the thirty instances acknowledged by the Defense Department, Deputy Defense Secretary John Hamre has provided the only analysis regarding the causes of civilian deaths. In Congressional testimony in July he said of the thirty incidents:

one third were instances where we damaged the target we wanted to destroy, but innocent civilians were killed at the same time. You will recall the time one of our electro- optically guided bombs homed in on a railroad bridge just when a passenger train raced to the aim point. We never wanted to destroy that train or kill its occupants. We did want to destroy the bridge and we regret this accident. As I said, 10 of the 30 instances of unintended damage fall in this category. For the remaining 20 instances, 3 were caused by human error that identified the wrong target, and two were caused by mechanical error by our hardware. In 14 instances we have not yet determined whether the unintended damage was caused by human error or mechanical failure. We will determine that to the best of our ability during our after action assessment. The one remaining ... [is the] bombing of the Chinese embassy. ... [It] was unique in that we had a legitimate target that we wanted to hit; the only problem is we had the target located in the wrong building. To my knowledge, this is the only example of this failing in all of our strike operations. ³⁶

The Standards Applied

The conduct of warfare is limited and restrained by the complementary standards of international humanitarian law, the laws of war. International humanitarian law (IHL) applies expressly and uniquely to armed conflict situations, with distinct provisions to regulate international and non-international (internal) armed conflicts. In evaluating NATO's use of military force in the Federal Republic of Yugoslavia, the laws of war provide the most relevant standards. The conflict in Kosovo reached the threshold of an internal armed conflict in the terms of humanitarian law in 1998, so that certain provisions of the laws of war then applied to both government forces and to the armed insurgency. With the initiation of the NATO bombing in March 1999, the conflict in Kosovo and all of the Federal Republic of Yugoslavia involving NATO and Yugoslav forces became an international armed conflict to which the full body of international humanitarian law applied.

The four Geneva Conventions of 1949 are the fundamental building blocks of international humanitarian law. Geneva Convention IV concerns the protection of civilians in time of war. The conventions are among the most widely ratified international treaties, and the norms they establish are largely considered customary international law, that is, norms that have obtained universal recognition and are accepted as binding upon all nations.

Further elaboration of the provisions of the four Geneva Conventions of 1949 is provided in the 1977 additional protocols to the conventions: Protocol I, relating to the protection of victims of international armed conflicts, and Protocol II, relating to the protection of victims of non-international armed conflicts. All of the 188 members of the United Nations are parties to the four Geneva Conventions of 1949; 155 states are parties to Protocol I and 148 to Protocol II. The Federal Republic of Yugoslavia acceded to the four Geneva Conventions on April 21, 1950, and to Protocols I and II on June 11, 1979. Most NATO

members are parties to Protocol I, which applies to the conflict in question: notable exceptions are France, Turkey, and the United States. Although the U.S. has not ratified Protocols I and II, it considers many of their provisions to be applicable as customary international law. ³⁷ In addition, the United States and NATO recognize as a matter of policy and have declared that the laws of war (LOW) apply to all cases of armed conflict, even if a state of war is not recognized. ³⁸

Protocol I Additional to the Geneva Conventions provides the basis for the evaluation of NATO's bombing. A basic principle of the laws of war is that the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. This turns in large part on the requirement that attackers must distinguish between civilians and combatants and between military objectives and civilian objects. They must avoid or minimize harm to civilians, and to this end may not attack civilians exclusively or combatants and civilians indiscriminately. Attacks may not be indiscriminate by intent, where the attackers deliberately set out to kill and maim civilians, or through negligence, where those carrying out an attack disregard their obligations to identify a specific military objective, and to take care not to cause disproportionate harm to civilians in attacking it. Damage to civilian objects and civilian casualties that are incidental to lawful attacks on military objectives are known in military terms as "collateral damage."

The most fundamental principle of the laws of war requires that combatants be distinguished from noncombatants, and that military objectives be distinguished from protected property or protected places. Parties to a conflict must direct their operations only against military objectives (including combatants). ³⁹ Under Protocol I, Art. 51, paragraph 4, indiscriminate attacks are prohibited. These include attacks that:

- are "not directed against a specific military objective";
- "employ a method or means of combat which cannot be directed at a specific military objective";
- "employ a method or means of combat the effects of which cannot be limited as required" by the Protocol; and
- "in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction."

Military objectives are defined as "those objects which by their nature, location, purpose or use make an effective contribution to military action." ⁴⁰

The term "means" of combat refers generally to the weapons used; the "method," to the way in which such weapons are used. Casualties that are a consequence of accidents, as in situations in which civilians are concealed within military installations, may be considered incidental to an attack on a military objective—"collateral damage"—but care must still have been shown to identify the presence of civilians. Protocol I, Art. 57 sets out the precautions required, among them to "do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects..."; to "take all feasible precautions in the choice of means and methods of attack" to avoid or minimize incidental civilian casualties or damage to civilian objects; and to refrain from launching any attack "which may be expected to cause" such deaths, injuries or damage "which would be excessive in relation to the concrete and direct military advantage anticipated..." ⁴¹ In its authoritative *Commentary* on the protocols, the International Committee of the Red Cross (ICRC) is clear on that what is meant by "feasible": "What is required...is to take the necessary identification measures in good time in order to spare the population as far as possible." ⁴²

The principle of proportionality places a duty on combatants to choose means of attack that avoid or minimize damage to civilians. In particular, the attacker should refrain from launching an attack if the expected civilian casualties would outweigh the importance of the military objective. ⁴³ Protocol I, art. 57 ("Precautions in attack"), para. 2(b) requires those who plan and/or execute an attack to cancel the attack in such circumstances. The ICRC has noted that there is never a justification for excessive civilian casualties, no matter how important the military target. Moreover, the argument of proportionality can never justify very high civilian casualties and damage whatever the military advantage envisioned: "Incidental losses and damages should never be extensive." ⁴⁴

The ICRC *Commentary* on Protocol I's art. 57 sets out a series of factors that must be taken into account in applying the principle of proportionality to the incidental effects attacks may have on civilian persons and objects:

The danger incurred by the civilian population and civilian objects depends on various factors: their location (possibly within or in the vicinity of a military objective), the terrain (landslides, floods etc.), accuracy of the weapons used (greater or lesser dispersion, depending on the trajectory, the range, the ammunition used etc.), weather conditions (visibility, wind, etc.), the specific nature of the military objectives concerned

(ammunition depots, fuel reservoirs, main roads of military importance at or in the vicinity of inhabited areas etc.), technical skill of the combatants (random dropping of bombs when unable to hit the intended target). ⁴⁵

The *Commentary* provides a number of examples of the application of this principle:

All these factors together must be taken into consideration whenever an attack could hit incidentally civilian persons and objects. Some cases will be clear-cut and the decision easy to take. For example, the presence of a soldier on leave obviously cannot justify the destruction of a village. Conversely, if the destruction of a bridge is of paramount importance for the occupation or non-occupation of a strategic zone, it is understood that some houses may be hit, but not that a whole urban area be levelled. ⁴⁶

In researching each of the incidents in which attacks led to civilian deaths we have sought to compile the facts from which to determine the nature of the real or perceived military objectives targeted; any facts relating to the care taken and procedures and criteria employed to confirm the military nature of the targets; analysis done by NATO to determine proportionality of the civilian deaths and the means of attack to the express military objectives; the correlation of civilian deaths to the location and nature of the targets selected; the timing of target selection as a factor in its appropriateness; the methods and conditions under which distinct weapons systems were employed; and the potentially indiscriminate nature of some weapons systems in general and under certain conditions.

In assessing specific attacks, with a view to general observations on the conduct of the air war, the primary issue is whether due care was taken for the protection of civilians. Was the prospect of civilian casualties sufficiently taken into account in the targeting, the weaponry employed, and the means and conditions under which weapons were employed? This involves a review of the selection of targets, and the procedures through which these are determined: Were the military objectives as defined and identified by NATO forces within the terms of humanitarian law? This report addresses the air war only through its cost in civilian lives as an indicator to be taken into account in assessing the larger picture of compliance with international humanitarian law.

Case Studies of Civilian Deaths

The ninety incidents involving some 500 civilian deaths provide a part of the picture from which to consider NATO's conduct of the war (two subsequent Human Rights Watch reports are planned to look in greater detail at targeting in Operation Allied Force and the use of cluster bombs). ⁴⁷ At issue is whether NATO effectively adhered to the humanitarian law imperative that the civilian population be protected against dangers arising from military operations. At the core is the principle of civilian immunity from attack and its complementary principle requiring the parties to a conflict to do everything feasible to distinguish civilians from combatants at all times. Several incidents, which accounted for a large proportion of civilian deaths, illustrate various problems faced in NATO actions, and are further presented below.

The most dramatic losses of civilian life from the NATO offensive in Kosovo came from attacks on fleeing or traveling refugees confused with military forces. These included repeated attacks on refugees over a twelve-mile stretch of the Djakovica-Decane road in Kosovo, in which seventy-three civilian refugees died (incident no. 19), attacks near Korisa in Kosovo (incident no. 57), in which as many as eighty-seven civilian displaced persons and refugees died, and two incidents involving attacks on civilian buses, at Luzane (incident no. 41) and Savine Vode (incident no. 46). Another dramatic loss of civilian life followed from an attack on Dubrava prison, which caused nineteen deaths (see below).

In these various incidents involving the deaths of Kosovar refugees, the principal issue is whether every feasible precaution was taken to accurately distinguish civilians from combatants. At the same time, there are questions regarding the decisions to attack on the basis of incomplete and/or seriously flawed information. The public statements by NATO spokespersons concerning particular attacks, and the changes in the way attacks were characterized, also bear some analysis, in particular insofar as they may seek to justify attacks in which civilian casualties were clearly excessive.

Moreover, there is a question as to whether NATO's extraordinary efforts to avoid casualties among its pilots precluded low-flying operations that might have helped to identify targets more accurately. This was and continues to be a major issue in the public debate about Operation Allied Force. For many weeks in the initial stages of the war, NATO airplanes were not flying below 15,000 feet. If the height at which the NATO pilots flew had little to do with identification and attack of the target, then the issue is irrelevant. But if precision would have been greater (and civilian casualties lessened) had NATO pilots flown lower, it

could be argued that NATO was "obligated" to have its pilots fly lower. ⁴⁸ In the case of attacks such as those at Djakovica-Decane, in which flying at a higher altitude seems to have impeded a pilot from adequately identifying a target, the conclusion again is that inadequate precautions were taken to avoid civilian casualties.

The incident at Korisa (incident no. 57) also raises important questions of Yugoslav responsibility for some civilian deaths attributed to NATO bombing. In this case, NATO did not apply adequate precautions in executing its airstrikes. But Yugoslav military forces may share the blame for the eighty-seven civilian deaths at Korisa: there is some evidence that displaced Kosovar civilians were forcibly concentrated within a military camp there as a human shield.

Yugoslav responsibility of a more direct kind has been shown for killings at the Dubrava prison that Yugoslav authorities attributed to NATO bombing. Human Rights Watch researchers in Kosovo have found that some seventy-six prisoners there were victims of extrajudicial executions-cold-blooded murder-by Yugoslav forces in the days after NATO bombed the prison. The NATO attack on May 21 was, however, responsible for nineteen deaths at the facility prior to the massacre of prisoners; an earlier NATO attack killed four civilians at the prison (see incidents nos. 60 and 65). ⁴⁹

A third of all of the incidents in which civilians died-thirty-three-occurred as a result of attacks on targets in populated urban areas. Six incidents occurred in Belgrade, Nis, and Vranje (the latter two are towns in southern Serbia). Eight towns had two or three incidents each involving civilian deaths: Aleksinac, Cacak, Novi Sad, Surdulica, and Valjevo in Serbia and Vojvodina, and Djakovica, Pristina, and Prizren in Kosovo. The targets in almost all of these attacks were headquarters or military/police barracks and facilities, and/or factories. In these cases there was little doubt as to the apparent objective of the attack, or that these locations constituted lawful military objectives.

In one case, involving the use of cluster bombs in Nis (incident no. 48), the weapon employed was a decisive factor in the civilian deaths. Nis is one of seven confirmed and five likely incidents involving civilian deaths from cluster bomb use. Altogether, some ninety to 150 civilians died from cluster bomb use by the United States and Britain. In the case of the attack on the Nis airfield on May 7, the technical malfunction of the weapon points to the fact that cluster bombs should not be used in attacks in populated areas, let alone on urban targets, given the risks. After the Nis incident, there was a U.S. executive prohibition on further cluster bomb use. ⁵⁰ Nevertheless, British planes continued to drop cluster bombs, indicating the need for universal, not national, norms regarding cluster bomb use.

In three cases-the bombing of Serb Radio and Television headquarters in Belgrade (incident no. 30), the bombing of the "Marshal Tito" Petrovaradin (Varadinski) Bridge in Novi Sad (incident no. 2), and the bombing of the Belgrade Heating Plant (incident no. 7)-Human Rights Watch questions the legitimacy of the target. Regardless of NATO's legal determination that civilian radio and television were legitimate military objectives because of their role in internal and external propaganda, ⁵¹ NATO did not take adequate precautions in warning civilians in the attack on the media headquarters, nor did the attack satisfy the legal requirement in terms of proportionality, given that the center was located in a densely populated urban neighborhood and was staffed twenty-four hours. After strikes on the Belgrade headquarters, moreover, Yugoslav state broadcasters were easily able to move operations to private and makeshift facilities. ⁵² Similarly, in the case of the 04:35 a.m. attack on the New Belgrade Heating Plant on April 4, in which one civilian (the night watchman) was killed, NATO issued no warning and attacked a target located in an urban area. ⁵³ The risks involved to civilians in undertaking the two Belgrade urban attacks were grossly disproportionate to any perceived military benefit.

The attacks on the Novi Sad bridge and six other bridges in which civilian deaths occurred (Ostruznica, incident no. 37; Trstenik, incident no. 39; Nis, incident no. 51; Vladicin Han, incident no. 55; Pertate, incident no. 71; and Varvarin, incident no. 81) also were of questionable military effect. All are road bridges. Most are urban or town bridges that are not major routes of communications. Human Rights Watch questions individual target selection in the case of these bridges. U.S. military sources have told Human Rights Watch that bridges were often selected for attack for reasons other than their role in transportation (for example, they were conduits for communications cables, or because they were symbolic and psychologically lucrative, such as in the case of the bridge over the Danube in Novi Sad). The destruction of bridges that are not central to transportation arteries or have a purely psychological importance does not satisfy the criterion of making an "effective contribution to military action" or offering a "definite military advantage," the baseline tests for legitimate military targets codified in Protocol I, art. 52. Moreover, the risk in terms of civilian casualties in attacking urban bridges, or in attacking during daylight hours, is "excessive in relation to the concrete and direct military advantage anticipated," the standard of proportionality codified in Protocol I, art. 57.

In one final incident, a pilot targeted a large sanatorium complex in Surdulica in southeastern Serbia (incident no. 79) in what was suggested to be an error, the complex apparently being mistaken for a military installation located in the sametown. Other than the Chinese Embassy bombing in Belgrade (incident no. 49), which NATO claimed it had mistakenly identified as the Yugoslav Directorate for Supply and Procurement, this appears to be the only target attacked in error. U.S. officials have elliptically admitted to what happened at Surdulica, but have not mentioned the place name. ⁵⁴ In another incident of civilian deaths, at Tornik peak in the Zlatibor mountains (incident no. 12), Human Rights Watch has been unable to identify the intended target.

What follows is a discussion of the major legal and policy issues raised in selected incidents (others are discussed in Appendix A).

Refugees on the Djakovica-Decane Road, Kosovo

On April 14, during daylight hours, NATO aircraft repeatedly bombed refugee movements over a twelve-mile stretch of road between Djakovica and Decane in western Kosovo, killing seventy-three civilians and injuring thirty-six. Human Rights Watch could document. The attack began at 1:30 p.m. and persisted for about two hours, causing civilian deaths in numerous locations on the convoy route near the villages of Bistrazin, Gradis, Madanaj, and Meja. NATO and U.S. spokespersons initially claimed the target was an exclusively military convoy and that Serb forces may have been responsible for the attacks on civilians. Pentagon spokesman Ken Bacon said that NATO commander Gen. Wesley Clark had received reports that "after the convoy was hit, military people got out and attacked civilians." "The pilots state they attacked only military vehicles," NATO said, adding that the "reported incident will be fully investigated once all mission details have been reviewed." There are also various NATO reports of Serbian deception in placing dead civilians at the site of the bombing. German Defense Minister Rudolf Scharping, in particular, put the blame for civilian casualties on Yugoslav forces. ⁵⁵

On April 15 NATO began to backtrack. It said one plane had "apparently" dropped a bomb on a civilian vehicle traveling with a military convoy. The reference to a strictly military convoy was modified: "Serbian police or army vehicles might have been in or near the convoy." NATO acknowledged that it had bombed civilian vehicles by mistake: "Following a preliminary investigation, NATO confirmed that apparently one of its planes dropped a bomb on a civilian vehicle traveling with a convoy yesterday," alliance spokespersons said.

Reporters from U.S. media went to the scene on April 15. They interviewed refugee survivors and observed shattered farm tractors, burned bodies identified as refugees, bomb craters, shrapnel, and bomb remnants with U.S. markings. The refugee column had apparently been divided in two main groups. Over the next few days, NATO wavered from insisting its forces attacked only military vehicles to an explanation that two convoys had been targeted, that the refugees had been at the rear of military columns, and that the civilian death toll was limited. On April 16, NATO spokesman Jamie Shea and Gen. Giuseppe Marini declared that "in one case and one only, we have proof of civilian loss of life. Otherwise, we are sure that we targeted military vehicles."

NATO finally admitted that the pilot of a U.S. F-16 mistakenly fired on what he believed to be military trucks, and expressed "deep regret." Later, on April 19, NATO modified its account of a single pilot's error, declaring that about a dozen planes had been involved in numerous attacks on the two convoys, dropping a total of nine bombs. Convoluting explanations continued for a number of days after the incident; NATO and the United States seemed incapable of reconstructing what had occurred. There were widespread press reports of the use of cluster bombs, which the United States denied. ⁵⁶

In addition to the press reporting of this incident and the endless damage control by NATO and U.S. spokespersons, Human Rights Watch obtained extensive forensic details of the incident from the Yugoslav government. ⁵⁷ No evidence whatsoever was ever produced to indicate Serb responsibility for any of the deaths, though Tanjug reported the deaths of three Serbian "policemen" in the bombings who it said "were securing the safe passage for the convoy." ⁵⁸ This tends to suggest that military or police were present in the refugee vehicles, but

Human Rights Watch found no basis to support the claim that the convoys themselves were composed of military vehicles. ⁵⁹

General Clark stated in September that NATO consistently observed Yugoslav military vehicles moving on roads "intermixed with civilian convoys." After the Djakovica-Decane incident, General Clark says, "we got

to be very, very cautious about striking objects moving on the roads. 60 Another NATO officer, Col. Ed Boyle, says: "Because we were so concerned with collateral damage, the CFAC [Combined Forces Air Component Commander] at the time, General [Michael] Short, put out the guidance that if military vehicles were intermingled with civilian vehicles, they were not to be attacked, due to the collateral damage." 61 When this directive was actually issued, and why it may not have served to avoid the subsequent three incidents, remains an important question. Nevertheless, the change in NATO rules of engagement indicates that the alliance recognized that it had taken insufficient precautions in mounting this attack, in not identifying civilians present, and in assuming that the intended targets were legitimate military objectives rather than in positively identifying them.

Displaced Civilians in the Korisa Woods, Kosovo

On May 13, almost a month after the Djakovica-Decane incidents, as many as eighty-seven displaced Kosovar civilians were killed and sixty wounded when bombs were dropped during the night on a refugee camp in a wooded area on the Prizren-Suva Reka road, near the village of Korisa in Kosovo (incident no. 57). There have been various conflicting reports of the number of dead, from 48 to 87. 62 The Yugoslav government claimed the attackers used cluster bombs, and the *White Book* published by the Ministry of Foreign Affairs includes photographs of the remains of tactical munitions dispensers (TMDs) it says are from the site. NATO spokespersons vociferously denied the use of cluster bombs, 63 and Human Rights Watch has been unable to independently confirm that cluster bombs were indeed used in this attack.

In an official statement on May 15, NATO spokesman Maj. Gen. Walter Jertz acknowledged the attack, deeply regretting any "accidental civilian casualties." He insisted, nonetheless, that the attack was against Yugoslav army forces in the field:

This was a legitimate military target. The Serb claims of an attack involving cluster bombs against a non-military target are both false. NATO identified Korisa as a military camp and command post. Military equipment including an armored personnel carrier and more than ten pieces of artillery were observed at this location. The aircraft observed dug-in military positions at the target before executing the attack. NATO cannot confirm the casualty figures given by the Serbian authorities, nor the reasons why civilians were at this location at the time of the attack. 64

The NATO statement further stressed that military positions had been positively identified and that the bombs employed included laser-guided PGMs and non-guided gravity bombs:

Immediately prior to the attack at 23.30 - 11.30 pm - local time Thursday night an airborne forward air controller confirmed the target, so the identification and attack system of his aircraft, having positively identified the target as what looked like dug in military reveted positions, he dropped two laser guided bombs. Following his attack, he cleared his wingman to also attack the same target using two more laser guided bombs. Approximately 10 minutes later, the third aircraft engaged the target with...six gravity bombs. A total of 10 bombs were dropped on the target. 65

The same day, Pentagon spokesman Kenneth Bacon said at a news briefing that the incident would be reviewed, but that major changes in operations should not be expected:

This accident at Korisa did not shake NATO's resolve in any way....NATO deeply regrets civilian casualties....We try very hard to avoid these casualties, but combat is inherently dangerous and accidents cannot be avoided...this mission, like every other, will be reviewed, and the airmen and their commanders will learn what they can from it and continue. But I don't anticipate that there will be a sweeping change. We can't cross legitimate military targets off the list, and we won't. 66

On May 16, a Kosovar refugee who witnessed the NATO strike on Korisa reported to Deutsche Welle that FRY police forced some 600 displaced Kosovars to serve as human shields there before the attack. "We were told something bad would happen to us if we left the place," said the eyewitness, interviewed by the station's Albanian service. He said Serbian police hinted at what was about to happen. "Now you'll see what a NATO attack looks like," the refugee quoted one policeman as saying. The refugee said he finally went to sleep underneath a tractor only to be woken up by explosions and the cries of children and adults. He said he and others managed to scale a two-meter wall surrounding the plot and fled in the direction of the village as Serbian paramilitaries fired bullets around them. 67

On the basis of available evidence it is not possible to determine positively that Yugoslav police or army troops deliberately forced civilians to group near them, nor to establish the motive for such action. It is not clear, for example, how potential attackers could be expected to have been aware of the refugee

concentration in order to be deterred from attacking.

The laws of war expressly forbid shielding. Article 28 of the Geneva Convention IV stipulates that "The presence of a protected person may not be used to render certain points or areas immune from military operations." Geneva Protocol I, article 51(7), elaborates:

The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

The Protocol stresses, however, in art. 51(8), that such violations of the laws of war do not in any account release an adversary from obligations to respect civilian immunity. An authoritative new commentary on humanitarian law states: "If one party to a conflict breaks this rule, this does not exempt the other side from the regulations applicable in military attacks....The military commander must therefore take into account the column of refugees used by the adversary as a shield." 68

For NATO, then, the question is whether its target designation was made with the knowledge that hundreds of displaced civilians were present in this wooded area-there is no evidence to this effect-and secondly, whether sufficient measures were taken to verify that the target had no such concentrations of civilians. On this score, the excessive civilian death toll in what NATO has itself described as a lamentable accident suggests that verification was inadequate.

Bombing of the Dubrava Penitentiary, Kosovo

Another case of Yugoslav deception involves civilian deaths and NATO bombing that damaged the large Dubrava penitentiary complex near Istok in Kosovo. According to NATO and former Dubrava prisoners interviewed by Human Rights Watch, Yugoslav Army and police forces were based adjacent to the penitentiary, which was fully operational well into the NATO air campaign, housing common and political criminals serving out their terms.

The Penitentiary Institute Istok, as it was officially called, was hit twice, causing civilian deaths among both prisoners and guards. In the first attack, at 1:15 p.m. on May 19 (incident no. 60), three prisoners and a guard were reported killed. The second attack occurred on May 21 (incident no. 65), in which at least nineteen prisoners were killed. According to a separate investigation undertaken by Human Rights Watch in Kosovo, based upon extensive eyewitness testimony, prisoners were hunted down by Serb police inside the penitentiary walls after the May 21 attack, and some eighty or so prisoners were killed.

The Yugoslav government initially reported nineteen people killed in the Dubrava Penitentiary as a result of the May 21 attack. 69 However, four days later, the Yugoslav press reported from the official Tanjug agency that "in days long bombardment of the Penitentiary Institute Istok, some 100 prisoners died, and some 200 were wounded." On May 27, Tanjug quoted Vladan Bojic, judge in Pec's District Court, saying that ninety-six corpses had been pulled from the ruins. On May 29, the Yugoslav government stated that "The number of casualties in the Correctional Institution in Istok is increasing." 70 On May 30, Tanjug reported a total of ninety-three killed. 71 In July, the Yugoslav government claimed that NATO bombs killed ninety-five inmates and injured 196. 72

While NATO readily acknowledged the air strikes at Istok and justified the attacks on the grounds that it had targeted military objectives "in the vicinity of a prison," 73 Human Rights Watch has determined that Yugoslav forces were likely responsible for the majority of deaths which occurred after the bombing. On May 22, according to eyewitnesses, prison officials ordered the approximately 1,000 prisoners to line up in the prison yard. After a few minutes, they were fired upon, and grenades were thrown at them from the prison walls and guard towers, killing at least seventy people. Over the next twenty-four hours, prison guards, special police, and possibly paramilitaries attacked prisoners who were hiding in the prison's undestroyed buildings, basements, and sewers, killing at least another twelve people.

Journalists who visited the Dubrava prison on May 21, just after the morning bombing, reported seeing deaths on the order of ten or twenty. 74 Serb authorities again opened the prison for journalists on May 24. Reporting for the BBC, Jacky Rowland said it was unclear how the victims in the prison had died:

Walking around the prison we counted forty-four bodies; about half of these appeared to be the victims of the first bombing raid on Friday [May 19], still lying under blankets on the grass. Then we were taken to a room in a damaged cell block where there were twenty-five corpses. The men appeared to be ethnic

Albanians, some of them had shaved heads, others had longer hair. A couple of the corpses had their trousers pulled down around their knees. We were told they had died between Friday and Sunday although it was not clear how all of them had met their deaths, nor why they were all in one relatively undamaged room. 75

The *Washington Post*, wrote:

This time, the official version—that bombs again were to blame—did not match what reporters saw at the scene, where twenty-five more ethnic Albanian corpses were on display. The corpses were piled in the foyer of a clinic. Except for a ruined dining hall, however, no new bomb damage was visible inside the prison, and none of the newly dead had been crushed, or touched by the concrete dust that covered the dining hall floor. 76

Post-war visits to the prison by journalists confirmed that prisoners had been killed after the bombing. 77

In the two attacks on the Dubrava prison, NATO did not apply adequate precautions in executing its airstrikes on nearby military objectives, and therefore must be held accountable for the civilian deaths that occurred as a direct result of those attacks. But Yugoslav forces must be held fully responsible for seventy-six of the claimed ninety-five deaths at Dubrava, as these were prisoners who were executed extrajudicially well after the NATO strikes.

Serb Radio and Television Headquarters

One of the worst incidents of civilian deaths, and certainly the worst in Belgrade, was the bombing of state Serb Radio and Television (RTS) headquarters in Belgrade on April 23 (incident No. 30). According to military sources, there was considerable disagreement between the United States and French governments regarding the legality and legitimacy of the target, and there was a lively public debate regarding the selection of Yugoslav civilian radio and television as a target group.

The NATO attack was originally scheduled for April 12, but due to French disapproval of the target, it was postponed. According to military, media, and Yugoslav sources, Western news organizations, who were using the facility to forward material from Yugoslavia, were alerted by NATO government authorities that the headquarters would be attacked. Attacks also had to be rescheduled because of rumors that foreign journalists ignored warnings to leave the buildings. 78 When the initial warnings were given to Western media, the Yugoslav government also found out about the intended attack. When the target was finally hit in the middle of the night on April 23, according to RTS and Yugoslav government officials, authorities were no longer taking the threats seriously, given the time that had transpired since the initial warnings. As a consequence, sixteen RTS civilian technicians and workers were killed and sixteen were wounded.

Paragraph 7 of the 1956 ICRC guidelines describing lists of targets that are legitimate military objectives includes "installations of broadcasting and television stations; [and] telephone and telegraph exchanges of fundamental military importance." 79 In a May 13 letter to NATO Secretary-General Javier Solana, Human Rights Watch questioned the legitimacy of the target group in the Yugoslav war. The reasoning was that the system was not "... being used to incite violence (akin to Radio Milles Collines during the Rwandan genocide), which might have justified their destruction. At worst, as far as we know, the Yugoslav government was using them to issue propaganda supportive of its war effort. And, in fact, NATO has stated that it bombed the television facilities because they were being used as a propaganda tool of the Milosevic government." As a consequence, Human Rights Watch believes that "While stopping such propaganda may serve to demoralize the Yugoslav population and undermine the government's political support, neither purpose offers the 'concrete and direct' military advantage necessary to make them a legitimate military target." 80

Even if one could justify legal attacks on civilian radio and television, there does not appear to be any justification for attacking urban studios, as opposed to transmitters. After strikes on the Belgrade and Novi Sad headquarters, Yugoslav state broadcasters were able to easily move operations to other facilities. In this case, target selection was done more for psychological harassment of the civilian population than for direct military effect. The risks involved to the civilian population in undertaking the urban attack thus grossly outweighed any perceived military benefit. What is more, NATO failed to provide clear advance warning of the attacks "whenever possible," as required by Protocol I, art. 57(2).

Cluster Bombs and Civilian Deaths

One of the issues of most intense public interest that has emerged from Operation Allied Force is NATO's use of cluster bombs. As noted, there are seven confirmed and five likely incidents involving civilian deaths

from cluster bomb use by the United States and Britain. Altogether, some ninety to 150 civilians died from cluster bomb use. The first confirmed incident was on April 10 (incident no. 14) and the last was on May 13 (incident no. 57).

The most serious incident involving civilian deaths and the use of cluster bombs occurred on May 7 in Nis (incident no. 48). The mid-day attack on Nis airfield, which is located inside the urban zone, killed fourteen civilians and injured twenty-eight. Cluster bomb submunitions fell in three widely separated areas: near the Pathology building of the Nis Medical Center in southeast Nis; in the town center near the Nis University Rector's Office, including the area of the central city market place, the bus station near the Nis Fortress, and the "12 February" Health Center; and near a car dealership and the "Nis Express" parking lot across the river from the fortress.

NATO confirmed the attack on Nis airfield, ⁸¹ and on May 8, NATO Secretary General Solana confirmed NATO responsibility for the attack, stating that "NATO has confirmed that the damage to the market and clinic was caused by a NATO weapon which missed its target." ⁸² According to U.S. Air Force sources, the CBU-87 cluster bomb container failed to open over the airfield but opened right after release from the attacking airplane, projecting submunitions at a great distance into the city. ⁸³

After the incident in Nis, the White House quietly issued a directive to the Pentagon to restrict cluster bomb use (at least by U.S. forces). ⁸⁴ Human Rights Watch considers this to have been the right move, but is concerned, given these risks, that cluster bombs were being used in attacks on urban targets in the first place. The mid-May prohibition against the further use of cluster bombs clearly had an impact on the level of civilian deaths as the war continued, particularly as bombing with unguided weapons (which would otherwise include cluster bombs) significantly intensified towards the end of the month. Nevertheless, the British air force continued to drop cluster bombs (official chronologies show use at least on May 17, May 31, June 3, and June 4), ⁸⁵ indicating the need for universal, not national, norms regarding cluster bomb use.

2 Documentation of abuses against ethnic Albanians in 1998 and 1999 can be seen in two Human Rights Watch reports: "Humanitarian Law Violations in Kosovo," October 1998, and "A Week of Terror in Drenica," February 1999.

3 On Racak, see Human Rights Watch, "Report on the Massacre in Racak," January 1999.

4 U.S. Department of Defense, Joint Chiefs of Staff (DOD/JCS), Joint Statement on the Kosovo After Action Review, October 14, 1999. Operation Allied Force was originally planned to be prosecuted in five phases: Phase 0 was the deployment of air assets into the European theater. Phase 1 would establish air superiority over Kosovo and degrade command and control over the whole of the FRY. Phase 2 would attack military targets in Kosovo and those FRY forces south of 44 degrees north latitude (in other words, targets beyond Kosovo but not yet including Belgrade), which were providing reinforcement to Serbian forces into Kosovo. This was to allow targeting of forces not only in Kosovo, but also in the FRY south of Belgrade. Phase 3 would expand air operations against a wide range of military and security force targets throughout the FRY. Phase 4 would redeploy forces as required. U.S. Department of Defense communications with Human Rights Watch, October and November 1999.

5 Dana Priest, "Tensions Grew with Divide over Strategy," *Washington Post*, September 21, 1999, p. A1.

6 Gen. Wesley Clark, Remarks to the American Enterprise Institute regarding military action in Yugoslavia, August 31, 1999. See also Testimony before the U.S. Senate Armed Services Committee Hearing on Lessons Learned from Military Operations and Relief Efforts in Kosovo, October 21, 1999. NATO's objectives for the conflict in Kosovo were set out in the Statement issued at the Extraordinary Meeting of the North Atlantic Council held at NATO on April 12, 1999 and were reaffirmed by Heads of State and

Government in Washington on April 23, 1999. They included:

- A verifiable stop to all military action and the immediate ending of violence and repression;
- The withdrawal from Kosovo of the military, police, and paramilitary forces;
- The stationing in Kosovo of an international military presence;
- The unconditional and safe return of all refugees and displaced persons and unhindered

access to them by humanitarian aid organizations; and

- The establishment of a political framework agreement for Kosovo on the basis of the

Rambouillet Accords, in conformity with international law and the Charter of the United Nations.

7 Special Department of Defense Press Briefing with General Wesley Clark, Supreme Allied Commander, Europe, Topic: Kosovo Strike Assessment Also Participating: Airmen and Analysts from Operation Allied Force and Post-strike Assessment Work, Brussels, Belgium, September 16, 1999.

8 Testimony of Gen. Henry Shelton, to the U.S. House Armed Services Committee, April 14, 1999.

9 Hearing of the U.S. Senate Armed Services Committee, Lessons Learned from Military Operations and Relief Efforts in Kosovo, October 14, 1999.

10 DOD/JCS, Joint Statement on the Kosovo After Action Review, October 14, 1999.

11 Hearing of the U.S. Senate Armed Services Committee, Lessons Learned from Military Operations and Relief Efforts in Kosovo, October 14, 1999.

12 DOD/JCS, Joint Statement on the Kosovo After Action Review, October 14, 1999.

13 U.S. Secretary of Defense William S. Cohen, Remarks as Delivered to the International Institute for Strategic Studies, Hotel del Coronado, San Diego, California, Thursday, September 9, 1999.

14 DOD/JCS, Joint Statement on the Kosovo After Action Review, October 14, 1999.

15 Anthony H. Cordesman, "The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo," CSIS, revised September 29, 1999, p. 17.

16 *Jane's Defense Weekly*, July 7, 1999, p. 21.

17 Statement of the Honorable John J. Hamre, U.S. Deputy Secretary of Defense, before the U.S. House Permanent Select Committee on Intelligence, July 22, 1999.

18 Gen. Wesley Clark, Remarks to the American Enterprise Institute regarding military action in Yugoslavia, August 31, 1999.

19 Testimony of Gen. Henry Shelton, to the U.S. House Armed Services Committee, April 14, 1999.

20 Testimony of Lt. Gen. Michael Short before the U.S. Senate Armed Services Committee Hearing on Lessons Learned from Military Operations and Relief Efforts in Kosovo, October 21, 1999.

21 Statement of Lt. Gen. Marvin R. Esmond, U.S. Deputy Chief of Staff, Air and Space Operations, United States Air Force, October 19, 1999.

22 These are collectively referred to as "Yugoslav press reports" in footnotes throughout this report and Appendices. When significant individual articles are referenced, they are listed individually.

23 These are Turkovac near Leskovac (April 11), Kastrat east of Kursumlija (April 26), and Smederevo (May 21).

24 These are Kursumlija and Prizren (March 25), Nis and Pristina "refugee" camps (March 29), and Stavaljska breza village near Sjenica (April 6). Like army soldiers, paramilitary troops are considered

combatants in the context of the Yugoslav war. and as such are excluded from this assessment of civilian (i.e., noncombatant) deaths.

25 One major exception to the largely credible nature of the government's *White Book* is the case of Dubrava prison, discussed in this report. It should also be noted that the general accuracy of the documentation contained in the *White Book* and the Ministry of Health's photographic record concerning civilian casualties and damage to civilian objects contrasts sharply with the sweeping statements made by the Yugoslav government of 1,200 to 5,000 civilian deaths during the war.

26 There is some uncertainty as to the precise number of civilians killed in about three incidents. These include the April 12 attack on the Djakovica-Klina road (incident no. 17), the May 1 attack in Luzane which destroyed the Nis Express bus (incident no. 41), and the May 13 Korisa attacks (incident no. 57). In Djakovica-Klina, where the best information only indicates that "several" civilians were killed, Human Rights Watch uses five civilian deaths as its estimate. In the case of Korisa, reporting of civilian deaths varies from forty-eight to eighty-seven.

27 In three other cases, Yugoslav authorities claimed that civilian casualties were a result of cluster bomb use, but Human Rights Watch could find no evidence to corroborate the claims or found evidence to refute them.

28 Remarks as Delivered to the International Institute for Strategic Studies by Secretary of Defense William S. Cohen, Hotel del Coronado, San Diego, California, Thursday, September 9, 1999.

29 Gen. Wesley Clark, Remarks to the American Enterprise Institute regarding military action in Yugoslavia, August 31, 1999.

30 U.S. Congress, House Permanent Select Committee on Intelligence, Hearing on the Bombing of the Chinese Embassy, July 21, 1999.

31 Testimony before the U.S. Senate Armed Services Committee Hearing on Lessons Learned from Military Operations and Relief Efforts in Kosovo, October 21, 1999.

32 "Savovic: Deca cine 30 odsto od ukupno ubijenih civila," [Savovic: Children Make 30 Percent of the Total Number of Killed Civilians], *Politika*, May 23, 1999, p. 12.

33 "Temeljno utvrditi posledice agresije," ["To Establish a Full Account of the Consequences of the Aggression"], *Politika*, July 15, 1999, p. 17. In a report about the same press conference, the independent *Danas* newspaper quoted Zivkovic as saying that the G-17 group of independent economists had estimated the number of civilians who lost their lives in NATO attacks to be 5,700. "NATO ubio 5.700 civila," [NATO Killed 5,700 Civilians], *Danas*, July 15, 1999, p. 5.

34 "Zivkovic: Steta od NATO bombardovanja neprocenjiva," [Zivkovic: Damage Caused by NATO Bombardments Unmeasurable], *BETA*, July 14, 1999.

35 Gen. Joseph W. Ralston, Vice Chairman, Joint Chiefs of Staff, AFA Policy Forum: "Aerospace Power and the Use of Force," September 14, 1999.

36 Statement of the Honorable John J. Hamre, U.S. Deputy Secretary of Defense, before the U.S. House Permanent Select Committee on Intelligence, July 22, 1999.

37 U.S. Army, *Operational Law Handbook 2000*, Chapter 5, p. 2. The U.S. views the following Protocol I articles as either legally binding as customary international law or acceptable practice though not legally binding: art. 5 (appointment of protecting powers); art. 10 (equal protection of wounded, sick, and shipwrecked); art. 11 (guidelines for medical procedures); arts. 12-34 (medical units, aircraft, ships, missing and dead persons); art. 35(1)(2) (limiting methods and means of warfare); art. 37 (perfidy prohibitions); art. 38 (prohibition against improper use of protected emblems); art. 45 (prisoner of war presumption for those who participate in the hostilities); art. 51 (protection of the civilian population, except para. 6, reprisals); art. 52 (general protection of civilian objects); art. 54 (protection of objects indispensable to the survival of the civilian population); arts. 57-60 (precautions in attack, undefended localities, and demilitarized zones); art. 62 (civil defense protection); art. 63 (civil defense in occupied territories); art. 70 (relief actions); arts. 73-89 (treatment of persons in the power of a party to the conflict; women and children; and duties regarding implementation of GP I). The U.S. specifically objects to art. 1(4) (on the applicability of Protocol I to

certain types of armed conflicts-wars of national liberation from "colonial domination," "alien occupation", and "racist regimes"); art. 35(3) (environmental limitations on means and methods of warfare); art. 39(2) (limits on the use of enemy flags and insignia); art. 44 (expansion of definition of combatants, relaxing of requirement to wear fixed distinctive insignia recognizable at a distance; reducing threshold of lawful combatant status to requirement to carry arms openly during military engagement or in military deployment preceding an attack; when visible to an adversary); art. 47 (non-protection of mercenaries); art. 55 (protection of the natural environment); and art. 56 (protection of works and installations containing dangerous forces). See Comments by Michael J. Matheson at "The Sixth Annual American Red Cross - Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law in the 1977 Protocols Additional to the 1949 Geneva Conventions," Session 1: "The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions," American University Journal of International Law and Policy, vol. 2, no. 2 (1987), pp. 419-20.

38 It is the position of the U.S., U.N., and NATO that any military forces engaged in operations will apply the "principles and spirit" of the laws of war in their operations. It is DOD policy to comply with the laws of war "in the conduct of military operations and related activities in armed conflict, however such conflicts are characterized." (DOD Directive 5100.77 of July 10, 1979, para. E(1)(b))

39 Protocol I, Art. 48.

40 Protocol I, Art. 52(2).

41 Art. 57, Precautions in attack:

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.
2. With respect to attacks, the following precautions shall be taken:
 - (a) those who plan or decide upon an attack shall:
 - (i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Art. 52. and that it is not prohibited by the provisions of this Protocol to attack them;
 - (ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;
 - (iii) refrain from deciding to launch any 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;
 - (b) an attack shall be canceled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack 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;
- © effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit. (...)

42 ICRC, *Commentary on the Additional Protocols*, pp. 681-682, para 2198. The ICRC notes that some delegations to the diplomatic conference that adopted the protocols interpreted the terms "everything feasible" to mean:

everything that was practicable or practically possible, taking into account all the circumstances at the time of the attack, including those relevant to the success of military operations. The last-mentioned criterion seems to be too broad, having regard to the requirements of this article.

The interpretation considered too broad by the ICRC, however, appears verbatim in the other authoritative commentary on the protocols, M. Bothe, K. Parsch, and W. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (The Hague: Martinus Nijhoff, 1982), p. 362.

43 The principle of proportionality is codified in Protocol I, Art. 51 (Protection of the civilian population), section 5:

Among others, the following types of attacks are to be considered as indiscriminate:...

- (b) 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.

44 ICRC, *Commentary on the Additional Protocols*, p. 626, para. 1980: "The idea has also been put forward that even if they are very high, civilian losses and damages may be justified if the military advantage at stake is of great importance. This idea is contrary to the fundamental rules of the Protocol....The Protocol does not provide any justification for attacks which cause extensive civilian losses or damage. Incidental losses and damage should never be extensive."

45 ICRC, *Commentary on the Additional Protocols*, p. 684, para. 2212.

46 Ibid., p. 684, paras. 2213-2214.

47 For an early account of the use of cluster bombs by NATO in the Federal Republic of Yugoslavia and Human Rights Watch's position, see Human Rights Watch, "Ticking Time Bombs: NATO's Use of Cluster Munitions in Yugoslavia," *A Human Rights Watch Short Report*, vol. 11, no. 6(D), May 1999; and Human Rights Watch, "Cluster Bombs: Memorandum for CCW Delegates," December 16, 1999.

48 The question as to what extent the military is obligated to expose its own forces to danger in order to limit civilian casualties or damage to civilian objects is examined in William J. Fenrick, "Attacking The Enemy Civilian As A Punishable Offense," *Duke Journal of Comparative and International Law*, 1997, p. 546, located at <http://www.law.duke.edu/journals/djcil/articles/djcil7p539.htm>).

49 The eighty-seven deaths in Korisa are counted in the Human Rights Watch total of 500; the seventy-six at Dobrava prison are not.

50 Human Rights Watch discussions with U.S. Air Force and Joint Chiefs of Staff officers, October 1999.

51 This issue will be discussed in greater detail in Human Rights Watch's upcoming report on targeting in Operation Allied Force.

52 The second largest broadcast center in Yugoslavia, in Novi Sad, was hit the next day but there were no civilian casualties. Officials told Human Rights Watch that after the attack on Belgrade, RTS evacuated the facility.

53 Seven oil storage tanks were damaged in the attack, as were the pump house and pouring station on the Sava river.

54 U.S. Congress, House Permanent Select Committee on Intelligence, Hearing on the Bombing of the Chinese Embassy, July 21, 1999.

55 NATO, SHAPE News Morning Update, April 15, 1999; Reuters, 150059 GMT April 15, 1999.

56 Joie Chen and Jamie McIntyre, "As Serb Force Grows, Limits of Air Attacks Become Apparent," CNN The World Today Broadcast, April 19, 1999; Sarah Chayes, "General Daniel Leaf Explains the Refugee Bombings," National Public Radio, All Things Considered Broadcast, April 19, 1999.

57 FRY Ministry of Foreign Affairs, *NATO Crimes in Yugoslavia*, vol. 1, pp. 1, 21-26, 32-37; FRY Ministry of Housing, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

58 Tanjug, Pristina, April 15, 1999.

59 At least two eyewitnesses told Human Rights Watch that the convoy was interspersed with military vehicles. Interviews with Kole Hasanaj, Meja, July 25, 1999, and with Safet Shalaj, Djakovica, July 25, 1999.

60 Special U.S. Department of Defense Press Briefing with Gen. Wesley Clark, Supreme Allied Commander, Europe, Topic: Kosovo Strike Assessment; Also Participating: Airmen and Analysts from Operation Allied Force and Post-Strike Assessment Work, Brussels, Belgium, September 16, 1999.

61 Ibid.

62 FRY Ministry of Foreign Affairs, *NATO Crimes in Yugoslavia*, vol. II, pp. 1-17. Though the *White Book* states that there were "only" forty-eight victims in Korisa, Yugoslav and Western press, as well as the U.S. State Department and the U.N. report figures of eighty to eighty-seven victims. Based upon Human Rights Watch investigations and discussions with Western journalists who attempted to reconstruct the incident, it appears that more than forty-eight people definitely died in the Korisa attack. The range of deaths is thus used.

63 Transcript of Backgrounder given by Peter Daniel and Major General Walter Jertz, in Brussels, May 15, 1999.

64 NATO, Subject: Press Release (99) 079, Statement by the NATO Spokesman on the Korisa Incident, May 15, 1999.

65 Transcript of Backgrounder, May 15, 1999.

66 Transcript, U.S. Department of Defense News Briefing, May 15, 1999.

67 Reuters 152249 GMT, May 15, 1999; Kosovo Chronology, Timeline of events 1989-1999 relating to the crisis in Kosovo, released by the Department of State, Washington, DC, June 18, 1999.

68 Hans-Peter Gasser, "Protection of the Civilian Population," in Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts* (Oxford: Oxford University Press, 1995), p. 505, para. 506. Hans-Peter Gasser is a Senior Legal Adviser of the ICRC.

69 Information provided by Yugoslav civil defense authorities; FRY MFA, NATO raids on manufacturing and civilian facilities on May 21st and in the night between May 21st and 22nd 1999.

70 FRY Ministry of Foreign Affairs, NATO Raids on Manufacturing and Civilian Facilities on May 29th and in the Night Between May 29th and 30th 1999.

71 Yugoslav press reports; "Identifikovano 86 mrtvih," *DAN*, May 27, 1999, p. 2; "Jos sedam leseva," *DAN*, May 30, 1999.

72 FRY Ministry of Foreign Affairs, *NATO Crimes in Yugoslavia*, vol. II, p. 319.

73 NATO, Operation Allied Force Update, May 22, 1999, 0930 CET. See also Transcript of Press Conference given by Mr. Jamie Shea and Col. Konrad Freytag in Brussels on Saturday, May 22, 1999.

74 Jacky Rowland, "Bombs, Blood and Dark Despair," *Scotland on Sunday*, May 23, 1999; Paul Watson, "NATO Bombs Ignite Prison Chaos-KLA Officers Reported to be Among Inmates," *Toronto Star*, May 22, 1999; Associated Press, "NATO Hits Kosovo Jail Again Friday Night," May 21, 1999.

75 Jacky Rowland, "Istok Prison's Unanswered Questions," BBC World News, May 25, 1999.

76 Daniel Williams, "Kosovo Revisited: At War's End, Old Places Seen in New Light," *Washington Post*, June 26, 1999.

77 Carlotta Gall, "Stench of Horror Lingers in a Prison in Kosovo," *New York Times*, November 9, 1999.

78 Human Rights Watch interviews with Air Force and Joint Staff planners. See also Dana Priest, "Bombing by Committee: France Balked at NATO Targets," *Washington Post*, September 20, 1999, p. A1.

79 ICRC, *Commentary on the Additional Protocols*, p. 632, para. 2002, note 3.

80 Human Rights Watch letter to Javier Solana, May 13, 1999.

81 NATO (SHAPE), ACE News Release - Press Release 99-05-02, May 8, 1999.

82 Transcript of Press Conference given by the NATO Secretary General, Mr. Javier Solana, in Brussels, on

Saturday, May 8, 1999 (including Maj. Gen. Jertz).

83 Human Rights Watch correspondence with a U.S. Air Force officer, November 1999.

84 Human Rights Watch discussions with U.S. Air Force and Joint Chiefs of Staff officers, October 1999.

85 U.K. Ministry of Defense, Royal Air Force, Operation Allied Force News and Downloadable Images (<http://www.mod.raf.uk/news/kosovonews.html>).

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200.htm#TopOfPage>> Table Of
Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>> Next Page
<<http://www.hrw.org/reports/2000/nato/Natbm200-02.htm#TopOfPage>>

Despotovic, Ruza

Van: Despotovic Ruza [despot@wishmail.net]
Verzonden: maandag 28 februari 2000 21:37
Aan: Ruza Despotovic
Onderwerp: Natbm200-02 (<http://www.hrw.org/reports/2000/nato/Natbm200-02.htm>)

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200-01.htm#TopOfPage>> Table Of Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>> Next Page <<http://www.hrw.org/reports/2000/nato/Natbm200-03.htm#TopOfPage>>

Recent Reports <<http://www.hrw.org/reports98/publictns.htm>>
Support HRW <<http://www.hrw.org/about/develop2.html>> About HRW <<http://www.hrw.org/about/about.html>>
Site Map <<http://www.hrw.org/site-map.html>>

Human Rights Watch - Home Page <<http://www.hrw.org>>

Appendix A: Incidents Involving Civilian Deaths in Operation Allied Force

March 25

1. In a 5:10 p.m. attack on an unidentified target in the **Rozaje** area of Montenegro, near the Kosovo border between Besnika and Njegus villages, Senad Dacic (16) is killed. The Yugoslav government provides forensic detail (such as photographs, investigator's reports, autopsy reports) of the incident in its *White Book*. 86

April 1

2. In a 4:55-5:30 a.m. attack on the "Marshal Tito" Petrovaradin (Varadinski) Bridge (the so-called "old bridge") across the Danube in **Novi Sad** in Vojvodina, one civilian is fatally injured. Oleg Nasov (29) dies in late May as a result of injuries sustained in the April 1 attack. A building of the University of Novi Sad is also damaged 87 and the Yugoslav government claims "severe damage" to the roof structure of the Fortress of Petrovaradin and to the Petrovaradin Monastery of the Church of St. Juraj (built in 1714). 88

Human Rights Watch visited the site (N4515242/E01951302) 89 on August 15, and inspected the damage. Though initial reports stated that there were no casualties in the attack, 90 a posted death notice for Nasov located on the bridge announced that his funeral took place on May 28. The attack, according to U.S. Air Force sources, was undertaken by a B-2 bomber, firing satellite guided Joint Direct Attack Munitions (JDAMs).

April 2

3. In a 1:30-2:00 a.m. attack on an unidentified target in the area of **Orahovac** in Nogavac (Negavac in Albanian) village in Kosovo, four civilians are killed and twelve are injured. Hysni Elsani (20), Hysen Ziniqi (29), Qazim Krasniqi (30), and Mahmut Krasniqi (age unknown) are identified as killed. 91 The Yugoslav government claims another seven are killed and five injured. Tanjug and the Yugoslav press reports that two ethnic Albanians from Negavac (Nogavac) village are killed and sixteen are wounded. Tanjug states that six are injured by cluster bomb fragments, including two children, according to a local doctor. 92 Another report states that the village near Orahovac was bombed and that six Albanian civilians were wounded. After being hospitalized in the Pristina medical center, one dies. 93

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the incident from the Ministry of Health. 94 There is no corroboration of the use of cluster bombs in this attack.

4. In a 2:00 a.m. attack on an unidentified target in the **Kursumlija** area in southern Serbia, one civilian is

killed and another is wounded. The house of the brothers Stepanovic in Samokovo village (Mt. Samokovo) is hit, killing Vucina Stepanovic (44) and wounding another Stepanovic brother. 95 Bombs also land near the St. Bogorodica monastery (at the mouth of the rivers Kosanica and Toplica), in Pepeljevac village, and near the St. Nikola monastery. 96

Human Rights Watch received photo documentation of the death from the Ministry of Health. 97

April 4

5. In a 3:17 a.m. attack on the Sloboda factory in **Cacak** in central Serbia, one civilian is killed and seven are wounded. Mileva Kuveljic (73) dies in her house at 99 Ratka Mitrovica street. A number of other houses situated near the town's roundabout are also damaged in the attack. The kindergarten "Bosko Buha" is also reported damaged. 98

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the death from the Ministry of Health. 99

6. In a 4:29 a.m. attack on the **Pancevo** oil refinery in Vojvodina, just north of Belgrade, three civilians are killed and three are wounded. Mirko Dmitrovic (39) and Dusko Bogosavljev (50), factory workers, are instantly killed. 100 A third civilian who was seriously injured in the April 4 attack dies six days later, according to refinery officials.

The attack is the first on the refinery. The "Energana" (energy plant or electrical transformer) at the refinery is the specific target of attack. It is hit with two weapons. 101

Human Rights Watch visited the NIS-Petrol and Oil Company Pancevo (N4449719/E02041436) on August 17, inspected the damage from this initial attack and other attacks, and verified the casualties with authorities at the refinery. 102 The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 103 Human Rights Watch concludes, based upon the target and the extent of damage at the refinery, that a precision-guided munition (PGM) was used in the attack on April 4 and in subsequent attacks.

7. In a 4:35 a.m. attack on the **New Belgrade** Heating Plant, one civilian is killed. Night watchman Slobodan Trisic (53) is killed while making his rounds. Six oil storage tanks are hit and a seventh is damaged, and the pump house and pouring station on the Sava river are also destroyed. 104

Human Rights Watch visited the site ("Beogradske elektrane" on 11 Savski nasip street, N4447904/E02024721) on August 5, inspected the damage, and verified the casualties with authorities at the plant. Authorities provided details relating to the attack and the civilian death. Remains of cruise missiles reportedly used to attack the plant were on display. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the death from the Ministry of Health. 105

April 5

8. In a 9:35-9:40 a.m. attack on the **Aleksinac** "Deligrad" military barracks in southeastern Serbia, ten civilians are killed and another thirty are wounded. 106 Immediately killed are: Snezana Miladinovic (40), Velimir Stankovic (52), Ljubica Miladinovic (63), Dragomir Miladinovic (67), Bogomir Arsic (69), Jovan Radojicic (75), Sofija Radojicic (80), Radojka Jovanovic (86), Vojislav Jovanovic (92), and Gvozden Milivojevic (93). 107 Two civilians subsequently die from injuries sustained: Marina Paovic (26) and Dragica Miladinovic (age unknown). 108

A weapon or weapons fall about 600m from the barracks. Damage is reported in Dusan Trivunca street (house numbers 56-62), between the Angrokolonijal commercial enterprise and the EMPA illumination and electrical products enterprise, and at Vuka Karadzica street, where four buildings were destroyed (house numbers 23-27). A crater was also caused on Petra Zeca street, and on a lot between "Betonjerka" enterprise and the "Sumatovac" driving school. Damage was caused on Vojske Jugoslavije and Kneza Milosa streets. Window panes on buildings in the center of Aleksinac were shattered, and tiles were blown off of several buildings near where the missiles fell. 109 Yugoslav authorities also report two explosions inside the Deligrad barracks and a third twenty-five meters from the barracks fence. 110

On April 6, Tanjug reported that sixteen private houses and more than 400 apartments, including three buildings with eighty apartments, were damaged or destroyed. Civilian defense headquarters commander Zoran Babovic said seven bombs fell in the center of the town. One bomb also fell near the Belgrade-Nis

highway, he said. He reported twenty injured civilians, including thirteen in hospitals in Nis and Aleksinac. 111

NATO expressed regret for the loss of life and called the incident an "accident of war." Commenting on the incident, Air Commodore David Wilby said: "It is possible that one of our weapons fell short of the target. Despite our meticulous and careful pre-attack planning, the law of statistics will, at some stage, go against us and we will be exposed to technical defect." NATO further says that the intended target was a military barracks and artillery unit nearby. 112 Testifying before Congress on April 14, 1999, Gen. Henry Shelton described this incident, which the United States labels the "first" incident of civilian deaths: "When I was in Aviano last week, we had just had what was at that point the first incident, I think, of a bomb missing the intended target. Actually three bombs went in, two hit dead center, one fell a little bit short." 113 Human Rights Watch visited the site (N4332375/E02142482) on August 11, inspected the damage, and took eyewitness testimony. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 114

9. In an 11:00 p.m. attack on the "1300 Corporals" and "Simo Pogacerevic" military barracks in **Vranje** in southeastern Serbia, two civilians are killed and twenty-three injured. Taxi driver Goran Eminovic (33) and Milica Grujic (68) are killed when a weapon intended for the 1300 Corporals barracks falls near the Vranje bus station, not far from the barracks. 115 Doctors say that six people have been seriously wounded but that their wounds are not life threatening. Slightly wounded are seventeen people, of which eleven will receive further hospital treatment. 116 A number of civilian facilities are damaged in this and a previous attack on April 2, including the DIV cigarette factory, the printing house Nova Jugoslavija, and the Jedinstvo bus station. 117

Human Rights Watch visited the site (N4233135/E0215455) on August 12, inspected the damage and took eyewitness testimony. The civilian objects reported as being damaged are all near the 1300 Corporals barracks, which appeared to have been extensively attacked. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 118

April 7

10. In 12:30 a.m. attacks on targets in and around **Pristina** in Kosovo, nine civilians are killed and eight are seriously wounded. 119 Adem Berisha, Radovan Aleksic, Dejan Vitkovic, and an unidentified woman die in the vicinity of the Pristina Post Office and telephone exchange. Five members of the Gashi family (father Mesud, mother Dijana, and children Dea, Rea, and Demis) are killed in their home on Kosovska street. 120 Dejan Vitkovic is killed in front of his house at 12 Meta Barjaktarija street.

Two weapons land in residential areas, 200-300 meters away from the telephone exchange, at the Dardanija apartment building, on Zanatska street, Meta Barjaktarija street, and Kosovska street. 121 There is also damage to the former Provincial Assembly building, the Republic Pension and Disability Fund building (the provincial and municipal insurance company), the National Bank, and the "Grmija" department store, the latter of which was observed by Human Rights Watch. One weapon also reportedly explodes near an Orthodox Christian cemetery. 122 Tanjug reports rescue efforts were hampered by unexploded cluster bombs, 123 but there is no evidence presented in the *White Book* of the use of cluster bombs, and it is highly unlikely that cluster bombs were employed to attack the urban telephone exchange.

Reported targets in Pristina on April 7 include the Slatina airfield; a Beopetrol depot in the Devet Jugovica suburb (ten kilometers from Pristina); the downtown Pristina telephone exchange; and the Grmija hill transmitter (three kilometers from Pristina). 124

On April 9, NATO admits damage to civilian homes in the strike on the telephone exchange, regretting "unintended damage or loss of civilian life." Air commodore David Wilby said that one of three bombs which targeted the Main Postal Office hit a residential area. "Careful investigation of the picture showed that bomb exploded some 200 to 300 meters from the target, on something that looks like a small residential area," Wilby says. 125

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 126

11. In an attack on the **Nis** airfield, one civilian is killed and twenty are injured. Miroslav Stojkovic is killed at the MIN industry complex. The civilian is reported as "the first civilian victim in Nis since NATO started attacks." 127

Human Rights Watch visited the site on August 13, inspected the damage, collected documentation, met with civil defense officials, and took eyewitness testimony. The MIN complex is located at 12. Februara

Boulevard; its rear is some 300 meters from the airfield perimeter. Nis civil defense officials reported that eleven weapons were fired against Nis on April 7, including four "missiles" and six "guided bombs." One additional unexploded bomb was reportedly recovered.

April 8

12. In an 4:00-4:10 a.m. attack on telecommunications and/or air defense facilities on Tornik peak in the **Zlatibor** mountains in central Serbia, three civilians are killed. They are forest ranger Milenko Savic (25) and guards Nedjo Urosevic (31) and Radoje Marjanovic (34). 128 The "Tornik" ski resort and a training facility of the Medical Institute "Cigota" incorporating a children's recreation center and an outpatient clinic are hit. The site is visited shortly afterwards by Judge Momcilo Krivokapic and Deputy Attorney-General Stevan Zrnica. 129 A government report at the time said, "Almost all objects on 2,000 square meters surface are completely destroyed." 130

Human Rights Watch visited the site on August 7, inspected the damage and interviewed eyewitnesses. Eyewitnesses said that army soldiers were occupying homes and hotels in the area, but that the local population knew little about the functions and activities of the army in the area during the war. The site of the civilian deaths (N4340272/E01938755), a ski lodge at the bottom of the lifts, is more than 2,000 meters from the telecommunications tower on Tornik peak, which was also bombed. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 131

13. In a 12:42-12:50 p.m. attack on the Kursulina street Army barracks in the Serbian town of **Cuprija**, one woman is killed and five civilians are injured. Zlatka Lukic (54) is killed. Houses are destroyed and damaged on Kursulina street, Milana Toplice street, Vojske Jugoslavije Boulevard, as well as surrounding areas. There is also damage to schools, stores, and a sports hall. 132

Human Rights Watch visited the site (N4356008/E02122130) on August 14, inspected the damaged and interviewed eyewitnesses. The barracks are located on the Morava river, right outside the center of town and about 800 meters from the locations where the civilian deaths occurred. Damage to the sports hall, office of the electrical distribution board, and residences was observed. The Yugoslav government provides forensic detail of the incident in its *White Book*.

April 10

14. In an 11:55 p.m. attack on unidentified targets in the area between Podujevo and Kursumlija on the Serbian-Kosovo border, five are killed and some three are injured near the villages of **Merdare** and **Mirovac**. Killed were Bozina Tosovic (30) and his one-year-old daughter Bojana, while Marija Tosovic, his wife, was seriously wounded. Dragan Bubalo (31) from Podujevo, Goran Djukic from Ploce, and Srdjan Cvetkovic are also killed. 133 *Politika* names five killed: Bojana Tosovic (eleven months), Bozina Tosovic, Dragan Bubalo, Goran Djukic, and Srdjan Cvetkovic. 134 According to the chief of orthopedic surgery at the Djakovica hospital, forty-three people injured at Bistrzin and Meja were admitted to the hospital on April 14. 135

Yugoslav press accounts state that cluster bombs are responsible for the killings. 136 Cluster bomb submunitions are later observed near the road from Podujevo to Kursumlija, near the village Merdare. 137 According to a *New York Times* report, "in Merdare, NATO bombs and anti-personnel cluster bombs demolished four houses early Sunday morning, killing five....A number of pigs and cows were killed and injured....In the fields, there were hundreds of small holes in the earth from detonations, and small green nylon parachutes from what appeared to be NATO anti-personnel cluster bombs, covering an area of about 300 square yards. Large pieces of green painted metal, with yellow stripes, perfectly broken open as if on a seam, lay about the yard. There were large pieces of formed yellow plastic foam and light aluminum containers, with fans like whirligigs, that appeared to have held the small parachutes, with explosives attached...." 138

The Yugoslav government provides forensic detail of the incident in its *White Book*. This is the first confirmed instance of civilian deaths resulting from cluster bomb use. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 139

April 12

15. In the evening, a four carriage civilian passenger train (No. 393) traveling the Belgrade to Ristovac line (on the Macedonian border) is hit as it crosses over the **Grdelica Klisura** gorge (Bistrica) bridge on the Juzna Morava river near Leskovac in southeastern Serbia, killing twenty. Killed are: Branimir Stanijanovic

(6), Ivan Markovic (26), Ana Markovic (26), Jasmina Veljkovic (28), Simeon Todorov (31), Zoran Jovanovic (35), Petar Mladenovic (37), Verka Mladenovic (37), Divna Stanijanovic (41), Vidosav Stanijanovic (45), Radomir Jovanovic (45), and Svetomir Petkovic (65). Five others' remains are unidentified, and three persons are reported missing. 140 Tanjug reports that about fifty civilian passengers are killed in the attack. 141

An AGM-130 electro-optically guided precision-guided munition (PGM) was used in the F-15E Strike Eagle attack. NATO apologizes for an "uncanny accident" and says that it had targeted the bridge because it was an important supply route into Kosovo. 142 Showing video footage of the attack, Gen. Clark says: "You can see if you were focusing right on your job as a pilot how suddenly that train appeared. It was really unfortunate." Later Deputy Defense Secretary John Hamre states that "one of our electro-optically guided bombs homed in on a railroad bridge just when a passenger train raced to the aim point. We never wanted to destroy that train or kill its occupants. We did want to destroy the bridge and we regret this accident." 143

Human Rights Watch visited the site (N4252594/E02205255) on August 12, inspected the damage and interviewed eyewitnesses. The Yugoslav government provides forensic detail of the incident in its *White Book*. It also received photo documentation of the deaths from the Ministry of Health. 144

16. A "Ford Escort" civilian car traveling on the **Pristina-Kosovo Polje road** is hit at 2:25 p.m. local time near the Agricultural School, killing two. A third civilian dies in the Pristina Hospital. 145

17. The Yugoslav government reports that the **Djakovica-Klina road** in Kosovo is struck with cluster bombs at 6:30 p.m. and that "several people were killed and wounded." 146 Human Rights Watch could find no authoritative source identifying the dead. Civil defense officials stated that five civilians died. 147

April 13

18. One civilian is reported killed in the **Kiema** settlement near **Pristina** in Kosovo: Sefcet Trnova (22). There are reports of attacks at the same time on the Slatina airfield, the Pristina bus station, as well as targets in the Ajvalija and Gracanica suburbs of Pristina. 148

April 14

19. Between 1:30-3:30 p.m., a refugee convoy is bombed along a twelve mile stretch of road between **Djakovica** and **Decane** in Kosovo, killing seventy-three individuals and injuring thirty-six. The bombing incidents occur near the villages of Bistrazin, Gradis, Madanaj and Meja in numerous different locations. On April 14, Yugoslav authorities claimed fifty-six dead and thirty-six wounded. On April 15, four additional bodies were discovered. Later the total was increased even more; Yugoslav authorities in the *White Book* state that seventy-three were killed and thirty-six were wounded. The Committee for Compiling Data on Crimes Against Humanity and International Law says eighty-two dead and fifty injured. 149

The identified dead are: Ferat Bajrami, Imer Cela, Sali Gjokaj, Skendi Gjokaj, Martin Hasanaj, Lek Hasanaj, Ram Maloku, Arton Maloku, Tazija Pajaziti, Vjollca Pajaziti (18), Violeta Pajaziti (16), Nevrija Pajaziti, Yasan Pajaziti, Flora Pajaziti, Adem Seljmani, Besarde Smajli, Fikrije Sulja, Nerdjivane Zeqiri, eight members of the Ali Ibraj family, four members of the Spend Nuraj family, four members of the Fatmir Nuraj family, and three members of the Sejdi Nuraj family. 150 Tanjug reports three Serbian "policemen who were securing the safe passage for the convoy" were also killed. 151

The incident ignites a major controversy about NATO bombings. The Pentagon suggests Serb security forces might have attacked civilians after a NATO strike on military vehicles in the convoy. Pentagon spokesman Ken Bacon says NATO commander Gen. Wesley Clark had received reports that "after the convoy was hit, military people got out and attacked civilians." "The pilots state they attacked only military vehicles," NATO says, adding that the "reported incident will be fully investigated once all mission details have been reviewed." There are also various reports emanating from NATO spokesman and militaries of Serbian deception in placing dead civilians at the site of the bombing. German Defense Minister Rudolf Scharping is among those who put the blame on Yugoslav forces. 152

On April 15, NATO acknowledges that it bombed civilian vehicles by mistake: "Following a preliminary investigation, NATO confirms that apparently one of its planes dropped a bomb on a civilian vehicle traveling with a convoy yesterday." NATO says the attack was made because military vehicles were identified in the area. "Serbian police or army vehicles might have been in or near the convoy," NATO spokesmen state.

On the same day, the AFP correspondent in Kosovo, Aleksandar Mitic, *Los Angeles Times* correspondent Paul Watson, and two Greek television crew are allowed to go to the scene of the bombing. They find,

according to the AFP dispatch, "bodies charred or blown to pieces, tractors reduced to twisted wreckage and houses in ruins." According to Mitic's report, two convoys, one to the north and one to the south of Djakovica, were hit. He quotes one refugee as saying the groups had been bombed three or four times, "the planes circling overhead as if they were following us." The *Los Angeles Times* reports small craters and bomb remnants found at the scene with U.S. markings, and reports eyewitness accounts of explosions in the air (which the newspaper says indicates the use of cluster bomblets), extensive shrapnel dispersion, and the burned bodies of refugees. Tractors pulling the refugees on wagons were destroyed, suggesting, the *Times* says, that the infrared heat-seeking "sensors" on the bomblets (sic) mistook the tractors for tanks. Cluster bomb remnants, small craters and destroyed tractors are reportedly found at Meja, about three miles west of Djakovica, and also about nine miles away, east of Djakovica. 153

Human Rights Watch spoke with two witnesses to the April 14 bombing in Meja, one of whom was seriously injured. Safet Shalaj from Junik had a large scar on his back and leg due to his injuries from the NATO bombing. He said:

It was April 14, around 12:45 p.m. There were seven or eight tractors and some cars. NATO bombed us. It was a civilian convoy with two or three pitzgowers in front and the [Yugoslav] army behind us burning houses. After the bombing they took us into a house with Serbian police. In my tractor, fourteen people died. I'm not angry with NATO. Only that they can now help me find my children. 154

Kole Hasanaj from Meja told Human Rights Watch:

NATO bombed the convoy on Wednesday, April 14, around 2:00 p.m. It was a convoy from Junik. When the aircraft were in the sky then the military vehicles mixed with the column. I counted twenty-three killed people from the tractors. There were others around, maybe twenty-seven or twenty-eight. NATO bombed five times. No military vehicles were damaged. After the bombing, they [Serb forces] went into the hills. The Albanians stayed in my house for about three hours. 155

On April 16, NATO spokesman Jamie Shea and Brig. Gen. Giuseppe Marini state that "in one case and one only, we have proof of civilian loss of life. Otherwise, we are sure that we targeted military vehicles."

NATO admits that the pilot of a U.S. F-16 fired on what he believed to be military trucks, and expresses "deep regret." There is confirmation that fragments of Mk 82 500 lb. unguided bombs found at the scene were indeed used. 156

On April 19, a new version of events emerges. NATO admits that about a dozen planes were involved in attacks on more than one convoy, dropping a total of nine bombs. NATO makes public a voice recording of one of the pilots responsible for bombing the first convoy, who says the vehicles in question are "of a military type." As for a second convoy, NATO claims it had been targeted because its "pace and formation were of a typically military nature."

"This is a very complicated scenario and we will never be able to establish all the exact details," says U.S.

Brig. Gen. Daniel Leaf, commander of the 31st Wing at Aviano, Italy, where the F-16s originated. Leaf suggests that after NATO aircraft attacked military vehicles, Serb forces attacked refugees in the rear with cluster bombs and grenades. He denies that NATO used cluster bombs in an attacks in the area. 157

The news media later reveals that one of the U.S. pilots responsible for the bombings had been warned by a British pilot that the convoy included civilians. NATO later admits that the recording made public on April 19 had no connection with the bombing of the convoys, but was just an example of pilot "chatter."

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 158

20. In 2:25-3:30 p.m. attacks on an unidentified bridge or on a military convoy near the suburban quarter of **Pavlovac** south of **Vranje** in southeastern Serbia, two civilians are killed and at least one is wounded. Milica Stojanovic (12) and Mijalko Trajkovic (65) are killed.

According to the Yugoslav government, they are killed by cluster bombs. 159 It says that Pavlovac houses are hit by cluster bombs. "Several people were killed and gravely wounded," the Yugoslav government says. Damage is reported to a bridge on the Presevo-Vranje motorway, with civilian facilities along the motorway also damaged. 160 Another report says that the Vranje-Bujanovac road was targeted. 161

Human Rights Watch visited the site (N4229656/E02151770) on August 12, inspected the damage and interviewed eyewitnesses. Eyewitnesses said that four weapons exploded next to the E-75 highway at about 3:00 and 4:00 p.m. on April 14. They speculated that a military convoy on the highway was the target. A highway bridge some one kilometer south of the site was also bombed at about the same time. There is no particular evidence of the use of cluster bombs, though it remains a possibility. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 162

April 15

21. The Yugoslav government reports that two "raids" are carried out with cluster bombs against targets in the village of **Raljan**, Presevo municipality in southern Serbia, and that eight "people" are killed in these attacks. 163 It reports attacks between 11:00 a.m.-12:10 p.m. in the area of Vranje, Bijelo Polje, Presevo, Bujanovac, and Prohor Pcinjski. 164

22. One civilian is killed at 2:20 p.m. near the Hotel "Baciste" in the **Kopaonik** mountains in southern Serbian during the collection and clearing of cluster bombs. 165 Mladen Stanojevic is killed during the clearing process. The cluster bomb attack occurred at 12:40 a.m. on April 13. 166

Human Rights Watch received photo documentation of the cluster bomb clearing and the death from the Ministry of Health. 167

April 16

23. In an attack on an unidentified target, one civilian is killed and two are injured in **Ribnice** village near **Vranje** in southeastern Serbia. Irena Mitic (16) died on April 17 from wounds received on April 16. 168

April 17

24. In a 2:15 a.m. attack on the **Valjevo** "Krusik" factory, one civilian is wounded and dies several days later. Milisav Micic (37) died several days after he was wounded in front of his house during "the second attack on Krusik," according to neighbors and eyewitnesses interviewed by Human Rights Watch. According to the Yugoslav government, five "highly destructive missiles" hit the plant. One of the production lines was completely destroyed. Damage was also registered in the "Kolubara 2" residential quarter. 169

Human Rights Watch visited the site on August 7, inspected the damage and interviewed eyewitnesses of the death.

25. In a 9:30-10:00 p.m. attack on the **Batajnica** airfield or airfield related air defenses west of Belgrade, Milica Rakic (3) is killed and another civilian is wounded. 170 The girl was killed by shrapnel while in the bathroom on the second floor of her apartment (Flat no. 2) at 8 Dimitrije Lazareva-Rase street. 171

Human Rights Watch visited the site (N4453977/E02017362) on August 7, inspected the damage and interviewed eyewitnesses. Evidence indicated that a weapon-possibly a cluster bomb submunition-exploded near the apartment building window. There have also been Yugoslav rumors that a cruise missile shot down by Yugoslav air defenses exploded in this neighborhood. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the death from the Ministry of Health. 172

26. After a reported cluster bomb attack in the vicinity of the village of **Kamena Glava**, Urosevac municipality, in Kosovo at 3:30 p.m. on April 17, three civilians are injured. Two civilians subsequently die on April 18. 173

April 19

27. In an 11:07 p.m. attack on the **Nis** airfield and Stefan Sindjelic military barracks in the southeastern Serbian city, one civilian is killed and between nine and eleven are reported wounded. Milen Milojkovic is killed at 5/17 Koste Vujinovica street. 174 Tanjug reports that the "industrial area" of Nis to the east of the airfield is hit, killing one and injuring nine. 175 The Yugoslav government reports damage to several houses in a Roma quarter, damage to the Duvanska Industrija Nis (DIN) tobacco production plant, the "Kopaonik" trade company (a general merchandise depot), a "cattle fodder silo," and the "Crveni krst" railway station, all east of the airfield. 176 Other reports state damage is caused in the Sljaka (Saka) neighborhood just to the southeast of the airfield, and on Bujmirska, Lipovacka, and Sarajevska streets. A "huge" crater is left on Bujmirska street. 177

Human Rights Watch visited the sites on August 13, inspected the damage, collected documentation, met with civil defense and DIN company officials, and took eyewitness testimony. The Stefan Sindjelic barracks is located at 12. Februara Boulevard, directly adjacent (to the southeast) of the DIN tobacco production plant. "Kopaonik" trade company is across the street from the tobacco plant and between the barracks and the railway station. The railway station is between the Kopaonik company and the Nis airfield. Nis civil defense officials stated that five weapons-four "missiles" and one "guided bomb"-were dropped in

Nis on April 19. The Yugoslav government provides forensic detail of the incident in its *White Book*. DIN also provided documentation of damage to the factory from a single weapon which landed some 100 meters outside the perimeters of the military barracks. 178

April 21

28. In a 12:00 p.m. attack on an unidentified target near **Djakovica** in Kosovo, five civilians are killed and between sixteen and nineteen are wounded. Killed are: Ivan Ivancevic (7), brothers Davor (29) and Radivoje (27) Ularevic, Marko Ivanovic (4), and Gordana Ilic (75). Predrag Ilkic (5) is reported sent to the Pristina Hospital in critical condition. The "Majino (Majno) naselje" (Maja) refugee camp in the southern part of the town is hit in the attack. Nineteen other Serb refugees from Republika Srpska are in the Djakovica hospital, according to the Yugoslav government. 179 According to the Yugoslav government, ten civilians are killed and sixteen are wounded. 180 Tanjug reports five killed and sixteen wounded. 181 A doctor at the Djakovica hospital told Human Rights Watch that nineteen civilians were admitted to the hospital after the attack on Majno naselje, which he said he thought was an agricultural company. 182

The Yugoslav government provides forensic detail of the incident in its *White Book*.

April 22

29. In an afternoon attack on an unidentified target in the southern or southeastern suburban area of **Vranje**, one civilian is killed. Dalibor Tasic (17) is killed. 183

April 23

30. In a 2:06-2:20 a.m. attack on the Radio Televizija Srbija (RTS) Studio on 1 Aberdareva street in central **Belgrade**, sixteen are killed and another sixteen are wounded. Killed are: technician Darko Stoimenovski (26), technician Nebojsa Stojanovic (27), security guard Dragorad Dragojevic (27), video mixer Ksenija Bankovic (28), make-up artist Jelica Munitlak (28), security guard Dejan Markovic (30), cameraman Aleksandar Deletic (31), technician Dragan Tasic (31), producer Slavisa Stevanovic (32), program designer Sinisa Medic (33), foreign programming specialist Ivan Stukalo (34), security officer Milan Joksimovic (47), program operator Branislav Jovanovic (50), set decorator Slobodan Jontic (54), mechanic Milovan Jankovic (59), and program director Tomislav Mitrovic (61). 184 The RTS initially reported that more persons may still be missing who were known to have been inside the building during the bombing, 185 but it is now believed that all bodies have been recovered.

About one hundred journalists and technicians were reported working in the complex when the bombing occurred. 186 Producing and directing rooms and equipment were completely destroyed. There was damage to neighboring buildings, including the "Dusko Radovic" Theater next door. 187

Human Rights Watch visited the site (N4448615/E02028195) on August 5, inspected the damage to RTS and surrounding buildings and took eyewitness testimony. The damage to the St. Trinity Russian Orthodox and the St. Marco Serbian Orthodox churches consisted on broken windows and other minor effects from the nearby blast. The theater, across a courtyard from the RTS building, received major damage. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 188

At least one JDAM precision-guided munition (PGM) dropped by a B-2 bomber was used in the attack, according to Air Force sources.

April 24

31. In an 11:30 a.m. attack on an unidentified target, the Yugoslav government reports that five civilians are killed and two "gravely" injured when cluster bomblets fall in **Doganovic** village in Kacanik municipality south of Urosevac on the Macedonian border in Kosovo. 189 Five Albanian boys from the Kodza family are reported killed when they pick up an unexploded bomblet: Edan (3), Fisnik (9), Osman (13), Burim (14), and Valjdet (15). 190

32. In a 3:00 p.m. attack on an unidentified target in the village of **Velika Dobrinja**, Lipljan municipality, in Kosovo, one civilian is killed and five are wounded. Arta Lugici (6) is killed, while her brothers Egzon (8) and Neron (7) and sister Arijeta (7) are wounded. Their parents, Gentijana and Arif Lugici, receive light injuries. The wounded boys are placed in the surgical ward of the Pristina hospital. 191

April 27

33. In a 12:15-12:30 p.m. attack on the Jovana Jovanovica Zmaja street army barracks in **Surdulica** in southeastern Serbia, eleven civilians are killed and as many as one hundred are wounded. Killed are Vladimir Milic (12), Miljana Milic (15), Miomir Miovanovic (17), Stanisa Djordjevic (22), Vesna Milic (37), Aleksandar Milic (37), Dragan Ivanovic (39), Stana Rasic (47), Stamenka Milic (66). Two corpses could not be positively identified.

Weapons landed outside the barracks perimeter and cause damage and casualties in the nearby residential areas of J.J. Zmaja (Nos. 1-28), Miroljuba Stanojevica (Nos. 4-8), Jugoslovenska (Nos. 51-112), Stojana Stamenkovica (Nos. 1-40), and Drinske Divizije (No. 8-63) streets, with lesser damage on Beogradska, Branislava Nusica, and 5 Septembrastreets. 192 There are widespread reports of sixteen dead, twelve of them being children aged five to twelve. 193 Other reports stated some twenty dead, including twelve children, and over one hundred are wounded, including twenty-four seriously. 194 Serbian Vice Premier Dragan Tomic escorted more than eighty domestic and foreign correspondents to view the damage in Surdulica. He states that the youngest victim was barely three years old, and that the attack killed "at least" twenty people, sixteen of whom have been identified so far, six of them children. Spokesman for the Yugoslav Foreign Ministry Nebojsa Vujovic told the correspondents in Surdulica that the town has been hit by 175 "missiles" since April 6. 195

On April 28, NATO admitted hitting the residential area of Surdulica, when a weapon intended to hit the army barracks overshot its target. 196 Speaking at NATO in Brussels, Brig. Gen. Giuseppe Marani said: "After more than 4,000 attack sorties, one bomb went astray. We put all our effort in avoiding collateral damage. Things like this can happen and in fact they happened."

Human Rights Watch visited the site (N4241297/E02210787) on August 12, inspected the damage and took eyewitness testimony. According to eyewitness reports, the civilians killed were in the house belonging to Aleksandar Milic on J.J. Zmaja street. Neighbors took shelter in the Milic house because it was a new house built of strong materials, and had a basement. Eyewitnesses said that eleven corpses were recovered. Stojance Petkovic, a neighbor who was in the Milic house when it was hit, says that there were ten people inside (and all but him died). Another eyewitness said, "Eleven people died in that house, and nobody else was killed" in the neighborhood. 197 The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the death from the Ministry of Health. 198

April 28

34. In 12:30-3:00 p.m. attacks on **Golubovac** airfield south of **Podgorica** in Montenegro, one civilian is killed and three are wounded. Paska Prenkovo Juncaj (61), an Albanian, is killed, and three civilians are wounded in **Sipcanik** village. Attacks are reported on the Golubovac airfield near Podgorica, as well as on Montenegrin targets at Bar and Bijelo Polje. Cluster bomblets land in the villages of Gosici and Mataguzi, just to the east of the airfield. 199 The Yugoslav government provides forensic detail of the incident in its *White Book*.

35. In an 11:35 p.m. attack on an unidentified target in **Prizren** in Kosovo, four civilians are killed and some twenty are wounded. The names of the dead are reported as two-and-a-half-year-old Kasandra, Becir (14), Maksun (22), and Djulja Zuljuri (25), all from the Roma settlement on Podrimska street. Djulja Zuljuri was pregnant at the time of her death. About fifty houses in the Roma settlement, are damaged or destroyed. 200 The Yugoslav government provides forensic detail of the incident in its *White Book*.

April 29

36. In an attack on Slatina airfield near **Pristina**, three civilians are killed. Berisha Braim (age unknown) and two sons, Daut and Basri, are killed in **Ariljaca** village (near Goles) (15 km west of Pristina). 201

37. In 12:58-4:35 a.m. attacks on the **Ostruznica** highway bridge over the Sava river south of Belgrade, one civilian is killed. Nebojsa Arsic (35) died on the bridge in his car. 202 Both the highway and railroad bridges in Ostruznica were bombed. 203

Human Rights Watch visited the site (N4444436/02019342) on August 5 and inspected the damage. It also received photo documentation of the death from the Ministry of Health. 204 The Yugoslav government provides forensic detail of the incident in its *White Book*. A precision-guided munition (PGM) was used in the attack.

April 30

38. In a 2:20-2:30 a.m. attack on the Yugoslav Army/Ministry of Defense headquarters on Kneza Milosa street in downtown **Belgrade**, one civilian is killed and four are seriously wounded. Another two dozen civilians are lightly wounded. Sofija Jovanovic (23), who sustained injuries, dies on May 2. 205 A security guard (policeman), Nenad Nikolic, at his Ministry of Foreign Affairs post across the street from the Ministry of Defense, is also killed. 206 The Yugoslav Army/Ministry of Defense headquarters building and the Federal and Serbian Ministries of Internal Affairs, all on Kneza Milosa street, are bombed. 207

Human Rights Watch visited the site on August 4, inspected the damage and took eyewitness testimony. Jovanovic was killed at 7 Vardarska street (N4447714/E02028904), about 1,400 meters from the ministry headquarters. There was also a direct hit on 57 Maksima Gorkog street (N4447666/E02028719) and the adjacent "Zlatni ovan" restaurant, and a weapon or shrapnel landed in the street at the corner of Vardarska and Maruliceva streets creating a ten foot crater (N4447698/E02028834). Damage was also observed to surrounding apartments, stores and businesses. The Yugoslav government provides forensic detail of the incident in its *White Book*. Either a JDAM precision-guided munition (PGM) delivered by a B-2 bomber or a cruise missile was used in the attack.

39. In a 3:15 p.m. attack on the "old bridge" over the Zapadna Morava river in the center of **Trstenik** in central Serbia, two civilians are killed and fifteen are wounded, one seriously. 208 Dejan Djordjevic (40) and Nadezda Petrickovic (44), both of Grabovac village, are killed on the bridge. 209

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch received photo documentation of the deaths from the Ministry of Health. 210 A precision-guided munition (PGM) was used in the attack.

40. In a 10:10 p.m. attack on the bridge over the Lim river in **Murino**, Montenegro (near the Albanian border), six civilians are killed and seven are wounded. The dead are reported as Julija Brudar (10), Olivera Maksimovic (12), Miroslav Knezevic (13), Vukic Vuletic (45), Manojlo Komantina (age unknown), and Milka Kocanovic (possibly Kovacevic) (age unknown). 211 The Yugoslav government initially reports one person killed and two wounded. 212 The next day it reports four people killed and eight wounded. 213 Still later it reports five civilians killed and eight children wounded. 214

The Yugoslav government provides forensic detail of the incident in its *White Book*. A precision-guided munition (PGM) was used in the attack.

May 1

41. In a 1:40 p.m. attack on a bridge over the Lab river near the village of **Luzane**, twelve miles north of Pristina in Kosovo, a bus is hit, killing thirty-nine and injuring thirteen. 215 The "Nis Express" passenger bus is hit on a bridge and plunges into the river. 216 The Yugoslav press reports, quoting Leposava Milicevic (the Serbian Health Minister), that forty-seven passengers are killed and sixteen are heavily wounded. 217 The Yugoslav government reports that "aircraft also bombed the ambulance which came to help the victims when one doctor was injured." 218

NATO admits destroying a civilian bus, saying that the bus appeared after an attacking aircraft released its weapon against the bridge, which it described as a key military route. 219 NATO's Col. Konrad Freytag said: "Unfortunately, after the weapon's release, a bus crossed on the bridge but was not seen by the pilot whose attention was focused on his aim point during weapon trajectory."

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch received photo documentation of the deaths from the Ministry of Health. 220 A precision-guided munition (PGM) was used in the attack.

42. In an attack on unidentified targets near the village of **Jablanica** south of Prizren in Kosovo, two civilians are killed and sixteen are wounded. Killed are Azemina Murati (38) and Ahmet Murati (88). Some twenty homes are destroyed and another fifty are damaged. 221 The Yugoslav government reports that three children and two adults are killed by a cluster bomb. 222 The Yugoslav government provides forensic detail of the incident in its *White Book*.

43. In an attack on unidentified targets in the suburb of Kule in **Prizren** in Kosovo, seven are killed and fifteen are wounded. Four members of the Berisha family are killed and seven are wounded. A weapons crater is caused on Alji Tarambabe street. 223 The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 2

44. In a 6:15 p.m. attack on the military barracks in the northern part of the city of **Sremska Mitrovica** in Vojvodina, one civilian is killed. Ljiljana Veliki (39) is killed in her house at No. 123 Milosa Obilica street, 800 meters away from the barracks. 224 The Yugoslav government provides forensic detail of the incident in its *White Book*.

45. In a 9:40 a.m. attack on Serbian MUP buildings in **Kosovska Mitrovica** in Kosovo, two civilians are killed. Milomir Aksentijevic (age unknown) and Hashima Meshehrani (age unknown) are killed when a weapon lands on the "Kosmetput" asphalt factory. 225

May 3

46. In an attack between 11:45 a.m. and 13:30 p.m. in the area of **Savine Vode** in northwestern Kosovo, a bus and car are hit, killing seventeen and injuring forty-four civilians. Aircraft hit the "Djakovica Prevoz" bus on its regular Pec-Rozaje route and a VW Golf Jetta car. 226 After being hit by two weapons, the bus burst in flames. Forty-three casualties from the bus and the adjacent automobiles were reported admitted to the Pec hospital. 227 Cluster bomb use is reported. 228

NATO denied its planes were responsible for the attack, saying that it could find "no evidence" linking it with the incident. 229

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of cluster bomb remains and of the deaths from the Ministry of Health.

230

May 4

47. At 3:00 p.m., a Ford Escort civilian passenger car is destroyed by the delayed explosion of a cluster bomb submunition on the **Pec-Rozaje highway** near the site at which the civilian bus had been hit on May 3. Jovan Otasevic (22) from Plav municipality is killed and one person is reported to be wounded. 231

May 7

48. In an 11:20-11:40 a.m. cluster bomb attack on the **Nis** airfield in southeast Serbia, fourteen civilians are killed and twenty-eight are wounded. Those killed are Ljiljana Spasic (26), Gordana Sekulic (29), Sasa Miljkovic (33), Dragisa Vucic (35), Bozidar Veljkovic (38), Ljubisa Stancic (48), Aleksandar Deljanin (50), Bozidar Djordjevic (57), Slobodan Stoilkovic (61), Vera Ilic (65), Zivorad Ilic (71), Gerasim Jovanovski (84), and Trifun Vuckovic (86). Ljiljana Spasic, killed on the corner of Jelene Dimitrijevic and Sumatovacka streets, is nine months pregnant. A fourteenth victim, Milutin Zivkovic (74), dies on May 8. 232

Cluster bomblets fall in three areas: near the Pathology building of the Nis Medical Center in southeast Nis; in the town center near the Nis University Rector's Office, including the area of the central city market place, the bus station near the Nis Fortress, and the "12 February" Health Center; and near a car dealership and the "Nis Express" parking lot across the river from the fortress. Unexploded bomblets are reported on Ljube Nenadovica St., Sumatovacka St., Franca Rozmana St., and Anete Andrejevic St. It is reported that "there are several hundred unexploded cluster bombs in the city center." 233

Initial Yugoslav government reports state that fifteen civilians are killed and more than sixty are wounded. 234 Later reports state thirteen civilians are killed and twenty-nine are wounded, eighteen gravely and eleven lightly. The Yugoslav government also reports that 120 housing units are damaged and forty-seven destroyed, and that fifteen passenger cars are also destroyed. 235

NATO confirms that it attacked the Nis airfield on May 7. 236 There are other reports that the Jugopetrol fuel storage depot in northwest Nis is also targeted. 237 On May 8, NATO Secretary General Solana states that it "NATO has confirmed that the damage to the market and

clinic was caused by a NATO weapon which missed its target. This strike was directed against the Nis airfield utilizing cluster munitions. The attack was aimed at destroying Serbian aircraft which were parked on the airfield, air defence systems and support vehicles, targets to which cluster munitions are appropriately suited. Once again of course civilian casualties were never intended and NATO regrets the loss of life and injuries inflicted."

NATO states that U.S. aircraft dropped CBU-87 cluster bombs in the airfield attack. According to

NATO Maj. Gen. Walter Jertz says: "I can tell you that we did not target-repeat we did not target-civilian hospitals and we do not target any civilian targets whatsoever." He further states: "We were using cluster bombs on the Nis target because, as I already mentioned, cluster bombs are used in aerial targets where we know that collateral damage could not occur, and it would be speculation if I would continue on the reason why some of the clusters obviously did go astray, maybe because of atechanical malfunction or they could have been inadvertently released." 238 According to U.S. Air Force sources, the intended target was the airfield and the cluster bomb container failed to open over the airfield, but opened right after release, projecting submunitions to a great distance.

Human Rights Watch visited the sites on August 11, inspected the damage and interviewed eyewitnesses. There were two areas where civilians were killed: near the town marketplace on Anete Andrejevic, Sumatovacka, and Jelene Dimitrijevic streets near the Nisava river; and near the Clinical Center on Ljube Nenadovica street. The closest to the airfield is more than 1.5 kilometers from the base perimeter; the Clinical Center is close to six kilometers from the airfield. Eyewitnesses also said that several people were injured at the "12 February" Health Center on Jelene Dimitrijevic street.

Human Rights Watch also observed a small military barracks on the banks of the Nisava river to the west of the October Revolution bridge, and the 3rd Army Headquarters building in downtown Nis at "Yugoslav Army" square in the downtown. Though NATO did not report attacks on these installations, both were extensively bombed, and could have been the objects of attack on May 7 (see also May 8). Nis civil defense officials stated that eight weapons-four "guided bombs," two cluster bombs, and two unexploded bombs-were dropped in Nis on May 7. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 239

49. In an 11:50 p.m. to midnight attack on what was wrongly identified as the Yugoslav Federal Directorate for Supply and Procurement (Yugoimport FDSP) at 2 Umetnosti Boulevard in **New Belgrade**, the Chinese Embassy compound is mistakenly hit, killing three and injuring twenty Embassy staff members. 240 The three Chinese nationals killed include Hi Hinhu (31), Zhu Jing (28), and Shao-Jin Juan (48). 241 At the moment of the attack, fifty people were reported in the embassy buildings. 242

According to the U.S. government, at 2146 Zulu time (GMT) (about midnight local time in Belgrade) on May 7, 1999, a B-2 dropped five Joint Direct Attack Munitions (JDAM) 2000 lb. GPS-guided bombs on the target designated as the FDSP building but which was, in fact, the Chinese Embassy. 243 According to U.S. government sources, the street address of the FDSP headquarters (the intended target) was known as Bulevar Umetnosti 2 in New Belgrade. During a mid-April "work-up" of the target to prepare a mission folder for the B-2 bomber crew, three maps were used in an attempt to physically locate this address within the neighborhood: two local commercial maps from 1989 and 1996, and one U.S. government (National Imagery and Mapping Agency or NIMA) map produced in 1997. None accurately identified the current location of the Chinese Embassy. CIA Director George Tenet says that there were people at the CIA and at the Department of Defense who had an intimate understanding of the Belgrade environment, but they were not consulted in this process. 244

- Human Rights Watch visited the Chinese Embassy site (N4449483/E02025147) located at Tresnjin cvet street No. 3 on August 4, and inspected the damage and the surrounding area. It also located the location of the FDSP headquarters at Bulevar Umetnosti 2, some 300 meters away from the Chinese Embassy. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 245

50. In an 11:50 p.m. attack on the Hotel Yugoslavia, on No. 3 Bulevar Nikole Tesle in **New Belgrade**, one civilian is killed and three are wounded. Andjelko Nincic (age unknown) is killed. The Yugoslav *White Book* identifies him as "a refugee residing in the hotel." 246 Other reports say he is a member of the board of the Socialist Party of the Republika Srpska. 247

A precision-guided munition (PGM) was used in the attack. NATO confirms that it attack the "Hotel Yugoslavia," which it calls "a location being used as a barracks for Arkan's Tigers in Belgrade and as an alternate MUP Headquarters. The hotel has long been under Arkan's control. He owned the casino as well as the sport club. Since the air campaign began, his forces took over the whole building and have used it as a Command Center for operations in Kosovo." 248

Human Rights Watch visited the site (N4449267/E02024976) on August 4, inspected the damage and interviewed eyewitnesses. Human Rights Watch was able to confirm that the casino area of the hotel was being used by paramilitary groups. The hotel itself was occupied, eyewitnesses said, mostly by government officials and guests of the government. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the death from the Ministry of

May 8

51. In a 4:03-4:25 p.m. attack on the concrete "12 February" bridge over the Nisava river in downtown Nis between, two civilians are killed. Initially, it is reported that one person is seriously and ten people are lightly wounded, and damage is caused to the Greek consulate, a car dealership, and the Nis Express parking lot. A city bus on Stanka Paunovica street is also reported hit. ²⁵⁰ Later press reports state that two persons are killed. ²⁵¹

A precision-guided munition (PGM) was used in the attack. NATO confirms that it attacked Nis airfield, a "highway bridge" in Nis, and the Nis petroleum storage site on May 8. ²⁵² Human Rights Watch visited the site (N4319395/E02153439) on August 11, inspected the damage and interviewed eyewitnesses. The bridge is located on Oktobarske Revolucije street, an extension of 12. Februara Boulevard. The Greek consulate is on the north bank of the river, on Kej Mike Paligorica street. The bridge was hit with one weapon, which did damage to the west side of the roadway (the bridge was not further damaged). Another crater from an errant weapon was observed further west on the bank of the Nisava river across from the "Rudo" factory. This crater was close to a small military barracks on the banks of the Nisava river (see comments on May 7). The 3rd Army Headquarters building in downtown Nis at "Yugoslav Army" square is also only a few hundred meters away. It seems possible that the bridge was not the object of the attack (the "highway" bridge reported attacked by NATO is assumed not to be this downtown road bridge). Nis civil defense officials stated that ten weapons-five "missiles" and five "guided bombs"-were dropped in Nis on May 8.

May 10

52. In an attack on an unidentified target near the **Lipljan** suburb of **Staro Gacko** (Gradsko) in Kosovo, three civilians are killed and four are wounded. Dragana Dimic (4), Rosa Jankovic (age unknown) and Bosko Jankovic (age unknown) are killed. ²⁵³ The Yugoslav government says that three civilians are killed and four are "gravely" wounded while several family houses are damaged. ²⁵⁴ The incident is reported as occurring both at 1:15 a.m. and at 10:30 a.m.

53. In a 3:11 p.m. attack believed to be on the "Sloboda" factory/ordnance repair facility in **Cacak** in central Serbia, four are killed and twelve to thirteen wounded. Killed are Dragan Obrenic (29) and Velija Dzemailovic (44) on Kulinovacko Polje III street. Milos Jovicic (46) and Nasko Ristic (50) are killed in a truck on the same street. ²⁵⁵ The attack occurs in the Cacak eastern industrial zone less than a kilometer from the town center. The "Cer" Appliances factory and the "Hidrogradnja" Construction Company are damaged to the north of the area where civilian casualties occurred. ⁰ Many houses are also reported "leveled to the ground" during the attack on the industrial area. ¹ The clothing factory "1. Oktobar" is reported damaged. ² Some reports place this attack at 11:05 a.m. on May 11, but they are incorrect.

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. ³

May 11

54. In 11:20 a.m. attacks on the **Nis** airfield and the Jugopetrol storage site, two civilian are killed and four are wounded. Zoran Nikolic (possibly Nikovic) (40) is killed immediately and security guard Goran Aleksic dies several days later at the VMA (Military Medical Academy) hospital in Belgrade. ⁴ The Yugoslav government reports that the "Energogas" storage facility in northwestern Nis is attacked during a visit of a Serbian Parliament delegation. It stated at the time that one person was killed, and five were wounded. The Yugoslav government also reported that the Nis Airport was targeted. ⁵ Tanjug reports that the Vice President of the Socialist party of Serbia Dusan Matkovic and the Vice President of the Yugoslav Assembly Republic Council Gorica Gajevic, who were part of a delegation visiting the Jugopetrol complex, were wounded in the attacks. ⁶ Cluster bombs are reported as having been used, but this was disputed by Nis officials. ⁷

NATO confirms attacks on both the airfield and the Nis "petroleum storage site" on May 11. ⁸ Human Rights Watch visited the Jugopetrol site on August 13, inspected the damage and interviewed eyewitnesses. Officials at the site stated that security guard Milorad Cukic was also gravely injured, and at the time of the Human Rights Watch visit, was still rehabilitating. Nis civil defense officials stated that eleven weapons-ten "missiles" and one unexploded weapon- were dropped in Nis on May 11. The Yugoslav

government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 9

55. In a 9:30 p.m. attack on the **Vladicin Han** road bridge over the Juzna Morava river in southeast Serbia, two civilians are killed and three are wounded. Gordana Nikolic (18) and Milan Ignjatovic (19) are killed. 10 The bridge in the center of the town, as well as a nearby department store, are destroyed. 11

A precision-guided munition (PGM) was used in the attack. NATO confirms attacking the Vladicin Han bridge on May 11. 12

Human Rights Watch visited the site (N4242353/E02203747) on August 12, inspected the damage and interviewed eyewitnesses. Eyewitnesses stated that the bridge was attacked four times on different occasions. The fourth attack was the one which ultimately destroyed the bridge, they said. Milan Ignjatovic and Gordana Nikolic were killed during the first attack. They were some 500 meters away and were knocked down by the blast created by the explosion. Townspeople said that they thought another town bridge was more likely to be attacked (the main one leading to Surdulica). The bridge that was actually attacked was not on the main highway nor was it the access route to the older secondary north-south road in Yugoslavia; it only connects the town center over the banks of the river.

The Yugoslav government provides forensic detail of the incident in its *White Book*.

56. In an attack on an unidentified target south of Nis, one civilian is killed in **Orlane** village, near Doljevac in Serbia. Jagoda Mladenovic (63) is killed by a weapons explosion while working in a field. 13

The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the death from the Ministry of Health. 14

May 13

57. In an 11:50 p.m. attack on Yugoslav Army forces in the field, a refugee camp on the Prizren-Suva Reka primary road, near the village of **Korisa** in Kosovo, is bombed, killing at least forty-eight and as many as eighty-seven, and injuring as many as sixty. 15

The Yugoslav government initially reports "at least seventy-nine civilians were killed, and more than fifty wounded," when aircraft attacked a convoy of about 500 ethnic Albanians hiding in the near-by woods. 16 Another Yugoslav government report stated that initial and still incomplete data indicates that eighty-four people were killed and over one hundred were wounded ("Yugoslav citizens of Albanian nationality, mainly women, children and the elderly"). 17 Yugoslav and western press reports ultimately put the death toll at eighty-seven, a number repeated by the U.S. State Department. 18 The UN Kosovo High Commissioner for Human Rights also quotes eighty civilians killed. 19

The Yugoslav government also claimed the use of cluster bombs, and the *White Book, Volume II*, contains photographic evidence of remains of tactical munitions dispensers (TMDs) from the site. 20 Tanjug also reports that NATO used "thermo-vision bombs that develop high temperature of up to 2000 degrees Celsius so that they burn even the stone." 21

In an official statement on May 15, NATO says:

This was a legitimate military target. The Serb claims of an attack involving cluster bombs against a non-military target are both false. NATO identified Korisa as a military camp and command post. Military equipment including an armoured personnel carrier and more than ten pieces of artillery were observed at this location. The aircraft observed dug-in military positions at the target before executing the attack. NATO cannot confirm the casualty figures given by the Serbian authorities, nor the reasons why civilians were at this location at the time of the attack. NATO deeply regrets accidental civilian casualties that were caused by this attack. 22

Maj. Gen. Jertz states further that

Immediately prior to the attack at 23.30-11.30 p.m.-local time Thursday night an airborne forward air controller confirmed the target, so the identification and attack system of his aircraft, having positively identified the target as what looked like dug in military reveted positions, he dropped two laser guided bombs. Following his attack, he cleared his wingman to also attack the same target using two more laser guided bombs. Approximately 10 minutes later, the third aircraft engaged the target with gravity bombs, with six gravity bombs. A total of 10 bombs were dropped on the target. Contrary to Serbian reports, I want to be very clear that cluster munitions were not used against these targets. 23

On May 14, the first rumors emerge that suggest that Serb troops were using civilians as human shields in Korisa. Amnesty International says that Korisa had been under attack by VJ and MUP forces prior to the

bombing. On May 15, AFP quotes a spokesman for SHAPE as saying: "The possibility of human shields is one that always exist.... But we are not on the ground so we have no way of confirming civilian casualties, their number or why they were there in the first place." 24 Visiting Albania the next day, General Clark said: "We know there is a real threat of human shields all the way through Kosovo." 25 On May 16, a Kosovar refugee who witnessed the NATO strike on Korisa also reported to Deutsche Welle that FRY police forced some 600 displaced Kosovars to serve as human shields there before the attack. 26 On May 15, Assistant Secretary of Defense Kenneth Bacon also says at the DOD News Briefing that

This accident at Korisa did not shake NATO's resolve in any way. The air campaign will continue with increasing force, particularly against Serb ground forces and police units in Kosovo.... NATO deeply regrets civilian casualties.... We try very hard to avoid these casualties, but combat is inherently dangerous and accidents cannot be avoided. ... This mission, like every other, will be reviewed, and the airmen and their commanders will learn what they can from it and continue. But I don't anticipate that there will be a sweeping change. We can't cross legitimate military targets off the list, and we won't.

The Yugoslav government provides forensic detail of the incident documenting civilian deaths in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 27

May 17

58. In a 3:30 p.m. attack on the "Jugopetrol" oil depot in **Bor** in central eastern Serbia, one civilian is killed and four are wounded. A tractor on the Bor-Slatina-Zajecar road is hit and Dragoslav Grujic (49) is killed and four other persons are wounded. 28 Houses in the "Elektrolstok" neighborhood are also reported to be damaged. 29

The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 18

59. In a 12:30-12:40 p.m. attack on the Krusik factory in **Valjevo** in central Serbia, one civilian is killed and eighteen are wounded. Mileva Kronic (72) is killed in the village (suburb) of **Jasenica**, when her home was hit. The home is located some three kilometers from the Krusik factory. 30 Tanjug reports that one person is killed and thirteen are wounded. 31 The Yugoslav government reports one person killed and twelve "severely wounded." The government reports damage to the "Oslobodioci Valjeva," "Novo Naselje" and "Kolubara 2" residential areas, as well as the Valjevo hospital. The nearby villages (suburbs) of Donja Grabovica and Jasenica (particularly the small village of Krunici) receive damage, and a local blackout was reported. 32

NATO states that it attacked the ammunition plant in Valjevo on May 18, the same day as the Krusik plant. 33

Human Rights Watch visited the site (N4418058/E01955215) on August 7, inspected the damage and interviewed eyewitnesses. The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 19

60. In a 1:15 p.m. attack on what NATO claimed were Yugoslav army and police forces near the Dubrava penitentiary near **Istok** in Kosovo, four civilians are killed and two are injured (see also May 21). Three weapons reportedly hit the penitentiary. Three prisoners and a guard are killed and two prisoners are wounded. The penitentiary administration building and two wings are hit. 34 Tanjug reports "There are fears that the casualty toll will rise, as it is difficult to approach the site, where ruins are being cleared. Material damage is tremendous." Provincial secretary for administration and regulations Jovica Jovanovic said that one of the wounded prisoners is in critical condition. Three penitentiary employees were lightly wounded, he added. 35

The Vujindol village on the Istok-Zubin Potok road is also reported hit. 36

NATO states that it attacked an "army facility" in Istok on May 19. 37 NATO spokesman Maj. Gen. Walter Jertz says that the facility was "a militarily significant target...a military security complex." He says that precision-guided munitions were used in the attack. 38

Among those believed killed by NATO bombing are: Enver Topalli, Abdullah Tahiri, and Gjon Ndrecaj.

bombing. On May 15, AFP quotes a spokesman for SHAPE as saying: "The possibility of human shields is one that always exist....But we are not on the ground so we have no way of confirming civilian casualties, their number or why they were there in the first place." 24 Visiting Albania the next day, General Clark said: "We know there is a real threat of human shields all the way through Kosovo." 25 On May 16, a Kosovar refugee who witnessed the NATO strike on Korisa also reported to Deutsche Welle that FRY police forced some 600 displaced Kosovars to serve as human shields there before the attack. 26 On May 15, Assistant Secretary of Defense Kenneth Bacon also says at the DOD News Briefing that

This accident at Korisa did not shake NATO's resolve in any way. The air campaign will continue with increasing force, particularly against Serb ground forces and police units in Kosovo.... NATO deeply regrets civilian casualties.... We try very hard to avoid these casualties, but combat is inherently dangerous and accidents cannot be avoided. ... This mission, like every other, will be reviewed, and the airmen and their commanders will learn what they can from it and continue. But I don't anticipate that there will be a sweeping change. We can't cross legitimate military targets off the list, and we won't.

The Yugoslav government provides forensic detail of the incident documenting civilian deaths in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 27

May 17

58. In a 3:30 p.m. attack on the "Jugopetrol" oil depot in **Bor** in central eastern Serbia, one civilian is killed and four are wounded. A tractor on the Bor-Slatina-Zajecar road is hit and Dragoslav Grujic (49) is killed and four other persons are wounded. 28 Houses in the "ElektroIstok" neighborhood are also reported to be damaged. 29

The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 18

59. In a 12:30-12:40 p.m. attack on the Krusik factory in **Valjevo** in central Serbia, one civilian is killed and eighteen are wounded. Mileva Krunic (72) is killed in the village (suburb) of **Jasenica**, when her home was hit. The home is located some three kilometers from the Krusik factory. 30 Tanjug reports that one person is killed and thirteen are wounded. 31 The Yugoslav government reports one person killed and twelve "severely wounded." The government reports damage to the "Oslobodioci Valjeva," "Novo Naselje" and "Kolubara 2" residential areas, as well as the Valjevo hospital. The nearby villages (suburbs) of Donja Grabovica and Jasenica (particularly the small village of Krunici) receive damage, and a local blackout was reported. 32

NATO states that it attacked the ammunition plant in Valjevo on May 18, the same day as the Krusik plant. 33

Human Rights Watch visited the site (N4418058/E01955215) on August 7, inspected the damage and interviewed eyewitnesses. The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 19

60. In a 1:15 p.m. attack on what NATO claimed were Yugoslav army and police forces near the Dubrava penitentiary near **Istok** in Kosovo, four civilians are killed and two are injured (see also May 21). Three weapons reportedly hit the penitentiary. Three prisoners and a guard are killed and two prisoners are wounded. The penitentiary administration building and two wings are hit. 34 Tanjug reports "There are fears that the casualty toll will rise, as it is difficult to approach the site, where ruins are being cleared. Material damage is tremendous." Provincial secretary for administration and regulations Jovica Jovanovic said that one of the wounded prisoners is in critical condition. Three penitentiary employees were lightly wounded, he added. 35

The Vujindol village on the Istok-Zubin Potok road is also reported hit. 36

NATO states that it attacked an "army facility" in Istok on May 19. 37 NATO spokesman Maj. Gen. Walter Jertz says that the facility was "a militarily significant target...a military security complex." He says that precision-guided munitions were used in the attack. 38

Among those believed killed by NATO bombing are: Enver Topalli, Abdullah Tahiri, and Gjon Ndrecaj.

61. In a 5:30 p.m. attack on an Army facility in **Gnjilane** in Kosovo, five civilians are killed and sixteen are "slightly injured." 39 Killed are Djijan Sabija (25), Vesna Cvetanovic (31), Djurdja Savic (34), Dzevat Ademi (39), and Gorica Cuprijanovic (46). 40 Sabija and Ademi are killed at the "Binacka Morava" construction enterprise. The others are killed at the PIP "Mladost" company cafeteria. 41

NATO states that it attacked an army facility in Gnjilane on May 19. 42
The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 20

62. In a 1:00-2:05 a.m. attack on the headquarters and barracks of the State Security Service (Sluzba Drzavene Bezbednosti (SDB), also known as the "Office of State Security") on Bulevar Mira in the Dedinje/Topcider section of **Belgrade**, four civilians are killed at the "Dragisa Misovic" Clinical and Hospital Center (KBC) at no. 64 Bulevar mira. Radoslav Novakovic (47), Branka Boskovic (75), Bosko Vrebalov (82), and Zora Brkic (82) are killed and numerous patients are wounded. 43

Two women in the process of giving birth and one new born baby are reported wounded. The Clinic of Neurology was reported "devastated" and buildings of the center for children lung diseases and tuberculosis and the gynecological clinic and maternity house were reported "demolished." 44 Serbia state television reports that emergency services evacuated infants and pregnant women. One woman was in labor when the bombs hit, the report said. Serbian Deputy Premier Milovan Bojic said that NATO's actions had been "something history and mankind would never forget." Two women who just gave birth, three babies, one child and a number of medical staff were also injured. 45

There are various unofficial reports regarding the intended target. The Yugoslav government incorrectly reports that a nearby gas station on the "Rakovicki put" in the Topcider sector was hit. 46 Tanjug reports attacks on nearby military barracks (without further specification). 47 There are also reports of an attack on the "Jugopetrol" fuel depot in Cukarica quarter (Radnicka street), about 2.5kilometers away on May 20. 48 There is also damage to the Swedish and Swiss Embassy buildings in the Dedinje neighborhood as a result of the attacks.

NATO states that it attacked "a surface to air missile support facility in Belgrade" and fuel stores "on the outskirts of" Belgrade on May 20, but makes no mention of attacks on the State Security or the adjacent Topcider "White House" compound, where the offices of President Milosevic are located, in its daily list of targets. 49 Responding to press questions, NATO spokesman Jamie Shea says "NATO aircraft targeted yesterday evening and struck a Belgrade army barracks-I insist an army barracks- at about 1 a.m. this morning; 7 laser-guided bombs hit the target, one laser-guidedbomb failed to guide correctly and we can confirm that it struck the base of a building about 1,500 feet from the centre of the target area...." 50 Human Rights Watch visited the site (N4446580/E02027348) on August 17 and inspected the damage. The Yugoslav government provides forensic detail of the incident in its *White Book*. Human Rights Watch also received photo documentation of the deaths from the Ministry of Health. 51

63. In a midnight attack on the northern Vojvodina **Sombor** "Naftagas-promet" depot, one civilian is killed and others are wounded. Nikola Hinic (59) is killed in his home at no. 60 Vuka Karadzica street and the Knezevic and Velimirovic homes are destroyed. Other wounded civilians are taken to the local hospital. 52

NATO confirms attacking fuel stores in Sombor on May 20. 53
The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 21

64. In a 5:30 p.m. attack on a MUP police station in central **Djakovica** in Kosovo, one civilian is killed and four are "lightly wounded." Ibrahim Gjosi (age unknown) is killed in his home. 54 Yugoslav authorities report that the town's center is targeted with "six missiles." "The civilian that was killed was in his house located in this part of the town," the civil defense authorities say, "while the four wounded persons were in a car at the time of the attack." 55 Human Rights Watch observed damage only to the Djakovica MUP building. According to a doctor at the Djakovica hospital, twenty-eight people were injured from the attack. 56

NATO states that it attacked a militia station supporting the MUP at Djakovica on May 21. 57
The Yugoslav government provides forensic detail of the incident in its *White Book*.

65. In an 8:10-10:25 a.m. attack on believed military barracks and assembly areas at Dubrava Penitentiary near **Istok** in Kosovo, at least nineteen prisoners are killed and more are wounded (see also May 19). The

Yugoslav government initially reports nineteen people were killed in the Dubrava Penitentiary, and more than ten were "severely or lightly" wounded. It said that twenty-four missiles were launched causing "huge damage to most of the buildings in the penitentiary perimeter." 58

On May 25, the Yugoslav press reported from Tanjug that "in days long bombardment of the Penitentiary Institute Istok, some 100 prisoners died, and some 200 were wounded." On May 27, Tanjug quoted Vladan Bojic, judge in Pec's District Court, saying that ninety-six corpses had been pulled from the ruins and that forty wounded are in critical condition. On May 29, the Yugoslav government stated that "The number of casualties in the Correctional Institution in Istok is increasing. Out of 196 people wounded in the vandal bombing of this institution another three persons died, and seven more were taken out from under the rubble, while the search for the dead continues." 59 On May 30, Tanjug reports seven more bodies found, bringing the total to ninety-three killed. 60 The *White Book* eventually states that ninety-five prisoners are killed and over one hundred are wounded at the Dubrava Penitentiary. 61

NATO declares that "a barracks and assembly area for the VJ and MUP forces that conduct ethnic cleansing operations in Kosovo, in the vicinity of a prison, were struck at Istok" on May 21. 62 On May 22, NATO Spokesman Col. Freytag states that the prison was on the target list as "an unused prison with an airfield with a large military facility used by the military forces, Serbian ground forces and special police." He says that NATO had bombed the "very large complex" twice before and "caused a lot of damage." 63

Human Rights Watch has determined that Yugoslav forces were likely responsible for the majority of deaths which occurred after the bombing (this accounts for the seeming discrepancy between the estimate of at least 19 quoted here and the Yugoslav claims of ninety-five dead). According to a separate investigation undertaken by Human Rights Watch in Kosovo, based upon extensive eyewitness testimony, prisoners were hunted down inside the penitentiary walls after the May 21 attack, eventually killing another eighty or so prisoners. The bombing on May 21 caused chaos in the facility. The Yugoslav government states that some prisoners tried to escape during this time, and the guards were struggling to maintain order. On May 22, according to eyewitnesses, prison officials ordered the approximately 1,000 prisoners to line up in the prison yard. After a few minutes, they were fired upon, and grenades were thrown at them from the prison walls and guard towers, killing at least seventy people. Over the next twenty-four hours, prison guards, special police, and possibly paramilitaries attacked prisoners who were hiding in the prison's undestroyed buildings, basements, and sewers, killing at least another twelve people. There has been extensive press reporting to substantiate this conclusion in addition to the Human Rights Watch investigation. 64

Among those believed killed by NATO bombing are: Mehdi Dallosi, Ahmet Hoxha, and Ali Kelmendi.

May 23

66. Tanjug reports that one person is killed and twenty-nine are wounded in **Djakovica** in Kosovo. 65

May 25

67. In a 1:35 p.m. attack on the "Mika Mitrovic" Army barracks in the center of **Sabac** in central Serbia, one civilian is killed and five are wounded. Zivorad Nenadovic (69) from no. 6 Stanimira Josipovica street was fatally wounded and later died in the hospital. 66 The barracks were targeted with six weapons, according to the Yugoslav government. Damage was reported to the "Laza Lazarevic" elementary school, "Macva" sports stadium, and the "Trkaliste" residential area. 67 Electric power supply was also cut to Sabac. 68

NATO confirms the bombing of the Sabac army barracks on May 25. 69

Human Rights Watch visited the site on August 7, inspected the damage and interviewed eyewitnesses. Neighbors said Nenadovic died in front of his house (N4445178/E01940848) while repairing his car. The barracks were located at N4445027/E01941017, some 1500 meters from the house. This was reportedly the last of three attacks on the Mika Mitrovic barracks (the previous two were on May 11 and May 18). All of the attacks took place in the afternoon, according to eyewitnesses.

The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 26

68. In a 10:45 p.m. attack on unidentified targets near the village of **Kosovska Vitina**, south of **Gnjilane** in Kosovo, three civilians are killed and two are wounded. 70 Yugoslav press reports state that Djelekare and Gornja Budriga villages with no army or police in vicinity are bombed. 71

NATO declares that it bombed the nearby Kacanik television and radio transmission and relay site on May 26. 72

69. In an 8:30 a.m. attack on unidentified targets in the Kosovo village of **Radoste**, west of Orahovac, two are killed and one is "severely wounded." Kujtim Kastrati (11) and Beg Krasniqi (31) are killed. 73 The Yugoslav government provides forensic detail of the incident in its *White Book*.

70. In an 11:15 to 11:30 p.m. attack on the **Ralja** logistic support depot south of Belgrade (Sopot municipality), three civilians are killed and three are wounded. Children Dejana (5) and Stefan (8) Pavlovic are killed, as well as Biljana Momcilovic (29). The home of the Pavlovic family at No. 6 Save Kovacevica street and the Momcilovic home at no. 4 are directly hit. 74 According to Yugoslav civil defense authorities, one "missile" hit a block of houses, injuring one child, and another is listed as missing. Authorities also report damage to a private house in the village of Begaljica southeast of Belgrade at 11.30 p.m., with one injury, and an attack on nearby Bubanj Potok. 75

NATO states that it bombed the logistic supply depot at Ralja on May 26. 76
Human Rights Watch visited the site (N4433785/E02033806) on August 14 and inspected the damage. The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 27

71. In a 1:25 p.m. attack on the Cekavicki bridge over the Jablanica river near **Pertate** between Leskovac and Lebane in southeastern Serbia, two civilians are killed and one is wounded. Branka Stankovic (55) and Veselka Spasic (59) are killed near the bridge. 77 The bridge is reported hit with three "missiles." The "Grmija" trading company storage facility is also reported targeted with two "missiles." 78 Later, the Yugoslav government reports a 2:20 p.m. attack on the Cenovacki Bridge on the road to Lebane that kills two civilians, undoubtedly the same incident. 79

A precision-guided munition (PGM) was used in the attack. NATO confirms attacking the Pertate bridge on May 27. 80

Human Rights Watch visited the site (N4258001/E02151265) on August 12, inspected the damage and interviewed eyewitnesses. The Yugoslav government provides forensic detail of the incident in its *White Book*.

72. In a 4:30-4:35 p.m. attack on the **Palic** meteorological station in Vojvodina near Subotica, one civilian is killed and three are wounded. Jeka Alavanja (70), a refugee from Croatia, is killed in a nearby refugee camp. 81 The meteorological station is located at no. 12 Lajos Vermesz Quay. 82 The Yugoslav government reports that four "missiles" are fired at the Palic tourist resort and that four people are severely wounded. It reports that the refugee camp housing refugees from Croatia suffered severe "damage." 83 It later reports three people killed at the Palic tourist resort. 84

NATO declares it attacked the Subotica AM Broadcast station on May 27, but does not report attacking anything in Palic nearby. 85

Human Rights Watch visited the site on August 2, inspected the damage and interviewed eyewitnesses. A Croatian refugee camp (N4605585/E01946001) was hit with two weapons, eyewitnesses said, at about 4:30 p.m. on May 27, killing one woman.

The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 28

73. In a 12:30-12:45 a.m. attack on an unidentified target in **Aleksinac** in southeastern Serbia, three civilians are killed and ten are wounded. Killed are Predrag Nedeljkovic (37), Dusanka Savic (48), and Branislav Mitrovic (79). A single weapon lands in the area of nos. 23 and 25 Niska street in the Svrlijig neighborhood. 86 The Yugoslav government says "more than ten missiles" hit Aleksinac, destroying ten houses. 87 Tanjug reports at least two civilians killed and ten are wounded. It reports "seven missiles" being fired. 88

NATO does not report attacks on any Aleksinac targets on May 27 or May 28. 89

Human Rights Watch visited the site (N4331817/E02142964) on August 11, inspected the damage, and took eyewitness testimony. The area is some distance from the Deligrad barracks downtown, which was the target of attack in an earlier incident (see April 5). 90

The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 29

74. In a 3:15 p.m. attack on the ammunition depot in northwestern **Nis**, two civilians are killed and three are

wounded in the village of **Camurlija**. Husband and wife Dusan (64) and Vukosava (61) Mancic died, and their grandchildren Aleksandra (10), Dejan (13), and Daliborka (16) were hospitalized with shrapnel wounds. Two houses in Camurlija are completely destroyed. 91

NATO confirms bombing the Nis ammunition depot, "a military vehicle storage area at Nis," as well as TV/FM relay and AM radio broadcasting stations in Nis on May 29. 92 The Nis ammunition depot and airfield are also reported bombed on May 30. 93 On May 30, NATO spokesman Maj. Gen. Walter Jertz discusses the attack on Camurlija:

First of all let me tell you once again that of course we do only attack military targets. Full stop.... I have a report...that north-west of Nis, Kamrolija (sic), we did attack military barracks. Indeed two bombs, the pilots did guide off intentionally because the target was covered so they couldn't identify the target well enough, so they intentionally discarded these two bombs which fell into a river called Nisavar (sic, Nisava), I hope it is spelt correctly. ... in this incident where they realized that they would not hit the target, they just guided them into a river, which was fortunate enough they did. 94

Human Rights Watch visited the site (N4321851/E02150758) on August 14, inspected the damage and interviewed eyewitnesses. NATO discussions of special precautions taken by pilots notwithstanding, there were civilian deaths and damage in the village. Villagers stated that the military "depot" is some 500 meters away. A neighbor told Human Rights Watch that the Mancics were in the house when the explosion occurred. The bomb did not hit their house directly, but the house next to theirs; a wall in their house, however, collapsed, and killed them inside. Another weapon fell some 200 meters away, on the same road, and destroyed a garage. The next day, in the afternoon during the funeral, the "depot" was again bombed. The second incident is reported as having taken place at 5:30 p.m. on May 30. 95 Nis civil defense officials stated that four "missiles" were dropped in Nis on May 29. The Yugoslav government provides forensic detail of the incident in its *White Book*.

75. In an afternoon attack on a tunnel near the village of **Krk Bunar/Gornje Selo** between Prizren and Brezovica in southern Kosovo, one civilian is killed and three are wounded. 96 Nebojsa Radojevic (38), a chauffeur, is killed. 97

The killed and injured are in a convoy of Western journalists who had snuck into southern Kosovo. There are various reports of the number of civilians wounded: press reports and the Yugoslav civil defense authorities state six are wounded. 98 Human Rights Watch could confirm that the three injured were a correspondent for the London *Times*, Eve-Ann Prentice, a journalist with Portuguese national television, Elsa Marujo, and French philosopher Daniel Schiffer. The wounded receive treatment at a nearby field hospital. Tanjug reported that there were no military or police facilities or units near the scene. 99

Yet NATO claimed an attack on "a VJ tunnel staging area in southern Kosovo" on May 29. 100 Later on May 31 NATO officials state that despite checks they had "no information" about the possible attacks on the journalist group. Spokesman Jamie Shea commented: "Of course, we cannot guarantee the safety of journalists or individual vehicles in Kosovo."

The Yugoslav government provides forensic detail of the incident in its *White Book*.

76. In a 3:25 p.m. attack on a Jablanica river bridge between Leskovac and **Lebane** in southern Serbia, two civilians are killed and one is wounded. Goran Stojmenovic (32) and Stanoje Stojmenovic (58) are killed, and one person is "seriously wounded." Stanoje Stojmenovic is killed while working nearby in a field. 101 The Yugoslav government reports the incident as occurring at 7:10 p.m. 102

A precision-guided munition (PGM) was used in the attack. NATO confirms an attack on the "Donje Trnjance" bridge on May 29 (presumed to be the **Donje Trnjane** bridge on the secondary road over the Jablanica river). 103

The Yugoslav government provides forensic detail of the incident in its *White Book*.

77. In an 8:00 p.m. attack on an unidentified target in the area of **Kosovska Vitina** in southern Kosovo, five civilians are killed and two are reported as "seriously injured." The deaths and injuries occur in the village of **Gornja Budriga**, and fifteen "missiles" are reported fired. 104 The Orthodox cemetery in Kosovska Vitina is also reported hit, as is the area of the village of Drobos. 105

NATO does not report hitting any fixed targets in the area on May 29, 106 though the attacks could have been directed against Yugoslav forces in the field.

wounded in the village of **Camurlija**. Husband and wife Dusan (64) and Vukosava (61) Mancic died, and their grand children, Aleksandra (10), Dejan (13), and Daliborka (16) were hospitalized with shrapnel wounds. Two houses in Camurlija are completely destroyed. 91

NATO confirms bombing the Nis ammunition depot, "a military vehicle storage area at Nis," as well as TV/FM relay and AM radio broadcasting stations in Nis on May 29. 92 The Nis ammunition depot and airfield are also reported bombed on May 30. 93 On May 30, NATO spokesman Maj. Gen. Walter Jertz discusses the attack on Camurlija:

First of all let me tell you once again that of course we do only attack military targets. Full stop.... I have a report...that north-west of Nis, Kamrolija (sic), we did attack military barracks. Indeed two bombs, the pilots did guide off intentionally because the target was covered so they couldn't identify the target well enough, so they intentionally discarded these two bombs which fell into a river called Nisavar (sic, Nisava), I hope it is spelt correctly. ... in this incident where they realized that they would not hit the target, they just guided them into a river, which was fortunate enough they did. 94

Human Rights Watch visited the site (N4321851/E02150758) on August 14, inspected the damage and interviewed eyewitnesses. NATO discussions of special precautions taken by pilots notwithstanding, there were civilian deaths and damage in the village. Villagers stated that the military "depot" is some 500 meters away. A neighbor told Human Rights Watch that the Mancics were in the house when the explosion occurred. The bomb did not hit their house directly, but the house next to theirs; a wall in their house, however, collapsed, and killed them inside. Another weapon fell some 200 meters away, on the same road, and destroyed a garage. The next day, in the afternoon during the funeral, the "depot" was again bombed. The second incident is reported as having taken place at 5:30 p.m. on May 30. 95 Nis civil defense officials stated that four "missiles" were dropped in Nis on May 29. The Yugoslav government provides forensic detail of the incident in its *White Book*.

75. In an afternoon attack on a tunnel near the village of **Krk Bunar/Gornje Selo** between Prizren and Brezovica in southern Kosovo, one civilian is killed and three are wounded. 96 Nebojsa Radojevic (38), a chauffeur, is killed. 97

The killed and injured are in a convoy of Western journalists who had snuck into southern Kosovo. There are various reports of the number of civilians wounded: press reports and the Yugoslav civil defense authorities state six are wounded. 98 Human Rights Watch could confirm that the three injured were a correspondent for the London *Times*, Eve-Ann Prentice, a journalist with Portuguese national television, Elsa Marujo, and French philosopher Daniel Schiffer. The wounded receive treatment at a nearby field hospital. Tanjug reported that there were no military or police facilities or units near the scene. 99

Yet NATO claimed an attack on "a VJ tunnel staging area in southern Kosovo" on May 29. 100 Later on May 31 NATO officials state that despite checks they had "no information" about the possible attacks on the journalist group. Spokesman Jamie Shea commented: "Of course, we cannot guarantee the safety of journalists or individual vehicles in Kosovo."

The Yugoslav government provides forensic detail of the incident in its *White Book*.

76. In a 3:25 p.m. attack on a Jablanica river bridge between Leskovac and **Lebane** in southern Serbia, two civilians are killed and one is wounded. Goran Stojmenovic (32) and Stanoje Stojmenovic (58) are killed, and one person is "seriously wounded." Stanoje Stojmenovic is killed while working nearby in a field. 101 The Yugoslav government reports the incident as occurring at 7:10 p.m. 102

A precision-guided munition (PGM) was used in the attack. NATO confirms an attack on the "Donje Trnjance" bridge on May 29 (presumed to be the **Donje Trnjane** bridge on the secondary road over the Jablanica river). 103

The Yugoslav government provides forensic detail of the incident in its *White Book*.

77. In an 8:00 p.m. attack on an unidentified target in the area of **Kosovska Vitina** in southern Kosovo, five civilians are killed and two are reported as "seriously injured." The deaths and injuries occur in the village of **Gornja Budriga**, and fifteen "missiles" are reported fired. 104 The Orthodox cemetery in Kosovska Vitina is also reported hit, as is the area of the village of Drobos. 105

NATO does not report hitting any fixed targets in the area on May 29, 106 though the attacks could have been directed against Yugoslav forces in the field.

78. The Yugoslav press reports that three civilians are killed in **Brezna** village near the Albanian border southwest of **Prizren** in Kosovo. 107

May 30

79. In a midnight attack intended for an ammunition depot in **Surdulica** in southeastern Serbia, a sanatorium is bombed, and twenty-three civilians are killed and thirty-six are wounded. Milenko Malobabic (16), Rada Malobabic (19), Milena Malobabic (20), Djordje Pavkovic (45), Rada Zigic (52), Bosiljka Malobabic (53), Slavko Popovic (60), Petar Budisavljevic (60), Bogdanka Janjanin (60), Stamen Rangelov (61), Milanka Vuckovic (65), Stana Rasic (66), Desanka Velickovic (67), Bosa Miladinovic (68), Danica Malesevic (68), Nepijal Dragic (70), Dragic Napijalo (70), Dusan Manojlovic (72), Bogdanka Janjanin (74), and Mile Slijepcevic (90) are killed. 108 On June 7, Boris Eremijev (60) from Klisura dies in a hospital in Bosilegrad. 109 The bodies of two more victims, names and ages unknown, were reportedly recovered on August 11.

The Special Hospital for Lung Diseases "Sanatorium" in southeastern Surdulica is hit. The complex includes an home for the aged and a refugee center. Directly hit were three widely separated buildings. 110 Tanjug reports "at least 17 children and helpless old people lost their lives." 111 In all, the Yugoslav government states, twenty civilians are killed and eighty-eight wounded. 112

NATO reports the bombing of the Surdulica ammunition storage site on May 30. 113 NATO spokesman Col. Konrad Freitag says that aircraft struck an ammunition storage depot and military barracks. "NATO cannot confirm any Serb claims of casualties or collateral damage," he said. On June 1, NATO spokesman Jamie Shea further addresses the Surdulica incident:

when we looked at this incident we clearly saw that the 4 missiles, precision guided missiles, which were fired at the facilities in Surdulica, all hit the target, the military target, the legitimate military target, accurately. There were no errant weapons in this situation. 114

In July, while testifying before Congress, Deputy Secretary of Defense John Hamre and CIA Director George Tenet address the Surdulica incident. Hamre says: "We did have an instance where we hit a hospital. It was totally an accident. In this case, that was human error that led in this instance where we hit a hospital." Tenet says: "We hit a hospital. We didn't want to do that. That was the case of the pilot got confused and he was off by about a mile and what he thought was his coordinates." 115

Human Rights Watch visited the site (N4240929/E02209910) on August 12, inspected the damage and interviewed eyewitnesses. Guards at the sanatorium said that they observed NATO aircraft flying at a low altitude, and that there was no air defenses active in the area. On August 11, one day before the Human Rights Watch team visited the site, the guards stated that two more corpses were found on the roof of a sanatorium building. Human Rights Watch also inspected a large crater in a field some 400 meters from the sanatorium facility. The Yugoslav government provides forensic detail of the incident in its *White Book*.

80. In a 7:05-7:21 a.m. attack on an army barracks in **Vranje**, one civilian is killed and one is wounded. Mane Andjelkovic (60) is killed and his wife is wounded, and houses on Kraljevica Marka and Nemanjina streets in the town center are damaged. 116 Vranje is reportedly attacked for the sixth time: this time the barracks in a densely populated northeast area is said to be the target. Civil defense authorities say that "The missiles dropped on the town this morning rocked the buildings and stirred dense clouds of smoke, which obscured the sun and plunged the area into semi-darkness." 117 The villages (suburbs) of Katun and Meredovac are also reported attacked. 118

NATO states that it bombed a Vranje Army barracks on May 30. 119 Human Rights Watch visited the site on August 12, inspected the damage and took eyewitness testimony. The intended target was the "Simo Pogacerevic" military barracks, which was also hit.

81. In a 1:00-1:25 p.m. attack on the **Varvarin** bridge over the Velika Morava river in central Serbia, nine civilians are killed and some forty are wounded. Reported killed are: Sanja Milenkovic (17), Milan Savic (24), Vojkan Stankovic (31), Zoran Marinkovic (33), Stojan Ristic (56), Ruzica Simonovic (60), priest Milivoje Ciric (66), Dragoslav Terzic (68), and Tola Apostolovic (74). 120 Tanjug says local people were attending the town's market on the holiday Svete Trojice when the daylight attack happened at 1 p.m. local time. Witnesses said four cars fell into the river. Rescuers who went to aid of the wounded were hit in a second attack. Tanjug and the Yugoslav government reports eleven killed and at least forty wounded. 121 There is damage to the "Plaza" hotel, the St. Bogordica church, and the municipal assembly building.

On June 2, Tanjug reported that six persons have been listed as missing since the NATO attack. It again reported eleven killed and "about forty" wounded. It states that nine victims had so far been identified. 122 NATO confirms the attack and states that a precision-guided munition (PGM) was used. Spokesman Jamie Shea said the alliance had bombed a "legitimate designated military target" and stated that "we take the same precautions at midday as we do at midnight." "There is always a cost to defeat an evil," he says. "It never comes free, unfortunately. But the cost of failure to defeat a great evil is far higher." 123 Human Rights Watch visited the site (N4343444/E02122405) on August 11, inspected the damage and interviewed eyewitnesses. The attack took place in the afternoon on Sunday, the market day. During the first explosion, no one was killed. In the second explosion, some seven minutes later, according to eyewitnesses, people were killed on and around the bridge. Among them was the priest Milivoje Ciric, who, after the first blast, interrupted the service in the nearby St. Bogorodica church, to go to the bridge. Varvarin is located on a secondary road between the main E-75 Nis-Belgrade highway and Krusevac. The bridge that was destroyed was not the main link to the north (which was not bombed); it was only a local bridge. The Yugoslav government provides forensic detail of the incident in its *White Book*.

82. In an 8:05-9:15 a.m. attack on targets in the area of Mt. Avala, one civilian is killed and five are wounded in the village of **Ripanj**, fifteen kilometers south of Belgrade. 124 Slavica Stojiljkovic (60) is killed in Ripanj village at no. 48 Put za Ivanovice street. 125 Three or four weapons reportedly land in the village near the route leading to Ivanovice. 126 Tanjug reports that the entire Avala area is bombed. 127

NATO states that it attacked the nearby command bunker at Mt. Avala, Belgrade army barracks (possibly at Zuce on the foothills of Avala), a Belgrade military storage area, and a Belgrade AM radio broadcast station on May 30. 128

Human Rights Watch visited the area on August 3, inspected the damage and interviewed eyewitnesses. The Stojiljkovic home was located at N4439595/E02031274. The "Suplja stena" (hollow rock) barracks (N4439841/E02032412), which appears to be an entrance and/or support base for underground bunkers, is located some 400 meters from the house. According to local residents, Suplja stena is an ex-coalmine, and now functions as an "ammunition depot." According to eyewitnesses, another weapon made a crater near Ripanj village homes in the woods, though the area was inaccessible to Human Rights Watch. Villagers from Ripanj told Human Rights Watch the mountainside military installations were attacked "every other night."

The Yugoslav government provides forensic detail of the incident in its *White Book*.

May 31

83. In an 8:00-8:40 a.m. attack on the **Vranje** TV/radio transmitter in southeastern Serbia, one civilian is killed in **Neradovac** village to the south of the city: Leposava Ristic (75). 129 Yugoslav civil defense authorities state that the intended target was the radio and television transmitter on Mt. Plackovica overlooking Vranje. The transmitter was already damaged in earlier raids, the authorities said. 130

NATO confirms attacking a TV/FM relay station in Vranje on May 31. 131

84. In a 1:30 p.m. attack on the military barracks in **Novi Pazar** in southern Serbia, eleven civilians are killed and twenty-three are wounded. 132 Killed are: Marko Simic (2), Marko Roglic (16), Djordje Pantovic (24), Dejan Milosevic (27), Miodrag Nikic (29), Vladan Simic (30), Golub Ratkovic (32), Zvezdan Jajic (37), Dragomirka Biorac (38), Dragan Simovic (46), and Radun ("Raco") Vranic (47). The Yugoslav government initially reports ten people killed and more than twenty wounded when an apartment building in the vicinity of the bus station in the town center was hit. The "Jedinstvo" publishing/media company building housing the local Radio Novi Pazar and RTS office was also hit 133 as was the "TK Raska" textile factory building near the city bus station. 134 Tanjug said that twenty missiles fell on various targets in Novi Pazar with the apartment taking a direct hit. More bodies were believed buried in the rubble. The news agency also reported that the target included the Jedinstvo complex.

NATO confirms attacking a Novi Pazar radio relay site and the Novi Pazar army barracks on May 31. 135 NATO states that a weapon went astray during an attack on the army barracks. Spokesman Jamie Shea said that five out of six munitions hit the target but one overshoot by about 60 meters.

Human Rights Watch visited the site on August 10, inspected the damage and interviewed eyewitnesses. Eyewitnesses said that there were three "groups" of people who died: some were leaving the Jedinstvo offices; some were waiting for the bus at the bus stop adjacent to an apartment building at No. 74 Stevana Nemanje street (or were passing by) (N4308815/E02031202); and some were in the stores located on the ground floor of No. 74 or at a butcher's shop belonging to Djordje Pantovic nextdoor to the building. The bus stop services a route to Novopazarska Banja and to Izbice, villages inhabited mostly by Serbs. This may

explain the strange coincidence that all killed were ethnic Serbs, even though the city of Novi Pazar is primarily made up of Muslims. A house on Miodraga Jovanovica street is also reported as destroyed. 136 The Yugoslav government provides forensic detail of the incident in its *White Book*.

85. In a 2:00 p.m. attack on the **Raska** highway bridge in southern Serbia, one civilian is killed in the village of **Brvenik**. Sasa Knezevic (31) is killed. 137 Telephone lines are reported down with Novi Pazar, Raska, Sjenica and Tutin. 138

A precision-guided munition (PGM) was used in the attack. NATO confirms attacking the Raska highway bridge on May 31. 139

86. In an attack on an unidentified target near the village of **Drazevac** near **Obrenovac** in central Serbia, one civilian is killed. Jovanka Arsenijevic (76) is killed in her home at no. 192 Baljevacki Put. 140

NATO confirms attacking an electric power transmission tower near Obrenovac and the Obrenovac army barracks on May 31. 141

The Yugoslav government provides forensic detail of the incident in its *White Book*.

June 6

87. In an attack on a radio relay site in in **Rudnik** near Kosovska Mitrovica in Kosovo, one civilian is killed and another is injured. Dragutin Todorovic (age unknown) from Krusevac dies of injuries caused in the bombing. Milenko Mihajlovic was slightly wounded in the same attack. They both were members of a Krusevac Union delegation carrying out humanitarian aid. 142

NATO confirms attacking a radio relay site at Rudnik on June 6. 143

88. In a 6:27 p.m. attack on unidentified targets in the **Gnjilane** area in Kosovo, one civilian is killed and one is wounded. Stojanka Aksic is killed and Stanislav Petrovic seriously wounded in the village of **Donja Budriga** near Gnjilane. 144

June 7

89. In a 4:30 p.m. attack on the **Podgorac** military storage depot north of Boljevac in southeastern Serbia, three civilians are killed. Nebojsa Srbulovic (37), Milija Andrejevic (54), and Slavka Trikanovic (59) are killed at the "Ekohrana" livestock farm. 145 According to the Serbian civil defense command, two people were killed outright and the third died on the way to hospital. 146 Seven buildings at the farm, where 2,500 sheep were being kept, were reported destroyed. 147

NATO states that it attacked a military storage depot at Podgorac on June 7. 148

The Yugoslav government provides forensic detail of the incident in its *White Book*.

June 8

90. In a 12:15 a.m. attack on the petroleum storage area at the **Novi Sad** refinery in Vojvodina, one civilian is killed and six are wounded. Milan Bajic (37) from 7th street in the nearby Sangaj ("Shangai") settlement is killed. One eleven-year-old boy reportedly suffers heavy injuries. 149 Yugoslav civil defense authorities and the Yugoslav press report two detonations, "the biggest so far in the 75 days of bombing." 150 The Yugoslav government reports that "The town was illuminated and thick smoke was rising from the oil refinery. A number of missiles have been fired at Mt. Fruska Gora zone." 151 According to Dr. Djordje Janjic, director of the clinical center in Novi Sad, six persons who were wounded when a weapon landed in the Sangaj neighborhood were admitted to the center. One soon died of injuries. 152

NATO confirms attacking the petroleum storage site at Novi Sad on June 7. 153

Human Rights Watch visited the site (N4516822/E01951292) on August 15, inspected the damage and took eyewitness testimony. The Yugoslav government provides forensic detail of the incident in its *White Book*.

86 Federal Republic of Yugoslavia (FRY), Ministry of Foreign Affairs (MFA), *NATO Crimes in Yugoslavia*, vol. I, p.39.

87 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

88 Information provided by the Yugoslav Ministry of Information.

89 Human Rights Watch used a Global Positioning System (GPS) receiver to locate precisely targets and areas of civilian damage. These coordinates are derived from on-the-scene readings.

90 Tanjug, "NATO aircraft destroy bridge linking Novi Sad and Petrovaradin," April 1, 1999.

91 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 39. Page 39 mentions Mahmut (not Mehmet) and states the age as twenty-four. The picture on p. 42 uses the name Mehmet, and the man is obviously much older than twenty-four.

92 Yugoslav press reports (see note about sources); AFP, "NATO Air Strike Kills Two Albanians, Injures Six: Tanjug," April 2, 1999.

93 Tanjug News Headlines, April 2, 1999; Serbian Unity Congress NewsBits, April 3, 1999.

94 FRY, Ministry of Health (MOH), "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999." In all of these cases in this series, photo documentation consisted of portfolios of injured and killed Yugoslavs as a result of NATO attacks.

95 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 39; Tanjug News Headlines, 2 April 1999; Yugoslav press reports; Serbian Unity Congress, NewsBits, April 2-3, 1999; Tanjug, Kursumlija, April 2, 1999.

96 Yugoslav press reports.

97 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

98 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 45; Yugoslav press reports; War Against Yugoslavia: Cacak (www.graduate.ac.uk/gradovi/cacak/index.html); Tanjug, Cacak, April 4, 1999; Information provided by Yugoslav civil defense authorities.

99 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

100 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 387, 389.

101 Republic of Serbia, Ministry for the Protection of the Human Environment, South Banat District, "Day to day report about the side-effects of bombardment on human environment and Pancevo citizens' health," June 16, 1999; FRY MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 387; Tanjug, Belgrade, April 4, 1999; Tanjug, Pancevo, 4 April 1999; information provided by Yugoslav civil defense authorities; Yugoslav press reports.

102 See also "Day-to-day report about the side-effects of bombardment on human environment and Pancevo citizen's health," prepared by Republic of Serbia Ministry of the Protection of Human Environment, South Banat district, June 16, 1999, p. 1.

103 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

104 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 355-365; Tanjug, Belgrade, April 4, 1999; Yugoslav press reports; Information provided by Yugoslav civil defense authorities.

105 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

106 Human Rights Watch issued a statement on April 7 calling on NATO to conduct an investigation into the incident. See Kosovo Human Rights Flash no. 21, "NATO Urged to Respect Humanitarian Law," April 7, 1999.

107 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 49-128; *Politika*, April 8, 1999, p. 17, also reports Marina Paović (26) as killed, but she is not included in the White Book.

108 *Politika*, April 8, 1999, p. 17; *Politika*, April 9, 1999, p. 17.

109 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 56-57, 62-63; Tanjug, NATO aggressor attacks civilian targets in Aleksinac, Aleksinac, 5 April 1999; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999; Permanent Mission of the FRY to the UN, "Provisional Assessment," July 3, 1999.

110 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 63.

111 Tanjug, "Aleksinac razed in NATO bombing," Aleksinac, April 6, 1999.

112 Tim Butcher, "Conflict in the Balkans: Harriers Go in with Cluster Bomb Raids: Civilians Are Killed as Allies Raise Stakes," *Daily Telegraph*, April 7, 1999, p. 2.

113 Testimony of Gen. Henry Shelton, to the HASC, April 14, 1999.

114 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

115 FRY, MFA, *NATO Crimes in Yugoslavia*, volume. I, pp. 46-48; Yugoslav press reports.

116 Tanjug, Vranje, April 5, 1999.

117 Tanjug, Vranje, April 5, 1999; Permanent Mission of the FRY to the UN, "Provisional Assessment," July 3, 1999.

118 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

119 Yugoslav press reports; Information provided by Yugoslav civil defense authorities.

120 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 130-135.

121 Ibid., pp. 132-135.

122 Ibid., pp. 130-135; information provided by the Yugoslav Ministry of Information and Yugoslav civil defense authorities.

123 "10 Killed in Pristina," *Irish Times*, April 8, 1999, p. 13.

124 FRY, MFA, "NATO Crimes Against Civilians," May 10, 1999; Tanjug, Pristina, April 6, 1999; Yugoslav press reports.

125 AFP (Brussels), "Lengthening List of NATO Errors," May 4, 1999.

126 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

127 "War Against Yugoslavia: Nis" (www.inet.co.yu/rat/gradovi/nis/index.html).

128 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 411-414; Yugoslav press reports; information provided by the Yugoslav Ministry of Information and Yugoslav civil defense authorities during Operation Allied Force via Email.

129 Information provided by the Yugoslav Ministry of Information and Yugoslav civil defense authorities during Operation Allied Force via Email

130 "War Against Yugoslavia: Uzice" (www.inet.co.yu/rat/gradovi/uzice/index.html).

131 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

132 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 136-139.

133 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 141; information provided by Yugoslav civil defense authorities.

134 *Politika*, April 13, 1999, p. 17.

135 Human Rights Watch interview with Dr. Burim Sahatqija, Djakovica, August 4, 1999.

136 Yugoslav press reports.

137 Information provided by Yugoslav civil defense authorities; FRY MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

138 Steven Erlanger, "NATO Bombs Slam Passenger Train," *Seattle Post-Intelligencer*, April 13, 1999, p. A1.

139 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

140 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 257-312; Yugoslav press reports. Committee for Compiling Data on Crimes Against Humanity and International Law (http://www.gov.yu/cwc/fejmel_nato.htm) says thirteen killed and sixteen injured.

141 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

142 AFP (Brussels), "Lengthening List of NATO Errors," May 4, 1999.

143 Statement of the Honorable John J. Hamre Deputy Secretary of Defense Before the House Permanent Select Committee on Intelligence, July 22, 1999.

144 FRY MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

145 Yugoslav press reports; Information provided by Yugoslav civil defense authorities; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

146 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

147 Information provided by Yugoslav civil defense authorities during Operation Allied Force via Email.

148 Yugoslav press reports.

149 Committee for Compiling Data on Crimes Against Humanity and International Law (<http://www.gov.yu/cwc/>

[fejmel_nato.htm](http://www.gov.yu/cwc/fejmel_nato.htm)). Human Rights Watch believes that the *White Book* figures are accurate, and seventy-three deaths corresponds with almost all the independent press reporting on the incident.

150 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 1, 21-26, 32-37.

151 Tanjug, Pristina, April 15, 1999.

152 NATO, SHAPE News Morning Update, April 15, 1999; Reuters, 150059 GMT April 1999.

153 Paul Watson, "Cluster Bombs May Be What Killed Refugees," *Los Angeles Times*, April 17, 1999, p. A1.

154 Human Rights Watch interview with Safet Shalaj, Djakovica, July 25, 1999.

155 Human Rights Watch interview with Kole Hasanaj, Meja, July 25, 1999.

156 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 10.

157 Joie Chen and Jamie McIntyre, "As Serb Force Grows, Limits of Air Attacks Become Apparent," CNN, *The World Today* broadcast, April 19, 1999; Sarah Chayes, "General Daniel Leaf Explains the Refugee Bombings," NPR, *All Things Considered* broadcast, April 19, 1999.

158 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

159 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 148-150; Yugoslav press reports; Information Provided by the FRY MOD; Information provided by Yugoslav civil defense authorities.

160 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

161 Information provided by the FRY MOD.

162 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

163 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

164 FRY, MFA, NATO raids on civilian and industrial facilities in the night between April 15 and 16, 1999.

165 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999; FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 414 mentions only "minor bodily injuries" suffered by Miodrag Maksimovic.

166 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 414-416.

167 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

168 Yugoslav press reports.

169 Information Provided by the FRY MOD.

170 FRY, MFA, NATO attacks on civilian and industrial plants in the night between April 17 and 18 1999; "War Against Yugoslavia: Beograd" (www.inet.co.yu/rat/gradovi/beograd/index.html).

171 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 152-163.

172 FRY, MFA, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

173 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

174 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 168.

175 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999; "War Against Yugoslavia: Nis" (www.inet.co.yu/rat/gradovi/nis/index.html).

176 FRY, MFA, "NATO raids on civilian and industrial facilities in the night between April 19 and 20, 1999;" Permanent Mission of the FRY to the UN, "Provisional Assessment," July 3, 1999.

177 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 166; Yugoslav press reports.

178 DIN, "Estimation of a Direct (Immediate) Damage in DP DIN 'Tobacco Factory' Nis caused by NATO Alliance Bombing."

179 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, pp. 170-172; Information provided by Yugoslav civil defense authorities.

180 FRY, MFA, "NATO raids on industrial and civilian facilities in the night between April 21 and 22 1999."

181 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

182 Human Rights Watch interview with Dr. Burim Sahatqija, Djakovica, August 4, 1999.

183 Yugoslav press reports; FRY, MFA, "NATO raids on civilian and industrial facilities in the night between April 22 and 23 1999."

184 FRY, MFA, *NATO Crimes in Yugoslavia*, vol I, pp. 343-350; FRY, MFA, "Overview of Civilian Destruction in the Territory of the FR of Yugoslavia as a consequence of Barbaric and Criminal NATO Aggression," Belgrade, April 26, 1999; FRY, MFA, "NATO Crimes Against Civilians," May 10, 1999.

185 Yugoslav press reports; *Vecernje Novosti*, April 25, 1999, p. 3; *Politika*, April 28, 1999, p. 16; *Nedeljni Telegraf*, July 21, 1999, p. 7; Information provided by Yugoslav civil defense authorities.

186 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

187 FRY, MFA, "NATO raids on civilian and industrial facilities in the night between April 22 and 23 1999"; information provided by the Yugoslav Ministry of Information.

188 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

189 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

190 Yugoslav press reports; information provided by Yugoslav civil defense authorities.

191 Yugoslav press reports; FRY, MFA, "Overview of Civilian Destruction in the Territory of the FR of Yugoslavia as a consequence of Barbaric and Criminal NATO Aggression, Belgrade, April 26, 1999."

192 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 19-82.

193 Yugoslav press reports; FRY, MFA, "NATO raids on industrial and civilian facilities on April 27 and in the night between April 27 and 28 1999."

194 Tanjug, "Chronology of Crimes and Dishonor of NATO," 5 June 1999; FRY MFA, "NATO Crimes Against Civilians," May 10, 1999; Permanent Mission of the FRY to the U.N., "Provisional Assessment," July 3, 1999; Yugoslav press reports.

195 Tanjug, Surdulica, April 28, 1999.

196 AFP (Brussels), "Lengthening List of NATO Errors," May 4, 1999.

197 See also *NATO Crimes in Yugoslavia*, vol. II, pp. 80-82.

198 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

199 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 92-94; FRY, MFA, "NATO raids on industrial and civilian facilities on April 28 and in the night between April 28 and 29 1999"; "War Against Yugoslavia: Podgorica" (www.inet.co.yu/rat/gradovi/podgorica/index.html); Yugoslav press reports.

200 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 83-85; Yugoslav press reports; *Politika*, 30 April 1999, p. 17; FRY, MFA, "NATO raids on industrial and civilian facilities on April 28 and in the night between April 28 and 29 1999"; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

201 Yugoslav press reports; *Pobjeda*, May 1, 1999, p. 2.

202 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 334-335.

203 FRY, MOH, "NATO raids on industrial and civilian facilities on April 28 and in the night between April 28 and 29, 1999"; "War Against Yugoslavia: Beograd" (www.inet.co.yu/rat/gradovi/beograd/index.html).

204 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

205 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, 100-109.

206 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

207 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999; Information provided by Yugoslav civil defense authorities; "War Against Yugoslavia: Beograd" (www.inet.co.yu/rat/gradovi/beograd/index.html).

208 FRY, MFA, "NATO raids on industrial and civilian facilities on April 30th and in the night between April 30 and May 1, 1999"; information provided by Yugoslav civil defense authorities; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

209 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 340; Yugoslav press reports.

210 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

211 Yugoslav press reports; FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 110.

212 FRY, MFA, "NATO raids on industrial and civilian facilities on April 30 and in the night between April 30 and May 1, 1999."

213 FRY, MFA, "NATO raids on civilian and industrial facilities on May 1, and in the night between May 1 and 2, 1999."

214 FRY, MFA, "NATO Crimes Against Civilians," May 10, 1999.

215 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 341-346.

216 Yugoslav press reports; FRY, MFA, "NATO raids on civilian and industrial facilities on May 1, and in the night between May 1 and 2, 1999."

217 *Pobjeda*, May 3, 1999, p. 2; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

218 FRY, MFA, "NATO Crimes Against Civilians," May 10, 1999.

219 AFP (Brussels), "Lengthening List of NATO Errors," May 4, 1999.

220 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 30.05.1999."

221 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 83-87.

222 FRY, MFA, "NATO Crimes Against Civilians," May 10, 1999.

223 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 88-91.

224 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 112; Yugoslav press reports.

226 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 349-353; FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

227 FRY, MFA, "NATO raids on industrial and civilian facilities on May 3 and in the night between May 3 and 4, 1999."

228 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

229 AFP (Brussels), "Lengthening List of NATO Errors," May 4, 1999.

230 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

231 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999; Yugoslav press reports.

232 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 118-121; Yugoslav press reports; *Vijesti*, May 4, 1999, p. 4; *BLIC*, May 10, 1999, p. 9; *Vreme*, May 15, 1999, p. 5. Committee for Compiling Data on Crimes Against Humanity and International Law (http://www.gov.yu/cwc/fejmel_nato.htm) says fourteen killed and thirty injured.

233 Yugoslav press reports; "War Against Yugoslavia: Nis" (www.inet.co.yu/rat/gradovi/nis/index.html).

234 FRY, MFA, "NATO Crimes Against Civilians," May 10, 1999; Information Provided by the FRY, MOD.

235 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

236 NATO (SHAPE), ACE News Release - Press Release 99-05-02, May 8, 1999.

237 "War Against Yugoslavia: Nis" (www.inet.co.yu/rat/gradovi/nis/index.html).

238 Transcript of Press Conference given by the NATO Secretary General, Mr. Javier Solana, in Brussels, on Saturday, May 8, 1999 (including Maj. Gen. Jertz).

239 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

240 Oral Presentation by Under Secretary of State Thomas Pickering on June 17 to the Chinese government regarding the Accidental Bombing of the PRC Embassy in Belgrade, released July 6, 1999.

241 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 122-136; FRY, MFA, "NATO Crimes Against Civilians," May 10, 1999.

242 Information Provided by the FRY, MOD.

243 Oral Presentation by Under Secretary of State Thomas Pickering on June 17 to the Chinese government regarding the Accidental Bombing of the PRC Embassy in Belgrade, released July 6, 1999.

244 U.S. Congress, House Permanent Select Committee on Intelligence, Hearing on the Bombing of the Chinese Embassy, July 21, 1999.

245 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

246 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 543.

247 Yugoslav press reports.

248 NATO (SHAPE), ACE News Release - Press Release 99-05-02, May 8, 1999.

249 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

250 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999; "War Against Yugoslavia: Nis" (www.inet.co.yu/rat/gradovi/nis/index.html).

251 Yugoslav press reports; "Dva pesaka poginula na mostu," (Two Pedestrians Died on the Bridge), *BLIC*, May 10, 1999, p. 9.

252 NATO, Operation Allied Force Update, May 9, 1999.

253 *Vijesti*, May 12, 1999, p. 4; FRY, MFA, "NATO raids on civilian and industrial facilities on may 11 and in the night between may 11 and 12 1999."

254 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

255 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 137-162, 365-366.

0 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 155; Yugoslav press reports; FRY MFA, "NATO raids on civilian and industrial facilities on may 10 and in the night between may 10 and 11, 1999."

1 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

2 "War Against Yugoslavia: Cacak" (www.inet.co.yu/rat/gradovi/cacak/index.html); Permanent Mission of the FRY to the UN, "Provisional Assessment," July 3, 1999.

3 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

4 Human Rights Watch interviews and inspections at the site, 13 August 1999; See also FRY, MFA, *NATO Crimes in Yugoslavia*, vol.II, p. 516; Yugoslav press reports.

5 FRY, MFA, "NATO raids on civilian and industrial facilities on May 11 and in the night between may 11 and 12 1999."

6 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

7 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999.

8 NATO, Operation Allied Force Update, May 12, 1999, 0900.

9 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

10 Yugoslav press reports; FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 375-377, incorrectly reports this incident as occurring on May 18.

11 FRY, MFA, "NATO Raids on civilian and industrial facilities on may 11 and in the night between May 11 and 12 1999."

12 NATO, Operation Allied Force Update, May 12, 1999, 0900.

13 FRY, MFA, *NATO Crimes in Yugoslavia*, vol.II, p. 163; Yugoslav press reports.

14 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

15 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 1-17. Though the *White Book* states that there were "only" forty-eight victims in Korisa, the Yugoslav and western press cite eighty-seven victims. The Committee for Compiling Data on Crimes Against Humanity and International Law (http://www.gov.yu/cwc/fejmel_nato.htm) says eighty-one killed and seventy injured. Based upon Human Rights Watch investigations, it was clear that the overall impression in Yugoslavia was that more than forty-eight people died in the Korisa attack, nevertheless forty-eight is the latest official figure.

16 FRY, MFA, "NATO raids on manufacturing and civilian facilities on may 14 and in the night between may 14 and 15 1999."

17 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999; FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 17.

18 Yugoslav press reports; *DAN*, May 20, 1999, p. 2; Kosovo Chronology, Timeline of events 1989-1999 relating to the crisis in Kosovo, released by the Department of State, Washington, DC, June 18, 1999.

19 Report by the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, Report by the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, May 31, 1999.

20 FRY, MFA, "Aide-Memoire on the Use of Inhumane Weapons in the Aggression of the North Atlantic Treaty Organization Against the Federal Republic of Yugoslavia," May 15, 1999; FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 17.

21 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999; Yugoslav press reports.

22 NATO, Subject: Press Release (99) 079, Statement by the NATO Spokesman on the Korisa Incident, May 15, 1999.

23 Transcript of Backgrounder given by Peter Daniel and Major General Walter Jertz, in Brussels, May 15, 1999.

24 SHAPE News Summary and Analysis, May 15, 1999.

25 SHAPE News Morning Update, May 16, 1999.

26 Kosovo Chronology, Timeline of events 1989-1999 relating to the crisis in Kosovo, released by the Department of State, Washington, DC, June 18, 1999.

27 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

28 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 518-532.

29 FRY, MFA, "NATO raids on civilian and industrial facilities on May 17, and in the night between May 17 and 18, 1999"; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

30 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 174-190; Yugoslav press reports.

31 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

32 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 18 and in the Night Between May 18 and 19 1999."

33 NATO, Operation Allied Force Update, May 19, 1999, 0930 CET.

34 Human Rights Watch has conducted a separate investigation into the deaths at the Dubrava prison (report forthcoming). In the May 19 attack, according to eyewitnesses, three prisoners were killed. FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 19th and in the Night Between May 19 and 20, 1999," says two prisoners and a guard were killed.

35 Tanjug, "NATO Kills Two, Wounds several in attack on Istok Wednesday," May 20, 1999.

36 Yugoslav press reports.

37 NATO, Operation Allied Force Update, May 20, 1999, 0930 CET.

38 Transcript of NATO Press Conference, May 20, 1999.

39 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

40 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 484-487.

41 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 484-490. See also FRY, MFA, "NATO raids on manufacturing and civilian facilities on May 20 and in the night between May 20 and 21, 1999"; Yugoslav press reports.

42 NATO, Operation Allied Force Update, May 20, 1999, 0930 CET.

43 FRY, MFA, *NATO Crimes in Yugoslavia*, vol II, pp. 246-251. FRY, MFA, "NATO raids on manufacturing and civilian facilities on May 20 and in the night between May 20 and 21 1999"; and Yugoslav press reports state that three patients and a hospital worker were killed but these reports seem to be in error.

44 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

45 FRY, MFA, "NATO raids on manufacturing and civilian facilities on May 20 and in the night between May 20 and 21, 1999."

46 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 19 and in the Night Between May 19 and 20, 1999."

47 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

48 FRY, MFA, "NATO raids on manufacturing and civilian facilities on May 20 and in the night between May 20 and 21, 1999"; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

49 NATO, Operation Allied Force Update, May 21, 1999, 0900 CET.

50 Transcript of Backgrounder given by Jamie Shea in Brussels on Thursday, May 20, 1999.

51 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

52 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 191-194; FRY, MFA, "NATO raids on manufacturing and civilian facilities on May 20 and in the night between May 20 and 21, 1999."

53 NATO, Operation Allied Force Update, 21 May 99, 0900 CET.

54 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 194.

55 Information provided by Yugoslav civil defense authorities.

56 Human Rights Watch interview with Dr. Burim Sahatqija, Djakovica, August 4, 1999.

57 NATO, Operation Allied Force Update, May 22, 1999, 0930 CET.

58 Information provided by Yugoslav civil defense authorities; FRY, MFA, "NATO raids on manufacturing and civilian facilities on May 21 and in the night between May 21 and 22, 1999."

59 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 29 and in the Night Between May 29 and 30 1999."

60 Yugoslav press reports; "Identifikovano 86 mrtvih," (Eighty-six Bodies Identified), *DAN*, May 27, 1999, p. 2; "Jos sedam leseva," (Seven More Bodies), *DAN*, May 30, 1999.

61 FRY, MFA, *NATO Crimes in Yugoslavia*, vol.II, p. 319.

62 NATO, Operation Allied Force Update, May 22, 1999, 0930 CET.

63 Transcript of Press Conference given by Mr. Jamie Shea and Colonel Konrad Freytag in Brussels on Saturday, May 22, 1999.

64 Jacky Rowland, "Bombs, Blood and Dark Despair," *Scotland on Sunday*, 23 May 1999; Paul Watson, "NATO Bombs Ignite Prison Chaos-KLA Officers Reported to be Among Inmates," *Toronto Star*, May 22, 1999; AP, "NATO Hits Kosovo Jail Again Friday Night," May 21, 1999; Jacky Rowland, "Istok Prison's

Unanswered Questions," BBC World News, May 25, 1999; Daniel Williams, "Kosovo Revisited: At War's End, Old Places Seen in New Light," *Washington Post*, June 26, 1999; Carlotta Gall, "Stench of Horror Lingers in a Prison in Kosovo," *New York Times*, November 9, 1999.

65 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

66 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 195; Yugoslav press reports.

67 FRY, MFA, "NATO raids on manufacturing and civilian facilities on May 25 and in the night between May 25 and 26, 1999."

68 Information provided by Yugoslav civil defense authorities.

69 NATO, Operation Allied Force Update, 26 May 1999, 09:30 CET.

70 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

71 Yugoslav press reports.

72 NATO, Operation Allied Force Update, May 27, 1999, 09:00 CET.

73 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 196-197; FRY, MFA, "NATO raids on the civilian and manufacturing facilities on May 26 and in the night between May 26 and 27, 1999."

74 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 198-201; Yugoslav press reports; FRY, MFA, "NATO raids on the civilian and manufacturing facilities on May 26 and in the night between May 26 and 27, 1999."

75 Information provided by Yugoslav civil defense authorities.

76 NATO, Operation Allied Force Update, May 27, 1999, 09:00 CET.

77 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 385-388.

78 FRY, MFA, "NATO Raids on the Civilian and Manufacturing Facilities on May 27 and in the Night Between May 27 and 28, 1999."

79 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 30 and in the Night Between May 30 and 31, 1999."

80 NATO, Operation Allied Force Update, May 28, 1999, 09:30 CET.

81 Yugoslav press reports.

82 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 315.

83 FRY, MFA, "NATO Raids on the Civilian and Manufacturing Facilities on May 27 and in the Night Between May 27 and 28, 1999."

84 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 30 and in the Night Between May 30 and 31, 1999."

85 NATO, Operation Allied Force Update, May 28, 1999, 09:30 CET.

86 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 201-205; "Aleksinac drugi put broji žrtve," (Aleksinac Counts Dead For the Second Time), *Politika*, May 29, 1999, p. 15; FRY, MFA, "Nato Raids on Manufacturing and Civilian Facilities on May 28 and in the Night Between May 28 and 29, 1999"; Information provided by Yugoslav civil defense authorities.

87 FRY, MFA, "NATO Raids on the Civilian and Manufacturing Facilities on May 27 and in the Night Between May 27 and 28, 1999."

88 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

89 NATO, Operation Allied Force Update, May 28, 1999, 09:30 CET; NATO, Operation Allied Force Update, May 29, 1999, 09:30 CET.

90 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

91 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 207; Yugoslav press reports; Information provided by Yugoslav civil defense authorities.

92 NATO, Operation Allied Force Update, May 30, 1999.

93 NATO, Operation Allied Force Update, May 31, 1999, 09:30 CET.

94 Transcript of Press Conference given by Mr. Jamie Shea and Major General Walter Jertz in Brussels on Sunday, May 30, 1999.

95 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 29 and in the Night Between May 29 and 30, 1999."

96 Yugoslav press reports time this incident at 6:10 p.m. on May 29, while FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 393-399, says it occurred at 4:30 p.m. on May 30.

97 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 393-399; Yugoslav press reports.

98 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 29 and in the Night Between May 29 and 30, 1999"; Information provided by Yugoslav civil defense authorities.

99 Tanjug, "NATO aircraft target convoy of reporters, kill one, wound two," May 31, 1999.

100 NATO, Operation Allied Force Update, May 30, 1999.

101 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 385-388.

102 Yugoslav press reports; FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 29 and in the Night Between May 29 and 30, 1999."

103 NATO, Operation Allied Force Update, May 30, 1999.

104 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 29 and in the Night Between May 29 and 30, 1999."

105 Information provided by Yugoslav civil defense authorities.

106 NATO, Operation Allied Force Update, May 30, 1999.

107 Yugoslav press reports.

108 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 252-294.

109 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on June 7 and in the Night Between June 7 and 8, 1999."

110 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 252-294; FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 31 and in the Night Between May 31 and June 1, 1999."

111 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

112 Permanent Mission of the FRY to the UN, "Provisional Assessment," July 3, 1999.

113 NATO, Operation Allied Force Update, May 31, 1999, 09:30 CET.

114 Transcript of Press Conference given by Mr. Jamie Shea and Major General Walter Jertz in Brussels on Tuesday, June 1, 1999.

115 U.S. Congress, House Permanent Select Committee on Intelligence, Hearing on the Bombing of the Chinese Embassy, July 21, 1999.

116 Yugoslav press reports; Serbian Unity Congress, NewsBits, May 30, 1999; FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 30 and in the Night Between May 30 and 31, 1999."

117 Information provided by Yugoslav civil defense authorities.

118 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 30 and in the Night Between May 30 and 31, 1999."

119 NATO, Operation Allied Force Update, May 31, 1999, 09:30 CET.

120 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 400-413; FRY, MFA, "NATO Raids on

Manufacturing and Civilian Facilities on May 31 and in the Night Between May 31 and June 1, 1999." Committee for Compiling Data on Crimes Against Humanity and International Law (http://www.gd.yu/wc/ejme1_nato.htm) says ten killed and sixteen injured

121 Yugoslav press reports; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999; FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 30 and in the Night Between May 30 and 31, 1999."

122 Tanjug, "Six persons listed as missing after NATO attack on bridge in Vavarin," June 2, 1999.

123 Transcript of Press Conference given by Mr. Jamie Shea and Major General Walter Jertz in Brussels on Tuesday, June 1, 1999.

124 Tanjug, "Eight persons wounded in NATO's overnight raid on Belgrade area," May 31, 1999; FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 31 and in the Night Between May 31 and June 1, 1999"; FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 30 and in the Night Between May 30 and 31, 1999."

125 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 214-215, report this incident as taking place on May 31. See also Serbian Unity Congress, NewsBits, May 31, 1999; Yugoslav press reports; *Danas*, June 1, 1999, p. 3.

126 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999; Information provided by Yugoslav civil defense authorities.

127 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

128 NATO, Operation Allied Force Update, May 31, 1999, 09:30 CET.

129 Yugoslav press reports.

130 Information provided by Yugoslav civil defense authorities.

131 NATO, Operation Allied Force Update, June 1, 1999, 09:30 CET.

132 Committee for Compiling Data on Crimes Against Humanity and International Law
(http://www.gov.yu/cwc/fejmel_nato.htm) says eleven killed and twelve injured

133 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on May 31 and in the Night Between May 31 and June 1, 1999"; Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

134 "War Against Yugoslavia" (www.inet.co.yu).

135 NATO, Operation Allied Force Update, June 1, 1999, 09:30 CET.

136 FRY, MFA, *NATO Crimes in Yugoslavia*, vol.II, pp. 217-227; Yugoslav press reports; *DAN*, June 3, 1999, p. 2; "War Against Yugoslavia" (www.inet.co.yu). The area of civilian deaths was much greater than sixty meters from the barracks; the bus station was as far as about 1,000 meters from the target.

137 Yugoslav press reports.

138 Information provided by Yugoslav civil defense authorities.

139 NATO, Operation Allied Force Update, June 1, 1999, 09:30 CET.

140 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 216.

141 NATO, Operation Allied Force Update, June 1, 1999, 09:30 CET.

142 "War Against Yugoslavia" (www.inet.co.yu).

143 NATO, Operation Allied Force Update, June 7, 1999, 09:30 CET.

144 Yugoslav press reports; information provided by Yugoslav civil defense authorities; FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on June 6 and in the Night Between June 6 and 7, 1999."

145 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, pp. 504-507; Yugoslav press reports.

146 Information provided by Yugoslav civil defense authorities.

147 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on June 7 and in the Night Between June 7 and 8, 1999."

148 NATO, Operation Allied Force Update, June 8, 1999, 09:00 CET.

149 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. II, p. 228; Yugoslav press reports; "War Against Yugoslavia" (www.inet.co.yu).

150 Information Provided by Yugoslav civil defense authorities.

151 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on June 7 and in the Night Between June 7 and 8, 1999."

152 FRY, MFA, "NATO Raids on Manufacturing and Civilian Facilities on June 7 and in the Night Between June 7 and 8, 1999"; Serbian Unity Congress Newsbits, June 8, 1999.



Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200-01.htm#TopOfPage>> Table Of
Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>> Next Page
<<http://www.hrw.org/reports/2000/nato/Natbm200-03.htm#TopOfPage>>

Despotovic, Ruza

Van: Despotovic Ruza [despot@wishmail.net]
Verzonden: maandag 28 februari 2000 21:39
Aan: Ruza Despotovic
Onderwerp: Natbm200-03 (<http://www.hrw.org/reports/2000/nato/Natbm200-03.htm>)

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200-02.htm#TopOfPage>> Table Of Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>> Next Page <<http://www.hrw.org/reports/2000/nato/Natbm200-04.htm#TopOfPage>>

Recent Reports <<http://www.hrw.org/reports98/publctns.htm>>
Support HRW <<http://www.hrw.org/about/develop2.html>> About HRW <<http://www.hrw.org/about/about.html>>
Site Map <<http://www.hrw.org/site-map.html>>

Human Rights Watch - Home Page <<http://www.hrw.org>>

Appendix B: Civilian Victims of NATO Bombing During Operation Allied Force

DATE

LOCATION

NAME (AGE)

March 25

Rozaje (Montenegro)

Senad Dacic (16)

April 1

Novi Sad (Vojvodina)

Oleg Nasov (29)

April 2

Orahovac (Kosovo)

Hysni Eljsani (20)

Hysen Zinici (29)

Qazim Krasniqi (30)

Mahmut Krasniqi (age unknown)

Kursumlija area (Serbia)

Vucina Stepanovic (44)

April 4

Cacak (Serbia)

Mileva Kuveljic (73)

Pancevo (Vojvodina)

Mirko Dmitrovic (39)
Dusko Bogosavljev (50)
one unidentified civilian

New Belgrade (Serbia)

Slobodan Trisic (53)

April 5

Aleksinac (Serbia)

Marina Paovic (26)
Snezana Miladinovic (40)
Velimir Stankovic (52)
Ljubica Miladinovic (63)
Dragomir Miladinovic (67)
Bogomir Arsic (69)
Jovan Radojicic (75)
Sofija Radojicic (80)
Radojka Jovanovic (86)
Vojislav Jovanovic (92)
Gvozden Milivojevic (93)
Dragica Miladinovic (age unknown)

Vranje (Serbia)

Goran Eminovic (33)
Milica Grujic (68)

April 7

Pristina (Kosovo)

Adem Berisha (age unknown)
Radovan Aleksic (age unknown)
Dejan Vitkovic (age unknown)
Mesud Gashi (age unknown)
Diana Gashi (age unknown)
Dea Gashi (age unknown)
Rea Gashi (age unknown)
Demis Gashi (age unknown)
One unidentified civilian woman

Nis (Serbia)

Miroslav Stojkovic (age unknown)

April 8

Tornik peak (Serbia)

Milenko Savic (25)
Nedjo Urosevic (31)
Radoje Marjanovic (34)

Cuprija (Serbia)

Zlatka Lukic (54)

April 10

Merdare near Kursumlija (Serbia)

Bojana Tosovic (1)
Bozina Tosovic (30)
Dragan Bubalo (31)
Goran Djukic (age unknown)
Srdjan Cvetkovic (age unknown)

April 12

Grdelica Klisura gorge (Serbia)

Branimir Stanijanovic (6)
Ivan Markovic (26)
Ana Markovic (26)
Jasmina Veljkovic (28)
Simeon Todorov (31)
Zoran Jovanovic (35)
Petar Mladenovic (37)
Verka Mladenovic (37)
Divna Stanijanovic (41)
Vidosav Stanijanovic (45)
Radomir Jovanovic (45)
Svetomir Petkovic (65)
five unidentified remains, three civilians missing

Pristina-Kosovo Polje road (Kosovo)

three unidentified civilians

Djakovica-Klina road (Kosovo)

"several" unidentified civilians

April 13

Pristina (Kosovo)

Sefcet Trnova (22)

April 14

area between Djakovica and Decani (Kosovo)

Violeta Pajaziti (16)
Vjolca Pajaziti (18)
Ferat Bajrami (age unknown)
Imer Celja (age unknown)
Sali Gjokaj (age unknown)
Skendi Gjokaj (age unknown)
Martin Hasanaj (age unknown)
Lek Hasanaj (age unknown)
Ram Maloku (age unknown)
Arton Maloku (age unknown)
Tazija Pajaziti (age unknown)
Nevrija Pajaziti (age unknown)
Hasan Pajaziti (age unknown)
Flora Pajaziti (age unknown)

Adem Seljmani (age unknown)
Besarde Smajli (age unknown)
Fikrije Sulja (age unknown)
Nerdjivane Zeqiri (age unknown)
eight members of the Ali Ibraj family
four members of the Spend Nuraj family
four members of the Fatmir Nuraj family
three members of the Sejdi Nuraj family
36 unidentified persons

Pavlovac near Vranje (Serbia)

Milica Stojanovic (12)
Mijalko Trajkovic (65)

April 15

Raljan near Presevo (Serbia)

eight unidentified civilians

Kopaonik (Serbia)

Mladen Stanojevic (age unknown)

April 16

Ribnice near Vranje (Serbia)

Irena Mitic (16)

April 17

Valjevo (Serbia)

Milisav Micic (37)

Batajnica near Belgrade (Serbia)

Milica Rakic (3)

Kamena Glava near Urosevac (Kosovo)

two unidentified civilians

April 19

Nis (Serbia)

Milen Milojkovic (age unknown)

April 21

Djakovica (Kosovo)

Marko Ivanovic (4)
Ivan Ivancevic (7)
Radivoje Ularevic (27)
Davor Ularevic (29)
Gordana Ilic (75)

April 22

Vranje (Serbia)

Dalibor Tasic (17)

April 23

Belgrade (Serbia)

Darko Stoimenovski (26)

Nebojsa Stojanovic (27)

Dragorad Dragojevic (27)

Ksenija Bankovic (28)

Jelica Munitlak (28)

Dejan Markovic (30)

Aleksandar Deletic (31)

Dragan Tasic (31)

Slavisa Stevanovic (32)

Sinisa Medic (33)

Ivan Stukalo (34)

Milan Joksimovic (47)

Branislav Jovanovic (50)

Slobodan Jontic (54)

Milovan Jankovic (59)

Tomislav Mitrovic (61)

April 24

Doganovic near Kacanik (Kosovo)

Edan Koxha (3)

Fisnik Koxha (9)

Osman Koxha (13)

Burim Koxha (14)

Valjdet Koxha (15)

Velika Dobrinja near Lipljan (Kosovo)

Arta Lugiqi (6).

April 27

Surdulica (Serbia)

Vladimir Milic (12)

Miljana Milic (15)

Miomir Miovanovic (17)

Stanisa Djordjevic (22)

Vesna Milic (37)

Aleksandar Milic (37)

Dragan Ivanovic (39)

Stana Rasic (47)

Stamenka Milic (66)

two unidentified civilians

April 28

Golubovci near Podgorica (Montenegro)

Paska Prenkovo Juncaj (61)

Prizren (Kosovo)

Kasandra Zylfuri (2.5)

Beqir Zylfuri (14)

Maksun Zylfuri (22)

Gjulja Zylfuri (25)

Ariljaca near Pristina (Kosovo)

Brahim Berisha (age unknown)

Daut Berisha (age unknown)

Basri Berisha (age unknown)

April 29

Ostruznica (near Belgrade)

Nebojsa Arsic (35)

April 30

Belgrade

Sofija Jovanovic (23)

Trstenik (Serbia)

Dejan Djordjevic (40)

Nadezda Petrickovic (44)

Murino (Montenegro)

Julija Brudar (10)

Olivera Maksimovic (12)

Miroslav Knezevic (13)

Vukic Vuletic (45)

Manojlo Komantina (age unknown)

Milka Kocanovic (possibly Kovacevic) (age unknown)

May 1

Luzane near Pristina (Kosovo)

39 unidentified civilians

Jablanica near Prizren (Kosovo)

Azemina Murati (38)

Ahmet Murati (88)

Prizren (Kosovo)

four members of the Berisha family
three unidentified civilians

May 2

Sremska Mitrovica (Vojvodina)

Ljiljana Veliki (39)

Kosovska Mitrovica (Kosovo)

Milomir Aksentijevic (age unknown)
Hashima Meshehrani (age unknown)

May 3

Savine Vode (Kosovo)

17 unidentified civilians

May 4

Savine Vode (Kosovo)

Jovan Otasevic (22)

May 7

Nis (Serbia)

Ljiljana Spasic (26)
Gordana Sekulic (29)
Sasa Miljkovic (33)
Dragisa Vucic (35)
Bozidar Veljkovic (38)
Ljubisa Stancic (48)
Aleksandar Deljanin (50)
Bozidar Djordjevic (58)
Slobodan Stoiljkovic (61)
Vera Ilic (65)
Zivorad Ilic (71)
Milutun Zivkovic (74)
Gerasim Jovanovski (84)
Trifun Vuckovic (86)

New Belgrade (Serbia)

Zhu Jing (28)
Hi Hinhu (31)
Shao-Jin Juan (48)

New Belgrade (Serbia)

Andjelko Nincic (age unknown)

May 8

Nis (Serbia)

two unidentified civilians

May 10

Lipljan (Kosovo)

Dragana Dimic (4)
Rosa Jankovic (age unknown)
Bosko Jankovic (age unknown)

Cacak (Serbia)

Dragan Obrenic (29)
Velija Dzemailovic (44)
Milos Jovcic (46)
Nasko Ristic (50)

May 11

Nis (Serbia)

Zoran Nikolic (Nikovic?) (40)
Goran Aleksic (age unknown)

Vladicin Han (Serbia)

Gordana Nikolic (18)
Milan Ignjatovic (19)

Orlane near Doljevac (Serbia)

Jagoda Mladenovic (63)

May 13

Korisa near Prizren (Kosovo)

48-87 unidentified civilians

May 17

Bor (Serbia)

Dragoslav Grujic (49)

May 18

Jasenica near Valjevo (Serbia)

Mileva Krunic (72)

May 19

Dubrava penitentiary near Istok (Kosovo)

Enver Topalli (Greme/Grebno) (age unknown)
Abdullah Tahiri (Malishevo) (age unknown)
Bijon Ndrecaj (Djakovica) (age unknown)
one unidentified guard

Gnjilane (Kosovo)

Djijan Sabija (25)
Vesna Cvetanovic (31)
Djurdja Savic (34)
Dzevat Ademi (39)
Gorica Cuprijanovic (46)

May 20

Belgrade (Serbia)

Radoslav Novakovic (47)
Branka Boskovic (75)

Bosko Vrebalov (82)
Zora Brkic (82)

Sombor (Vojvodina)

Nikola Hinic (42)

May 21

Djakovica (Kosovo)

Ibrahim Gjosi (age unknown)

Dubrava penitentiary near Istok (Kosovo)

Mehdi Dallosi (Lipljan) (age unknown)
Ahmet Hoxha (Urosevac) (age unknown)
Ali Kelmendi (Pec) (age unknown)
at least 16 other prisoners and/or guards

May 23

Djakovica (Kosovo)

one unidentified civilian

May 25

Sabac (Serbia)

Zivorad Nenadovic (69)

May 26

Kosovska Vitina (Kosovo)

three unidentified civilians

Radoste near Orahovac (Kosovo)

Kujtim Kastrati (11)
Beg Krasniqi (31)

Ralja near Sopot (Serbia)

Dejana Pavlovic (5)
Stefan Pavlovic (8)
Biljana Momcilovic (29)

May 27

Pertate between Leskovac and Lebane (Serbia)

Branka Stankovic (55)
Veselka Spasic (59)

Palic near Subotica (Vojvodina)

Jeka Alavanja (70)

May 28

Aleksinac (Serbia)

Predrag Nedeljkovic (37)

Dusanka Savic (48)

Branislav Mitrovic (79)

May 29

Carmurlija near Nis (Serbia)

Vukosava Mancic (61)

Dusan Mancic (64)

Krk Bunar/Gornje Selo between Prizren and Brezovica, (Kosovo)

Nebojsa Radojevic (38)

bridge between Leskovac and Lebane (Serbia)

Goran Stojmenovic (32)

Stanoje Stojmenovic (58)

Gornja Budriga near Kosovska Vitina (Kosovo)

five unidentified civilians

Brezna near Prizren (Kosovo)

three unidentified civilians

May 30

Surdulica (Serbia)

Milenko Malobabic (16)

Rada Malobabic (19)

Milena Malobabic (20)

Djordje Pavkovic (45)

Rada Zigic (52)

Bosiljka Malobabic (53)

Slavko Popovic (60)

Petar Budisavljevic (60)

Bogdanka Janjanin (60)

Boris Eremijev (60)

Stamen Rangelov (61)

Milanka Vuckovic (65)

Stana Rasic (66)

Desanka Velickovic (67)

Bosa Miladinovic (68)

Danica Malesevic (68)

Nepijal Dragic (70)

Dragic Napijalo (70)

Dusan Manojlovic (72)

Bogdanka Janjanin (74)

Mile Slijepcevic (90)

two unidentified civilians

Vranje (Serbia)

Mane Andjelkovic (60)

Varvarin (Serbia)

Sanja Milenkovic (17)

Milan Savic (24)

Vojkan Stankovic (31)

Zoran Marinkovic (33)

Stojan Ristic (56)

Ruzica Simonovic (60)

Milivoje Ciric (66)

Dragoslav Terzic (68)

Tola Apostolovic (74)

Ripanj near Belgrade (Serbia)

Slavica Stojiljkovic (60)

May 31

Neradovac near Vranje (Serbia)

Leposava Ristic (75)

Novi Pazar (Serbia)

Marko Simic (2)

Marko Roglic (16)

Djordje Pantovic (24)

Dejan Milosevic (27)

Miodrag Nikic (29)

Vladan Simic (30)

Golub Ratkovic (32)

Zvezdan Jajic (37)

Dragomirka Biorac (38)

Dragan Simovic (46)

Radun Vranic (47)

Brvenik near Raska (Serbia)

Sasa Knezevic (31)

Drazevac near Obrenovac (Serbia)

Jovanka Arsenijevic (76)

June 6

Rudnik near Kosovska Mitrovica (Kosovo)

Dragutin Todorovic (age unknown)

Donja Budriga near Gnjilane (Kosovo)

Stojanka Aksic (age unknown)

June 7

Podgorac near Boljevac (Serbia)

Nebojsa Srbulovic (37)

Milija Andrejevic (54)

Slavka Trikanovic (59)

June 8

Novi Sad (Vojvodina)

Milan Bajic (37)

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200-02.htm#TopOfPage>> Table Of
Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>> Next Page
<<http://www.hrw.org/reports/2000/nato/Natbm200-04.htm#TopOfPage>>

Van: Despotovic Ruza [despot@wishmail.net]
Verzonden: maandag 28 februari 2000 21:41
Aan: Ruza Despotovic
Onderwerp: Natbm200-04 (<http://www.hrw.org/reports/2000/nato/Natbm200-04.htm>)

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200-03.htm#TopOfPage>> Table Of Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>> Next Page <<http://www.hrw.org/reports/2000/nato/Natbm200-05.htm#TopOfPage>>

Recent Reports <<http://www.hrw.org/reports98/publctns.htm>>

Support HRW <<http://www.hrw.org/about/develop2.html>> About HRW <<http://www.hrw.org/about/about.html>>
Site Map <<http://www.hrw.org/site-map.html>>

Human Rights Watch - Home Page <<http://www.hrw.org>>

Appendix C: Incidents Involving Unsubstantiated Reports of Civilian Deaths

March 25

In an attack on a **Prizren** Ministry of Interior (MUP) building or headquarters in Kosovo, Dragan Barac and Dragan Renic are reported killed. Though the Ministry of Health provided photographs of the bodies, 154 they are mentioned nowhere else in the press or the Yugoslav government's *White Book* and it is doubted whether these two casualties were civilians.

The field (war) headquarters of the 3rd Army in **Kursumlija** in southern Serbia is hit "on the first night of the campaign and ... badly damaged." According to the British government, "This is the HQ from which the Yugoslav Army is controlling its Kosovo campaign and this will give the Yugoslavs key command and control problems. We know that their army has been badly rattled by this attack." 155 The Yugoslav government initially reports that a refugee center was bombed, killing eleven "refugees" from Bosnia-Herzegovina and Croatia, and wounding twenty-four. 156

Human Rights Watch was unable to verify Yugoslav claims of civilian casualties in this incident, the bombing of a refugee center, and it suspects that those killed were not refugees but military or MUP personnel. The Kursumlija refugee center incident is not reported in the Yugoslav government *White Book*, nor does it figure in later Yugoslav compilations. 157 In the May 29, 1999 "espionage" verdict for three Care Australia workers (Steve Pratt, Peter Wallace, and Branko Jelen) handed down by the Military Court of the 1st Army command in Yugoslavia (No. I.K.14/99), the court stated that a March 29 report compiled by Pratt refers to the initial bombing of Kursumlija. In that report, according to the verdict, Pratt stated that "what was hit in Kursumlija and Pristina were not refugee camps, but Army depots and a paramilitary police headquarters." 158

March 29

Tanjug reports that refugee camps near **Nis** in southern Serbia and **Pristina** in Kosovo are "bombed," killing fifteen refugees. 159 The refugee camps are managed by CARE Australia on behalf of the U.N. High Commissioner for Refugees (UNHCR). Steve Pratt of CARE Australia is quoted by Australian ABC radio as saying that his staff could confirm that nine refugees died when NATO hit buildings in Pristina near the agency's refugee centers. Pratt is later arrested by Yugoslav authorities for espionage, and it is later learned that the attacks were actually on police facilities. The Ministry of Health reports that in an attack on the Pristina MUP building on March 29, Radoica Kovac is killed. 160 The death is not reported again in the press, is not mentioned in Yugoslav government compilations, nor in the *White Book*. Human Rights Watch accordingly concludes that Kovac was likely not a civilian. 161

April 6

At 8:45 p.m., in an attack on the Sjenica airfield in eastern central Serbia, one person is killed in the village of **Stavaljska breza**. ¹⁶² Civilian buildings were reported struck with cluster bombs at Dubinje in the vicinity of Sjenica causing substantial damage to the management building of the agricultural complex "Pester," as well as to the dairy, workers' accommodation facilities, and a number of auxiliary buildings and motor vehicles. Telephone, power, and water supply lines are reported hit, cutting water and power supply and telephone service. ¹⁶³

The Yugoslav *White Book* reports the bombing in Dubinje and Sjenica at 8:45 p.m. on April 6, but do not report any civilian casualties. ¹⁶⁴ The Yugoslav press states that a "person" was killed in the attack, not a "civilian." ¹⁶⁵ Human Rights Watch concludes that it is likely that a member of the military or police was killed.

April 11

Yugoslav authorities claim that in a 5:00 a.m. attack on the village **Turekovac** near Leskovac in southeastern Serbia, "there were some damages on civilian objects and some civilians have been killed." ¹⁶⁶ The Yugoslav *White Book* mentions the attack, which it says "heavily damaged a large number of family houses," but it does not include any further reports of civilian casualties. ¹⁶⁷ Human Rights Watch thus doubts that there were any civilian casualties.

April 26

Tanjug reports that civilians are killed in an attack on a bridge on the outskirt of **Kastrat** just east of Kursumlija. "The number of civilians killed in Kursumlija as a result of air strikes rose up to 17," Tanjug reports. ¹⁶⁸ The incident on April 26 is not mentioned in the Yugoslav government *White Book*, nor is there any further corroboration or reporting in the Yugoslav press. The Tanjug reference to "up to 17" killed in Kursumlija area likely refers to deaths from attacks on March 25, April 2, and April 10 (see above and Appendix A).

May 21

In an 11:00 a.m. attack on the **Smederevo** "Jugopetrol" depot in eastern Serbia, seven people are reported killed. The depot is reportedly targeted with three weapons for the sixth time. One weapon hit the grounds of "Trudbenik-Buducnost" factory and the other Godominsko Polje near the Smederevo medium wave (MW) radio transmitter. ¹⁶⁹

NATO reports attacking the petroleum storage facility in Smederevo on May 21, ¹⁷⁰ but the Yugoslav government *White Book* does not mention any civilian deaths in the attack, nor was there any reporting of the deaths in the Yugoslav press. Human Rights Watch visited Smederevo and was able to verify the attack, but could not verify any civilian deaths in this incident.

See also Appendix A, incident 65.

Table 1
Leading Incidents involving Civilian Deaths

Date Location Civilians Killed

May 13 Korisa, Kosovo 48-87
April 14 Djakovica-Decane, Kosovo 73
May 1 Luzane, Kosovo 39
May 30 Surdulica, Serbia 23
April 12 Grdelica Klisura, Serbia 20
May 21 Istok (Dubrava), Kosovo at least 19
May 3 Savine Vode, Kosovo 17
April 23 Belgrade, Serbia 16
May 7 Nis, Serbia 14
April 27 Surdulica, Serbia 11
May 31 Novi Pazar, Serbia 11
April 5 Aleksinac, Serbia 10

154 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until

20.05.1999."

155 Statement by Gen. Charles Guthrie. See Briefing By the Secretary of State for Defence, Mr. George Robertson, and the Chief of the Defence Staff, Gen Sir Charles Guthrie, London, March 27, 1999.

156 Yugoslav press reports; FRY, MFA, "Consequences of NATO aggression against the FRY," Belgrade, March 27, 1999.

157 For instance, the incident is not listed on the compilation of the Committee for Compiling Data on Crimes Against Humanity and International Law (http://www.gov.yu/cwc/fejmel_nato.htm).

158 Judgment of the Military Court of the 1st Army Command, I.K. No. 14/99, May 29, 1999.

159 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

160 FRY, MOH, "Photo Documentation of Civilians Who Were Killed By NATO Attacks, from 24.03 until 20.05.1999."

161 Ibid.

162 Yugoslav press reports.

163 FRY, "Aide-Memoire," May 15, 1999.

164 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 129.

165 *Vecernje Novosti*, April 6, 1999, p. 4.

166 Information provided by Yugoslav civil defense authorities.

167 FRY, MFA, *NATO Crimes in Yugoslavia*, vol. I, p. 141.

168 Tanjug, "Chronology of Crimes and Dishonor of NATO," June 5, 1999.

169 FRY, MFA, "NATO raids on manufacturing and civilian facilities on May 21 and in the night between May 21 and 22, 1999."

170 NATO, Operation Allied Force Update, May 22, 1999, 0930 CET.

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200-03.htm#TopOfPage>> Table Of
Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>> Next Page
<<http://www.hrw.org/reports/2000/nato/Natbm200-05.htm#TopOfPage>>

Despotovic, Ruza

Van: Despotovic Ruza [despot@wishmail.net]
Verzonden: maandag 28 februari 2000 21:41
Aan: Ruza Despotovic
Onderwerp: Natbm200-05 (<http://www.hrw.org/reports/2000/nato/Natbm200-05.htm>)

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200-04.htm#TopOfPage>> Table Of Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>>

Recent Reports <<http://www.hrw.org/reports98/publctns.htm>>

Support HRW <<http://www.hrw.org/about/develop2.html>> About HRW <<http://www.hrw.org/about/about.html>>

Site Map <<http://www.hrw.org/site-map.html>>

Human Rights Watch - Home Page <<http://www.hrw.org>>

ACKNOWLEDGMENTS

This report was researched by William M. Arkin, consultant with the Arms division of Human Rights Watch, and Bogdan Ivanisevic, researcher in the Europe and Central Asia division of Human Rights Watch, and was written by Mr. Arkin. Additional research in Kosovo was conducted by Fred Abrahams, senior researcher with the Europe and Central Asia division. The report was reviewed by Kenneth Roth, executive director of Human Rights Watch, and Wilder Tayler, general counsel of Human Rights Watch. It was edited by Michael McClintock, deputy program director of Human Rights Watch, Joost R. Hiltermann, executive director of the Arms division, and Holly Cartner, executive director of the Europe and Central Asia division. Production assistance was provided by Alexandra Perina, associate with the Europe and Central Asia division, Patrick Minges, publications director, and Fitzroy Hepkins, mail manager.

*Human Rights Watch
Europe and Central Asia Division*

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Reed Brody, advocacy director; Carroll Bogert, communications director; Cynthia Brown, program director; Barbara Guglielmo, finance director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Patrick Minges, publications director; Susan Osnos, associate director; Maria Pignataro Nielsen, human resources director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Jonathan Fanton is the chair of the board. Robert L. Bernstein is the founding chair.

Its Europe and Central Asia division was established in 1978 to monitor and promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. It is affiliated with the International Helsinki Federation for Human Rights, which is based in Vienna, Austria. Holly Cartner is the executive director; Rachel Denber is the deputy director; Elizabeth Andersen is the advocacy director; Fred Abrahams is senior researcher; Cassandra Cavanaugh, Julia Hall, Malcolm Hawkes, Bogdan Ivanisevic, André Lommen, Acacia Shields, Diane Paul, and Benjamin Ward are research associates;

Diederik Lohman is the Moscow office director; Alexander Petrov is the assistant Moscow office director; Pamela Gomez is the Caspian office director; Marie Struthers is the Dushanbe office director; Alex Frangos is coordinator; Ludmila Belova, Alexandra Perina, Tamar Satnet, and Natasha Zaretsky are associates. Peter Osnos is the chair of the advisory committee and Alice Henkin is vice chair.

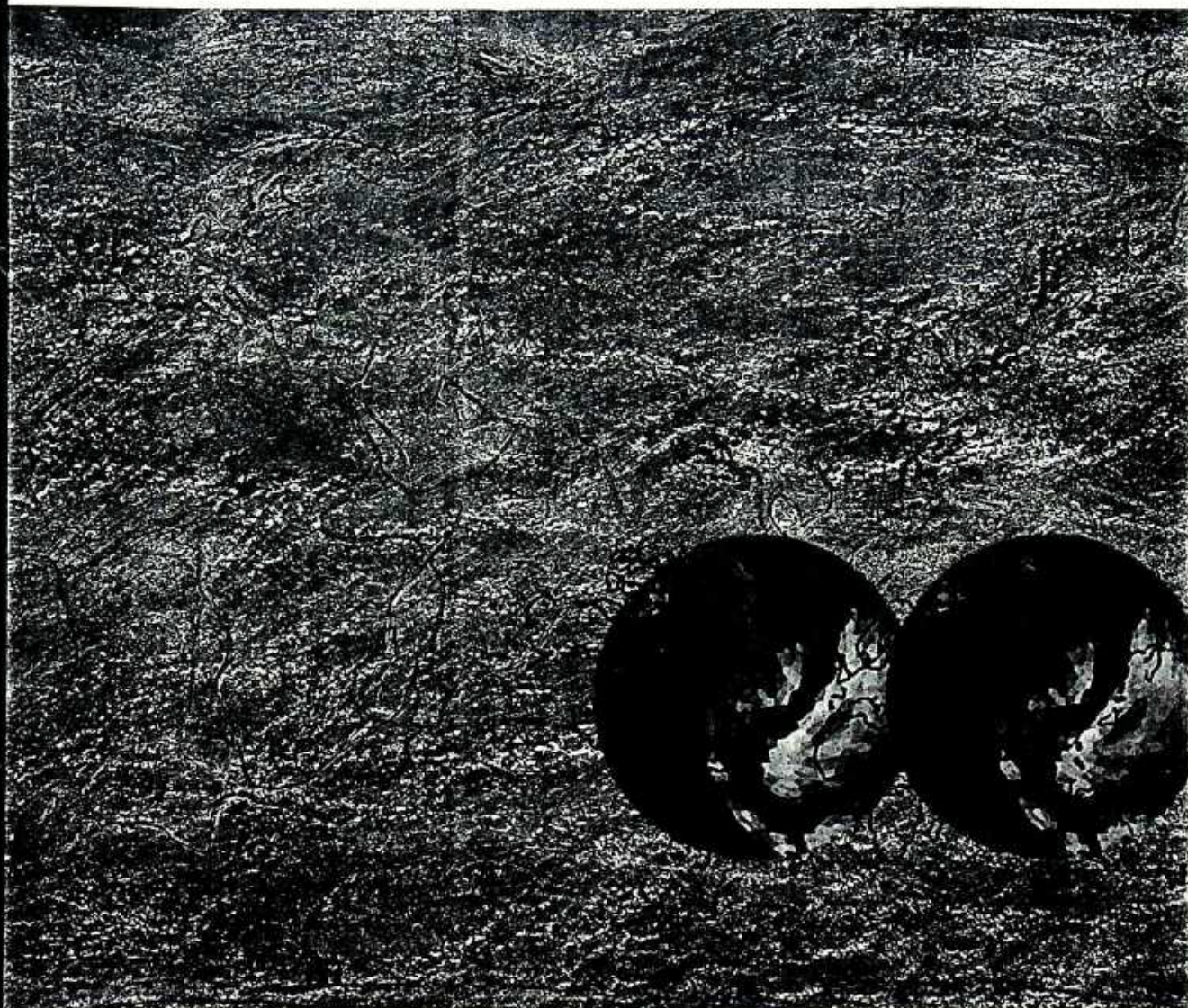
Its Arms Division was established in 1992 to monitor and prevent arms transfers to governments or organizations that commit gross violations of internationally recognized human rights and the rules of war and promote freedom of information regarding arms transfers worldwide. Joost R. Hiltermann is the director; Stephen D. Goose is the program director; Loretta Bondi is the Advocacy Coordinator, Mary Wareham is the senior advocate, Ernst Jan Hogendoorn and Alex Vines are research associates; Sharda Sekaran is the associate; William M. Arkin, Kathi L. Austin, Monica Schurtman, and Frank Smyth are consultants. Torsten N. Wiesel is the chair of the advisory committee and Nicole Ball and Vincent McGee are the vice-chairs.

Web Site Address: <http://www.hrw.org>

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "hrw-news-europe" in the body of the message (leave the subject line blank).

Previous Page <<http://www.hrw.org/reports/2000/nato/Natbm200-04.htm#TopOfPage>> Table Of Contents <<http://www.hrw.org/reports/2000/nato/index.htm#TopOfPage>>

HUMANITAIRE INTERVENTIE



ADVIESRAAD INTERNATIONALE VRAAGSTUKKEN
ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS

COMMISSIE VAN ADVIES INZAKE VOLKENRECHTELIJKE VRAAGSTUKKEN
ADVISORY COMMITTEE ON ISSUES OF PUBLIC INTERNATIONAL LAW

A I V
CAVV

HUMANITAIRE INTERVENTIE

No. 13, April 2000

ADVIESRAAD INTERNATIONALE VRAAGSTUKKEN
ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS

A I V

COMMISSIE VAN ADVIES INZAKE VOLKENRECHTELIJKE VRAAGSTUKKEN
ADVISORY COMMITTEE ON ISSUES OF PUBLIC INTERNATIONAL LAW

CAVV

Inhoudsopgave

I	Inleiding	3
II	Uitgangspunten	5
II.1	Wijze van aanpak	5
II.2	Een werkdefinitie van 'humanitaire interventie'	6
III	Morele en politieke aspecten	8
III.1	Soevereiniteit en humaniteit	8
III.2	Veranderende conflictpatronen	10
III.3	Het optreden van staten terzake van gewapende interventies	11
IV	Humanitaire interventies met een mandaat van de Veiligheidsraad	15
IV.1	De rol van de Veiligheidsraad	15
IV.2	Aanpassingen met betrekking tot het functioneren van de Veiligheidsraad	17
V	Humanitaire interventie zonder mandaat van de Veiligheidsraad	20
V.1	Internationaalrechtelijk kader	20
V.2	Rechtsontwikkeling	23
VI	De legitimiteit van humanitaire interventies	28
VI.1	Het gebruik van een toetsingskader	29
VI.2	Aanzet tot een toetsingskader	30
VII	Conclusies en aanbevelingen	35
Bijlage I	Adviesaanvraag	
Bijlage IIa	Samenstelling van de werkgroep 'Humanitaire Interventie'	
Bijlage IIb	Leden Adviesraad Internationale Vraagstukken	
Bijlage IIc	Leden van de Commissie van Advies inzake Volkenrechtelijke Vraagstukken	
Bijlage III	Artikel 7 van het Statuut van Rome voor een Internationaal Strafhof	
Bijlage IV	Lijst van gebruikte afkortingen	

I Inleiding

Op 12 oktober 1999 heeft de minister van Buitenlandse Zaken namens de regering de Commissie van Advies inzake Volkenrechtelijke Vraagstukken (CAVV) en de Adviesraad Internationale Vraagstukken (AIV) gevraagd gezamenlijk advies uit te brengen over de problematiek rond humanitaire interventie. In de adviesaanvraag, die is opgenomen als bijlage 1 van dit advies, stelt de regering:

'Het verbod op het gebruik van geweld buiten de eigen grenzen, zoals dat na de Tweede Wereldoorlog is neergelegd in het Handvest van de Verenigde Naties, is gebaseerd op het idee dat soevereine staten ieder voor zich verantwoordelijkheid dragen voor handhaving van recht en orde binnen hun grenzen. Deze veronderstelling blijkt echter niet altijd op te gaan. De Veiligheidsraad heeft daarom soms militair ingrijpen op het grondgebied van een andere staat toegestaan op basis van Art. 39 van Hoofdstuk VII van het VN-Handvest, met als doel het beëindigen van grootschalig menselijk lijden. De ervaring leert echter dat de Veiligheidsraad niet altijd in staat is tijdig doeltreffende maatregelen te nemen. In een dergelijke situatie kan een land (of een groep landen) ondanks het ontbreken van autorisatie door de Veiligheidsraad en zonder toestemming van het betrokken land besluiten een poging te doen om met geweld of de dreiging met geweld een einde te maken aan deze mensenrechtenschendingen. In een dergelijk geval is volgens de definitie in het gezamenlijk advies van de Commissie van Advies inzake Volkenrechtelijke Vraagstukken en de Adviescommissie Mensenrechten Buitenlands Beleid uit 1992 sprake van 'humanitaire interventie'.¹

Hoewel een dergelijke interventie op politieke en morele gronden gerechtvaardigd kan zijn, is er geen sprake van een heldere en algemeen aanvaarde juridische basis. Wanneer op dit punt rechtsontwikkeling achterwege blijft, brengt dit een tweetal gevaren met zich mee. Ten eerste kan worden gesteld dat zolang humanitaire interventie geen duidelijke en algemeen aanvaarde rechtsbasis heeft, het concept kan worden misbruikt als dekmantel voor andersoortige militaire operaties. Ten tweede kan de positie van het volkenrecht onbedoeld worden aangetast wanneer het geen mogelijkheid biedt om in te grijpen bij grove schendingen van algemeen aanvaarde mensenrechten.' De minister van Buitenlandse Zaken acht het daarom van groot belang dat het concept van humanitaire interventie verder wordt ontwikkeld: 'Dat betekent enerzijds dat duidelijke richtlijnen moeten worden opgesteld waaraan een humanitaire interventie moet voldoen, en anderzijds dat gezocht moet worden naar een zo breed mogelijk draagvlak voor het aldus preciezer omschreven concept.'

De minister van Buitenlandse Zaken verzoekt in de adviesaanvraag zowel te bezien, hetgeen uit politiek en moreel oogpunt nodig of wenselijk is, als hetgeen uit een oogpunt van volkenrecht mogelijk is. In het licht van de samenhang tussen politieke, morele en juridische overwegingen vraagt hij de AIV en CAVV een gezamenlijk advies uit te brengen over de vraag hoe het vermogen vergroot kan worden om een einde te maken aan grootschalige schendingen van de mensenrechten in een bepaald land. Allereerst zouden de mogelijkheden kunnen worden geïnventariseerd om te komen tot vergroting van het vermogen van de Veiligheidsraad om op te treden. Daarbij zou ook de mogelijkheid van aanpassing van het vetorecht aan de orde kunnen komen. Daarnaast legt de

1 Zie daarvoor: Adviescommissie Mensenrechten Buitenlands Beleid en Commissie van Advies inzake Volkenrechtelijke Vraagstukken, Advies nummer 15, 'Het gebruik van geweld voor humanitaire doeleinden - Dwangmaatregelen voor humanitaire doeleinden en humanitaire interventies', Den Haag 1992.

minister van Buitenlandse Zaken de vraag voor hoe het concept van humanitaire interventie duidelijker volkenrechtelijk vorm zou kunnen worden gegeven.

De tekst van dit advies is voorbereid door een werkgroep die bestond uit de voltallige CAVV samen met een gecombineerde commissie 'Humanitaire Interventie' van de AIV.² Op 31 maart 2000 is de ontwerp tekst aanvaard in een zitting van de AIV, waarna de definitieve tekst op 11 april 2000 is vastgesteld in een gemeenschappelijke vergadering van de CAVV en de Commissie Humanitaire Interventie van de AIV. Ter onderbouwing van de beraadslagingen hebben de CAVV en AIV een onderzoeksoopdracht verstrekt aan Drs. G. Molier van de Rijksuniversiteit Groningen. Deze is gevraagd om aan de hand van de verslagen van een aantal beraadslagingen in de Algemene Vergadering van de Verenigde Naties en Veiligheidsraad na te gaan of sprake is van een veranderend rechtsbesef onder staten met betrekking tot de rechtmatigheid van humanitaire interventies die zonder autorisatie van de Veiligheidsraad worden uitgevoerd. De CAVV en AIV spreken hun erkentelijkheid uit voor het werk dat de heer Molier op korte termijn heeft geleverd.

Na een hoofdstuk waarin de uitgangspunten van het advies worden beschreven (hoofdstuk 2), gaat dit advies allereerst in op een aantal algemene morele en politieke aspecten van het vraagstuk van de humanitaire interventie (hoofdstuk 3). Vervolgens wordt in hoofdstuk 4 een aantal aspecten beschreven van humanitaire interventies die worden uitgevoerd met een mandaat van de Veiligheidsraad. Hierbij gaan de CAVV en AIV ook in op de mogelijkheid van aanpassingen van het functioneren van de Veiligheidsraad. In hoofdstuk 5, dat humanitaire interventies zonder Veiligheidsraadsmandaat behandelt, staan de volkenrechtelijke aspecten van het gebruik van geweld tussen staten centraal. In hoofdstuk 6, over de legitimiteit van humanitaire interventies, wordt een analyse gegeven van de samenhang tussen de volkenrechtelijke, morele en politieke aspecten van humanitaire interventies. Het advies wordt in hoofdstuk 7 afgesloten met een aantal conclusies en aanbevelingen.

² De volledige samenstelling van de werkgroep is weergegeven in bijlage 2 van dit advies. De ledenlijsten van de AIV en CAVV zijn eveneens opgenomen in deze bijlage.

II Uitgangspunten

II.1 Wijze van aanpak

De CAVV en AIV hebben ervoor gekozen te streven naar een aanpak van het vraagstuk van humanitaire interventie, die de morele, politieke en volkenrechtelijke aspecten in zich verenigt. In elke humanitaire noodsituatie verhouden deze aspecten zich anders tot elkaar, al naar gelang de voorgeschiedenis, het politieke momentum en de concrete omstandigheden.

De politieke en maatschappelijke discussie rond het NAVO-ingrijpen in de humanitaire noodsituatie in Kosovo heeft opnieuw het belang aangetoond van een dergelijke integrale aanpak. Vaak werd daarbij onvoldoende onderscheid gemaakt tussen de *rechtmatigheid* -de verenigbaarheid met het thans geldende volkenrecht- van een interventie en de *legitimiteit* daarvan. De legitimiteit van een interventie is grotendeels afhankelijk van de politieke en morele overwegingen die ter rechtvaardiging worden aangevoerd, maar kan zeker niet worden bepaald zonder ook juridische aspecten in aanmerking te nemen. Zij kan daarom alleen worden beoordeeld op basis van een brede afweging van alle drie elementen. Zo kan, wat de legitimiteit van een operatie betreft, een rol spelen dat de interveniërende landen kunnen rekenen op een stevig en breed draagvlak in de internationale statengemeenschap. Hoewel dit niets behoeft te zeggen over de rechtmatigheid van een interventie onder het geldende recht, kan de legitimiteit wel een indicatie geven over de algemeen gevoelde wenselijkheid van bepaald optreden, en daarmee duiden op een mogelijk toekomstige juridische ontwikkeling.

Vanuit een volkenrechtelijk perspectief nemen vooral de normatieve aspecten van het vraagstuk van de humanitaire interventie een belangrijke plaats in. Daarbij zijn in de loop van de jaren tachtig en negentig inherente spanningen aan het licht getreden. Hoe kunnen bijvoorbeeld het volkenrechtelijke verbod op interventie en het verbod op geweldgebruik tussen staten worden verenigd met de belangrijke ontwikkeling die de bescherming van de fundamentele rechten van de mens in het internationale recht heeft doorgemaakt? Met deze humanitaire ontwikkelingen heeft het internationale recht een eigen dynamiek in gang gezet. Het volkenrecht richt zich tegenwoordig niet meer alleen op de betrekkingen tussen staten, maar ook op individuele en collectieve rechten van (groepen) mensen.

Het aldus opgekomen spanningsveld tussen non-interventie en het geweldsverbod enerzijds, en het toenemende belang van humanitaire overwegingen anderzijds dient zich evenzeer aan in de politieke discussie over humanitaire interventie. Vooral sinds het einde van de Koude Oorlog wordt steeds meer erkend dat de wereldgemeenschap grootschalige mensenrechtenschendingen niet kan tolereren. Tegelijk wordt gesignaleerd dat interventies met een humanitair oogmerk in de praktijk vaak (mede) ten dienste staan van puur nationale belangen. Bovendien wordt geargumenteerd dat men niet lichtvaardig voorbij kan gaan aan het door alle staten gedeelde belang van een werkend statensysteem, met inbegrip van het bijbehorende non-interventiebeginsel dat in wezen ook een humanitair doel dient, namelijk het voorkomen van oorlogen.

De CAVV en AIV menen dat de volkenrechtelijke en politieke discussies over het vraagstuk van humanitaire interventie nauw met elkaar samenhangen en niet geïsoleerd van elkaar kunnen worden beschouwd. In dit advies is er daarom voor gekozen om, nadat de morele, politieke en juridische aspecten van het vraagstuk van de humanitaire inter-

ventie eerst afzonderlijk zijn behandeld, deze aspecten nadrukkelijk in samenhang te bezien.

II.2 Een werkdefinitie van 'humanitaire interventie'

Het begrip 'humanitaire interventie' leidt vaak tot spraakverwarring. Om duidelijkheid te scheppen in deze situatie maakte het ACM/CAVV-advies van 1992 een duidelijk onderscheid tussen drie verschillende vormen van ingrijpen, die in het spraakgebruik alle als 'humanitaire interventie' worden betiteld, maar die alle ook een geheel eigen discussie en dynamiek met zich brengen. Het betreft:

- 1) Het zonder toestemming van het betrokken land verlenen van hulp ter leniging van acute noden die een bedreiging van vele mensenlevens vormen.
- 2) Het autoriseren van gebruik van geweld door de Veiligheidsraad op basis van hoofdstuk VII van het VN-Handvest naar aanleiding van situaties van grootschalige mensenrechten-schendingen in een bepaald land.
- 3) Het interveniëren door een staat of een groep staten, met geweld of dreiging van geweld, op het grondgebied van een ander land naar aanleiding van daar plaatsvindende ernstige en grootschalige mensenrechtenschendingen, zonder daartoe door de Veiligheidsraad vooraf te zijn geautoriseerd.

Hoewel in alle drie situaties de reden voor optreden is gelegen in het feit dat de levens van grote groepen mensen worden bedreigd, bestaan er grote verschillen in de wijze van optreden en de juridische gronden waarop dat optreden is of zou kunnen worden gebaseerd. De eerstbeschreven situatie valt onder 'humanitaire noodhulp' (*humanitarian emergency assistance*).³ Onder bepaalde omstandigheden -bijvoorbeeld wanneer de regering van het land waarin de noodsituatie zich voordoet de verlening van humanitaire noodhulp weigert of een gegeven toestemming wordt gevolgd door systematische obstructie- kan een dergelijke situatie aanleiding vormen voor het gebruik van geweld krachtens de bevoegdheden van de Veiligheidsraad neergelegd in Hoofdstuk VII van het Handvest. Het onderwerp van de humanitaire noodhulp zal hier verder niet afzonderlijk worden behandeld. In dit verband verdient het overigens nog altijd aanbeveling de in AV/Resolutie 46/182 neergelegde regels betreffende de versterking van de coördinatie van humanitaire noodhulp van de VN verder uit te werken in een conventie over humanitaire noodhulp.⁴

Bij de tweede vorm van ingrijpen -het autoriseren van gebruik van geweld door de Veiligheidsraad- staat de vraag centraal of, op grond van Artikel 39 VN-Handvest, een bepaalde situatie kan worden aangemerkt als een bedreiging van de internationale vrede en veiligheid. Het maken van deze (politieke) beoordeling is primair aan de Veiligheidsraad. Als de Raad deze vraag bevestigend beantwoordt, is hij -overeenkomstig de bepalingen van Hoofdstuk VII VN-Handvest- exclusief bevoegd bindende besluiten te nemen tot militaire dwangmaatregelen (*enforcement*). Indien een dergelijk besluit tot een militaire dwangmaatregel wordt genomen naar aanleiding van grootschalige mensenrechtenschendingen, is sprake van een specifieke toepassing van het algemene instrument van *enforcement*. Hoewel de CAVV en AIV er daarom de voorkeur aan zou-

3 Zie hiervoor AV-Resolutie 46/182 van 19 December 1991: "Strengthening of the coordination of humanitarian emergency assistance of the United Nations". Ook zij verwezen naar het advies van de AIV, getiteld: 'Humanitaire hulp: naar een nieuwe begrenzing', Den Haag 1998.

4 Zie hiervoor ook ACM/CAVV (1992), pagina 3.

den geven een dergelijke situatie te omschrijven als 'dwangmaatregelen met gebruik van geweld voor humanitaire doeleinden' (*enforcement action for humanitarian purposes*), constateren zij dat dergelijke dwangmaatregelen in het politieke spraakgebruik steeds het etiket 'humanitaire interventie' opgeplakt krijgen. In het kader van dit advies, waarbij het expliciet de bedoeling is ook het functioneren van de Veiligheidsraad zelf te betrekken, zal derhalve worden gesproken van '*humanitaire interventie met toestemming van de Veiligheidsraad*'; of kortweg '*geautoriseerde humanitaire interventie*'. Het voorgaande neemt niet weg dat het begrip 'humanitaire interventie' in zijn strikte betekenis uitsluitend betrekking heeft op de derde hiervoor omschreven situatie: het gebruik van geweld ter voorkoming of beëindiging van grootschalige mensenrechtenschendingen, *zonder* daartoe vooraf door het betrokken land of de Veiligheidsraad te zijn geautoriseerd. Het is juist deze situatie die de grootste problemen van politieke en juridische aard oplevert. In algemene zin kan het begrip humanitaire interventie in zijn strikte betekenis naar het oordeel van CAVV en AIV als volgt worden omschreven: 'De dreiging met of het gebruik van geweld door één of meer staten, eventueel in het kader van een internationale organisatie, binnen het territorium van een andere staat:

- a) met het doel het beëindigen van reeds bestaande, dan wel het voorkomen van onmiddellijk dreigende grootschalige ernstige schendingen van fundamentele mensenrechten, in het bijzonder het recht op leven van individuen, ongeacht hun nationaliteit;
- b) zonder voorafgaande autorisatie van de Veiligheidsraad en zonder toestemming van de legitieme regering van de staat, op het grondgebied waarvan de interventie plaatsvindt.'

In het kader van dit advies zal kortweg worden gesproken van '*humanitaire interventie zonder toestemming van de Veiligheidsraad*' of van '*ongeautoriseerde humanitaire interventie*'.

Een aantal algemene aspecten van beide hier gehanteerde definities van humanitaire interventie kan reeds vóór een verdere analyse worden genoemd. Zo betreft humanitaire interventie de bescherming van rechten van personen ongeacht hun nationaliteit. Interventies die gericht zijn op de bescherming of het in veiligheid brengen van onderdanen van de interveniërende staat (of van een derde staat) kunnen niet worden gebracht onder de noemer van humanitaire interventie.⁵ Daarnaast is het van belang dat de legitieme regering van de staat op het grondgebied waarvan de interventie plaatsvindt, de interveniërende staat (of staten) niet heeft uitgenodigd of deze gedooft. Zou dit wel het geval zijn, dan kan men niet spreken van 'humanitaire interventie', maar alleen van het verlenen van humanitaire assistentie. Ook moet er sprake zijn van ernstige en grootschalige schendingen van fundamentele mensenrechten. Wat onder grootschalig moet worden verstaan en om welke rechten het moet gaan, is voor uiteenlopende interpretatie vatbaar. Hierop komt het advies in Hoofdstuk 6 terug.⁶ Ten slotte is een bedreiging van de internationale vrede en veiligheid als resultaat van de ernstige en grootschalige schendingen van fundamentele mensenrechten geen afzonderlijke of bijkomende voorwaarde. Een dergelijke, internationaal vastgestelde schending van de internationale rechtsorde hoeft immers niet noodzakelijkerwijze en in alle omstandigheden tevens een bedreiging op te leveren van de internationale vrede en veiligheid. Ook hierop zal later in het advies nader worden ingegaan.

5 De vraag of de interveniërende staat in die gevallen zich mag beroepen op het recht van individuele of collectieve zelfverdediging, overeenkomstig Artikel 51 van het VN-Handvest, blijft hier onbesproken.

6 Zie punt 2a van het beschreven toetsingskader

III Morele en politieke aspecten

III.1 Soevereiniteit en humaniteit⁷

In zijn redevoering in september 1999 ter gelegenheid van de opening van de Algemene Vergadering stelde de Secretaris-Generaal van de Verenigde Naties (SGVN), Kofi Annan, de vertegenwoordigers van de VN-statengemeenschap voor het volgende dilemma: 'To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask -not in the context of Kosovo- but in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of states had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold? To those for whom the Kosovo action heralded a new era when states and groups of states can take military action outside the established mechanisms for enforcing international law, one might ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the Second World War, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents and in what circumstances?'⁸

Het dilemma dat de SGVN in zijn redevoering schetst, kan in algemene termen worden beschreven als een conflict tussen enerzijds het verbod op gewapende interventie en het respect voor de territoriale integriteit, en anderzijds de plicht tot handhaving en bevordering van de rechten van de mens. Moet de nadruk worden gelegd op het voorkomen van geweld tussen staten en op stabiliteit in hun verhoudingen, of verdient de 'humaniteit', de bescherming van de fundamentele rechten van burgers prioriteit? De verhouding tussen beide belangen is bijzonder ingewikkeld, kent tegenstrijdigheden en geeft geen houvast voor ondubbelzinnige keuzes.

Een inbreuk op het verbod op het gebruik van of de dreiging met geweld, zoals neergelegd in artikel 2(4) VN-Handvest, moet worden gezien als een fundamentele schending van de 'constitutie van de internationale statengemeenschap'. Een dergelijke inbreuk is -buiten gevallen van onmiddellijke zelfverdediging- volgens het VN-Handvest alleen voorbehouden aan de Veiligheidsraad. Daarbij is het vetorecht van de permanente leden van de Raad een erkenning van het feit dat zo'n inbreuk dient te berusten op consensus van de grote mogendheden. Wordt toch ingegrepen zonder zo'n consensus, dan bestaat de mogelijkheid dat deze mogendheden zich distantiëren van de statenorde, zoals die is neergelegd in het VN-Handvest. Aldus wordt die orde ondermijnd, met een riskante onzekerheid en spanning als gevolg. Er wordt ook geredeneerd dat een verslechtering van de verhoudingen tussen de permanente leden van de Veiligheidsraad gevolgen kan hebben die op ter-

7 Met humaniteit wordt in dit verband bedoeld op individuele rechten en de collectieve rechten van niet-staatelijke actoren ('de mensheid', volken, en minderheden. Zie hiervoor het ACM-advies, 'Collectieve Rechten', Den Haag 1995). In sommige analyses wordt op een vergelijkbare wijze gesproken van een spanningsveld tussen 'order and justice' (Danish Institute of International Affairs, 'Humanitarian Intervention. Legal and Political Aspects, Kopenhagen 1999), of van een spanningsveld tussen 'order and self-determination' (S. Hoffmann, 'The Ethics and Politics of Humanitarian Intervention', Notre Dame 1996; M. Ignatieff, 'Whose Universal Values? The Crisis in Human Rights', Amsterdam 1999).

8 Zie voor de volledige tekst: United Nations Press Release SG/SM/7136 GA/9596.

mijn veel ernstiger voor de mensheid zijn dan een humanitaire ramp binnen een staat. In essentie komt deze redenering erop neer dat internationale stabiliteit, op basis van de procedures die daarvoor in VN-verband zijn overeengekomen, een voorwaarde is voor het respect voor mensenrechten, de bescherming van minderheden en de ontwikkeling van democratie. Daarbij is het van belang te beseffen dat staten in beginsel nog steeds het beste kader vormen voor de naleving van de fundamentele rechten van de mens. Staten kunnen immers worden aangesproken op hun gedrag; zij kunnen en moeten hun binnenlandse geweldsmonopolie toepassen ter bevordering van deze rechten. De 'internationale gemeenschap' mist hiervoor de middelen; zij kan slechts complementair optreden.

Vanuit het belang van 'humaniteit' geredeneerd wordt het universeel respect voor de fundamentele rechten van de mens echter eveneens gezien als premisse voor een stabiele internationale orde, als een aspect van de 'constitutie van de internationale statengemeenschap'. Internationale afzijdigheid bij grootschalige mensenrechtenschendingen wordt in deze redenering niet alleen onrechtmatig geacht -bijvoorbeeld in tegenspraak met het Genocideverdrag-, maar moedigt repressieve regimes ook aan hardhandige methodes te (blijven) gebruiken om de eigen machtsbasis in stand te houden. Juist zulke regimes blijken door een 'spill-over' van de binnenlandse gewelddadigheid de internationale orde het meest te kunnen ondermijnen. Niet alleen leidt passiviteit van de internationale gemeenschap zodoende tot meer menselijk lijden en onrecht, ook kan zij een aantasting van de gemeenschappelijke veiligheid betekenen in de zin dat onderdrukte of bedreigde (groepen van) mensen gaan zoeken naar steeds vergaander maatregelen om zelf hun eigen recht te halen. In deze visie is een internationale orde die genocide of andere flagrante mensenrechtenschendingen toelaat per definitie instabiel. De nationale en internationale ordes hangen nauw samen en ontleen *beide* hun legitimiteit en stabiliteit voor een belangrijk gedeelte aan hun vermogen om individuen of groepen te beschermen tegen willekeur en geweld.

Dat sinds de jaren tachtig spanning optreedt tussen respect voor territoriale integriteit en het verbod op het gebruik van of de dreiging met geweld enerzijds, en de (vooralsnog veronderstelde) plicht een einde te maken aan grootschalige schendingen van de mensenrechten anderzijds, is niet alleen het gevolg van de toegenomen mogelijkheden tot gewapende interventie als gevolg van het einde van de Koude Oorlog. Ten minste zo belangrijk is de tendens om in de internationale praktijk steeds meer rekening te houden met de belangen en rechten van mensen en van volkeren, en niet alleen met die van de staat.⁹

9 Deze veranderende notie klinkt duidelijk door in verschillende uitspraken van drie achtereenvolgende Secretarissen-Generaal van de Verenigde Naties. Secretaris-Generaal Perez de Cuellar verklaarde nog tijdens zijn ambtsperiode: 'we are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that defence of the oppressed in the name of morality should probably prevail over frontiers and legal documents' (Report of the Secretary-General, in: UN Yearbook 1991, para 11). Boutros Boutros-Ghali ging in een 1991 verschenen VN-document een stap verder door te stellen: 'it is now increasingly felt that the principle of non-interference with the essential jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity' (geciteerd in: P. Malanczuk, 'Humanitarian Intervention and the Legitimacy of the Use of Force', Amsterdam 1993, p. 29). Een meer recente uitspraak is afkomstig van Kofi Annan die tijdens zijn rede voor de Algemene Vergadering in 1999 stelde: 'State sovereignty, in its most basic sense, is being redefined by the forces of globalization and international cooperation. The state is now widely understood to be the servant of its people, and not vice versa. At the same time, individual sovereignty -and by this I mean the human rights and fundamental freedoms of each and every individual as enshrined in our Charter- has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny' (UN Press Release SG/SM/7136 GA/9596).

De rechten van de mens zijn meer en meer een 'gedeelde verantwoordelijkheid' geworden van staten en de internationale gemeenschap. De staat blijft de eerstverantwoordelijke voor de bescherming van individuen -en moet dat ook zijn- maar hij kan in dit opzicht op zijn verantwoordelijkheden worden aangesproken door internationale fora die daartoe steeds verfijnder toezichtsmechanismes hebben ontwikkeld. Anderzijds is het verbod op het gebruik van of de dreiging met geweld stevig verankerd in het VN-Handvest en is het een belangrijke pijler gebleken van de stabiliteit in de interstatelijke verhoudingen.

Bovenstaande, kort aangeduide ontwikkelingen op het terrein van de rechten van de mens hebben het beginsel van de staatssoevereiniteit, dat bij het opstellen van het VN-Handvest in 1945 als uitgangspunt werd genomen, sterk van karakter doen veranderen. Daarnaast heeft ook het bredere proces van 'internationalisering' (dat wil zeggen: het toenemend belang van internationale overeenkomsten, van het lidmaatschap van internationale organisaties en de economische interdependentie, en de steeds pregnantere rol van internationale NGO's en de media) in *praktische* zin de soevereiniteit van staten in vergaande mate beperkt. De afweging tussen het interstatelijk geweldsverbod en de rechten van de mens is dientengevolge actueler dan ooit.

De rechten van de mens zijn een elementair onderdeel geworden van de internationale betrekkingen. Het is echter ook van belang welke middelen de internationale gemeenschap bij de handhaving van de rechten van de mens kan, wil of mag gebruiken. Een dergelijke afweging kan niet worden gemaakt zonder in te gaan op de aard van de humanitaire crises die om ingrijpen vragen en op de opstelling van de statengemeenschap. Tegen de achtergrond hiervan zullen de AIV en CAVV ook nader ingaan op de vragen hoe de slagvaardigheid van de Veiligheidsraad kan worden verbeterd, en of -en hoe- duidelijker richtlijnen kunnen worden ontwikkeld waaraan humanitaire interventies moeten voldoen.

III.2 Veranderende conflictpatronen

Sinds het einde van de Koude Oorlog is de bemoeienis van de statengemeenschap met betrekking tot gewelddadige conflicten en humanitaire crises substantieel toegenomen. Dit wordt weerspiegeld in de hoeveelheid Veiligheidsraadsresoluties inzake humanitaire crises en een daarvan afgeleide toename van het aantal 'blauwhelmen' en militaire coalities dat over de gehele wereld in dienst van de 'crisisbeheersing' of humanitaire opdrachten actief is. Tegelijkertijd is ook het internationale veiligheidsbeeld veranderd. Waar tijdens de Koude Oorlog sprake was van een wereldwijde rivaliteit tussen de supermogendheden, moeten thans veel landen constateren dat zij voor de eertijds rivaliserende mogendheden niet meer van voldoende strategisch belang zijn om voor internationale ondersteuning in aanmerking te komen. Door het wegvallen van dergelijke steun, en bij gebrek aan eigen draagvlak, legitimiteit en uitvoerende mogelijkheden ontberen vele van de betrokken regeringen het vermogen om 'etnische spanningen'¹⁰ langer adequaat te beteugelen. Sommige staten vallen uit elkaar of dreigen dat te doen; in een aantal landen nemen regeringen hun toevlucht tot rigoreus geweld om de eenheid te bewaren. Omdat een gehele samenleving bij een dergelijk conflict betrokken raakt, is niet meer duidelijk wie tot de strijdende partijen behoort. Oorlogvoering en humanitaire crises zijn zodoende steeds minder uit elkaar te halen.

Ook het onderscheid dat traditioneel wordt gemaakt tussen intrastatelijke en interstatelijke oorlogen, is na het einde van de Koude Oorlog vervaagd. Conflicten binnen staten leiden

¹⁰ Het is weliswaar gebruikelijk in dit verband te spreken van 'etnische conflicten' maar deze vlag dekt niet geheel de lading. In de praktijk zijn het immers evenzeer religieuze, regionale, politieke en sociaal-economische groepsidentiteiten die aan de basis van 'etnische' conflicten kunnen liggen.

thans veelal tot conflicten tussen staten en omgekeerd. Ten eerste liggen de oorzaken van gewapende strijd vaak in het buitenland. Daarnaast gaat het in veel gevallen (Rwanda/Zaire) bij de 'spill-over' van conflicten om méér dan het door eerdere vluchtelingenstromen veroorzaken van latere gevechten. Doordat veel landsgrenzen niet parallel lopen met etnische, religieuze of culturele scheidslijnen, kunnen ook zonder vluchtelingenstromen transnationale effecten van conflicten optreden. Gewapende strijd heeft onder dergelijke omstandigheden een 'veenbrand'-karakter gekregen, hetgeen betekent dat vaak na en in de buurt van eerdere gevechten weer nieuwe strijdontonen ontstaan.¹¹

De opkomst van de hier aangeduide conflictpatronen heeft de statengemeenschap voor een aantal belangrijke problemen geplaatst. Het 'totale' karakter van bestaande (burger)-oorlogen maakt het vaak onmogelijk om succesvol met diplomatieke middelen in te grijpen. Ook het middel van economische sancties blijkt van beperkte waarde. De effecten hiervan zijn immers pas op langere termijn merkbaar, terwijl het voorkomen van genocide of massale slachtingen onder de burgerbevolking juist een snel en krachtig optreden vereist. Daardoor blijft militair ingrijpen veelal uiteindelijk over als uiterste redmiddel om een ramp te voorkomen danwel in te dammen. In de loop van de jaren negentig is echter gebleken dat ook voor de militair interveniërende staten nauwelijks onderscheid te maken is tussen strijdende partijen en burgerbevolking. Traditionele beginselen van 'peace-keeping', zoals het plaatsen van lichtbepapende 'blauwhelmen' tussen herkenbare partijen, hebben in dergelijke omstandigheden beperkt of geen succes, ook omdat deze door hun opdracht en uitrusting niet in staat kunnen worden geacht een einde te maken aan de grootschalige humanitaire ellende die gepaard gaat met de nieuwe conflictpatronen. Het handhaven van een status quo of het vergemakkelijken van humanitaire hulp wordt maar al te snel gezien als bevoorrecht van één van de strijdende groeperingen met als gevolg dat vredesmachts in escalerende conflicten worden meegezogen met alle daarbij behorende risico's vanden, onder andere voor het ingezette militaire personeel.¹²

III.3 Het optreden van staten met betrekking tot gewapende interventies

De frustrerende ervaringen die zijn opgedaan met de VN-operaties in Somalië (UNOSOM II) en Bosnië (UNPROFOR) hebben veel VN-troepenleveranciers tot de overtuiging gebracht dat in 'vredesoperaties' die niet met de uitdrukkelijke en nageleefde instemming van alle strijdende partijen worden uitgevoerd, deelnemende militaire eenheden in staat moeten zijn op hoge geweldsniveaus te opereren. Deze voorwaarde geldt *a fortiori* voor humanitaire interventies, waarbij immers *per definitie* sprake is van afwezigheid van instemming van de staat, waarbinnen wordt geïntervenieerd. In de geldende militaire doctrines betekent dit dat de interveniërende macht voorbereid moet zijn op een onderneming die kan escaleren tot regelrechte gevechtsoperaties. De ingezette legermacht moet daarom kunnen beschikken over 'escalatiedominantie'.¹³ In veel doctrines wordt om die reden, althans wat de inzet van militaire middelen betreft, geen verschil gemaakt tussen oorlogvoering

11 Zie bijvoorbeeld het voormalige Joegoslavië, de Kaukasus en het Grote Merengebied in Afrika.

12 Adviesraad Vrede en Veiligheid, 'Verloren Onschuld. Nederland en VN-Operaties'. Den Haag 1995, p. 16.

13 Zo moet de mogelijkheid bestaan om, naarmate het geweldsniveau daadwerkelijk opklimt, steeds meer de nadruk te leggen op de gntegreerde inzet van een steeds breder scala aan militaire middelen. Het kan bijvoorbeeld noodzakelijk zijn dat bij interventies te land van enige omvang eenheden van meet af aan worden uitgerust met zwaar materieel. Daarnaast moet in beginsel rekening worden gehouden met de (voorwaarden-scheppende of ondersteunende) inzet van luchtmacht en marine. Zie hiervoor: Landmacht Doctrine Publikatie III ('Vredesoperaties'), Den Haag 1999, p. 79, en AIV, 'De ontwikkelingen in de internationale veiligheids-situatie in de jaren negentig: Van onveilige zekerheid naar onzekere veiligheid', Den Haag 1999, p. 37.

en afdwingingsoperaties. Wel is er uiteraard een verschil in de doelstellingen van een operatie, omdat bij afdwingingsoperaties de militaire dwangmaatregelen uitdrukkelijk in dienst blijven staan van de uitvoering van het door de Veiligheidsraad geformuleerde mandaat of van het humanitaire doel van de operatie.¹⁴ Dat vergt terughoudendheid en, voor zover mogelijk, de bevordering van een zekere instemming van de betrokken partijen, een toezicht op de naleving van gemaakte afspraken en een grote nadruk op samenwerking.

Zelfs als militaire middelen grootschalig worden ingezet, kan nog wel worden afgedongen op de kansen op een succesvolle afloop van gewapende interventies. Om enige kans van slagen te hebben tegenover modern uitgeruste interventiemachten, zijn minder goed toegeruste partijen in crisisgebieden hun toevlucht gaan nemen tot aangepaste strategieën, ook wel aangeduid als 'asymmetrische oorlogvoering'.¹⁵ Zij pogen het strijdtoneel te verplaatsen naar een onoverzichtelijke stedelijke omgeving ('urban warfare'), zij zijn bereid voor beperkte militaire successen grote aantallen slachtoffers te incasseren, maken gebruik van uitputtingstactieken (vertragen van onderhandelingen), geven met opzet blijk van een gebrek aan humanitaire scrupules en maken grif gebruik van (alom verkrijgbare) lichte wapens.¹⁶ Interventiemachten die als oogmerk hebben een einde te maken aan een humanitaire noodsituatie, hebben hierop vaak geen afdoende antwoord. Ondanks de veelal robuuste uitrusting van moderne strijdmachten, blijven bij een asymmetrische conflictsituatie de persoonlijke risico's voor interveniërende militairen groot en is de kans op een succesvolle afloop van een interventie geen gegeven. Deze operationeel-militaire problematiek laat de talloze politieke, sociaal-economische en emotionele problemen nog onbesproken die men tegenkomt als men een 'totale' oorlogssituatie binnen een afzienbare termijn wenst om te buigen tot een veilige en enigszins stabiele situatie.

De gevoelde noodzaak om bij afdwingingsoperaties militaire middelen grootschalig in te zetten en de onzekerheid over een succesvolle en 'maakbare' afloop hebben de internationale gemeenschap voor een aantal ingewikkelde dilemma's gesteld. Staten voelen zich steeds nadrukkelijker voor de keuze gesteld om bij conflicten met een urgent humanitair karakter zich ofwel afzijdig te houden, ofwel grootschalig en langdurig in te grijpen. Vanwege de enorme kosten die zijn gemoeid met een militaire interventie, de risico's die ingezette militairen lopen en de beperkte militaire middelen, lijken juist die regeringen terughoudend te zijn die wel over het passende materieel kunnen beschikken. Deze terughoudendheid wordt verder versterkt als staten worden geconfronteerd

14 In sommige doctrines wordt een onderscheid gemaakt tussen oorlogvoering en 'Military Operations Other Than War' (MOOTW), waarbij niet zozeer een verschil wordt gemaakt in het geweldsniveau als wel in de doelstellingen van operaties (zie bijvoorbeeld L. Freedman, *The revolution in Strategic Affairs* (Adelphi paper 318), Oxford 1998, p. 47, noot 4). In de Britse 'Strategic Defence Review' wordt zelfs hierbij geen verschil gemaakt. De gehanteerde term 'interventie' wordt gebruikt voor alle vormen van militair optreden in het hogere deel van het geweldsspectrum, ongeacht of het militaire geweld wordt toegepast ter verdediging van NAVO-grondgebied, daarbuiten in een klassiek scenario (Koeweit) of ter beëindiging van een complex intrastatelijk conflict.

15 L. Freedman, 'The Changing Forms of Military Conflict' in: *Survival*, vol. 40, no. 4. (Winter 1998-1999), p. 41.

16 Zie voor de proliferatie van kleine wapens: Adviesraad Internationale Vraagstukken, 'Conventionele Wapenbeheersing. Dringende noodzaak, beperkte mogelijkheden', Den Haag 1998.

met de machtsbelangen en invloedssferen van grote mogendheden, of met een onduidelijke rechtsbasis voor gewapend ingrijpen.

Uit het voorgaande kan worden geconcludeerd dat staten bij voorkeur *niet* interveniëren, *tenzij* er dwingende redenen zijn dat wel te doen. Deze redenen zijn in de regel niet van louter humanitaire aard, maar maken deel uit van bredere geopolitieke en veiligheidsoverwegingen van staten. De ervaring leert dat staten niet interveniëren bij bondgenoten, tegen vriendschappelijke regeringen en tegen grote mogendheden of staten in de onmiddellijke invloedssfeer daarvan, hoezeer regeringen zich ook misdragen.

Daarnaast kan worden geconstateerd dat de terughoudendheid van staten om in andere staten te interveniëren ook te maken heeft met de politieke onzekerheid van regeringen ten aanzien van acties die niet direct hun nationale belang *in enge zin* dienen, namelijk de verdediging van het eigen grondgebied.¹⁷ Deze terughoudendheid wordt verder versterkt wanneer een crisis zich ver weg afspeelt, in gebieden met weinig strategische waarde of in regio's waarover de pers nauwelijks bericht. Anderzijds wordt de druk om in te grijpen sterker gevoeld naar gelang crises naderbij zijn. De effecten van dergelijke crises (vluchtelingenstromen, 'spill-over') zijn dan duidelijk zichtbaar en kunnen bovendien de regionale stabiliteit ondermijnen. Dergelijke overwegingen leiden welhaast onvermijdelijk tot een selectiviteit, die op zichzelf moeilijk te rijmen is met de gelijkwaardige behandeling van gelijksoortige situaties die de internationale rechtsorde idealiter zou vereisen.

Vooralsnog is de krijgsmacht van de Verenigde Staten de enige die met zijn militair-strategische middelen in staat is een significante mondiale veiligheidsrol te spelen. Tegelijk kan echter worden geconstateerd dat de animo in de Verenigde Staten onder druk staat om na veertig jaar Koude Oorlog een wereldwijde rol te blijven spelen. Bepalend voor de huidige Amerikaanse stellingname is een presidentiële richtlijn die kort na de terugtrekking uit Somalië van kracht werd.¹⁸ Deze richtlijn komt erop neer dat de VS alleen dan participeert in vredesmissies als er een sprake is van een 'nationaal belang',¹⁹ als er een overtuigende 'exit strategy' bestaat, als de VS zelf de militaire leiding heeft, als het Amerikaanse publiek brede steun geeft en als de 'overwinning' verzekerd is. In het licht van dergelijke voorwaarden hebben sommigen²⁰

17 Zie onder meer: E. Luttwak, 'A Post heroic Military Policy' in: *Foreign Affairs*, vol. 75., no. 4., (July-August 1996), p. 33-44.

18 Presidential Directive 25, uitgebracht in Mei 1994

19 Indicatief voor de invulling van het nationale belang van de Verenigde Staten is de uitkomst van een discussie, in 1996 georganiseerd door de Commission on American National Interests. De discussie werd gevoerd door verschillende congresleden, regeringsmedewerkers en politiek analisten. Volgens hen zijn er slechts vijf *vital national interests* die *dwingen* tot optreden: een dreiging met massavernietigingswapens, de opkomst van een vijandige grootmacht in Europa of Azië, een vijandige macht op zee of aan de grenzen van de VS, een ineenstorting van economisch, financieel of milieu-systeem en het voortbestaan van geallieerden. *Zeer belangrijke* nationale belangen zijn regionale proliferatie massavernietigingswapens en agressie tegen geallieerde landen. Grootchalige mensenrechtenschendingen behoren samen met politiek pluralisme, democratie in strategisch belangrijke gebieden tot de *gewone* nationale belangen. *Minder beduidende* belangen zijn: handelstekorten en democratie in het algemeen. Bovenstaande indeling heeft overigens niet verhinderd dat de VS -weliswaar na aarzelingen- toch heeft deelgenomen aan IFOR/SFOR in Bosnië en KFOR in Kosovo.

20 Hoffmann (1996), pp. 34-35.

gesignaleerd dat de beginselen van staatssoevereiniteit en non-interventie niet alleen worden gehuldigd door zwakke regimes die vrezen dat de internationale gemeenschap al te gemakkelijk tot ingrijpen in binnenlandse crises besluit. Ook de staten die over de militaire middelen voor gewapende interventie beschikken, beroepen zich graag op deze beginselen, maar dan om te voorkomen dat een morele interventieplicht ontstaat die 'evenzeer een politieke dwangbuis wordt als het juridische interventieverbod dat was onder het Westfaalse stelsel'.²¹

Kortom, er is onmiskenbaar sprake van een toenemend belang in de internationale betrekkingen van de fundamentele rechten van de mens; deze ontwikkeling heeft evenwel niet direct geleid tot een groeiende bereidheid tot mondiaal gewapend ingrijpen. Afgezien van de vraag of de toepassing van geweld in alle gevallen het meest geschikte middel is ter voorkoming of beëindiging van een humanitaire noodsituatie, moet worden vastgesteld dat juist regeringen die de middelen tot ingrijpen bezitten, zich terughoudend opstellen, zeker als het gaat om optreden buiten hun eigen regio of om acties die een duidelijke rechtsbasis ontberen.

21 P.H. Kooijmans, 'Het non-interventiebeginsel herijkt' in: Internationale Spectator, oktober 1996.

IV Humanitaire interventie met een mandaat van de Veiligheidsraad

IV.1 De rol van de Veiligheidsraad

In de jaren negentig is de Veiligheidsraad bereid gebleken niet alleen interstatelijk geweld, maar ook grootschalige mensenrechtenschendingen -op basis van zijn bevoegdheden neergelegd in Hoofdstuk VII VN-Handvest- te beoordelen als een bedreiging voor de internationale vrede en de veiligheid om zodoende gewapende interventies mogelijk te maken. Daarmee is de Veiligheidsraad afgestapt van de scheiding die hij tijdens de Koude Oorlog maakte tussen de (militair-strategische) veiligheidsproblematiek en humanitaire overwegingen.²² Tegen deze achtergrond heeft de Veiligheidsraad zich in de loop van de jaren negentig actief bemoeid met de interne situatie in Irak, het voormalig Joegoslavië, Liberia, Somalië, Haïti, Angola, Rwanda, Burundi, Zaïre, Albanië, de Centraal Afrikaanse Republiek, Oost-Timor, Sierra Leone en de Democratische Republiek Congo. Destabilisatie en wanorde in deze landen hebben ook feitelijk een internationale dimensie gehad, bijvoorbeeld in de vorm van vluchtelingenstromen of een dreigende uitbreiding van vijandelijkheden. De Veiligheidsraad heeft daar in zijn resoluties dan ook soms -maar lang niet altijd- naar verwezen. Geargumenteed kan zelfs worden dat de Veiligheidsraad zich in de loop van de jaren negentig juist bewust heeft gedistantieerd van het argument dat een bedreiging van de internationale vrede en veiligheid alleen kan worden gebruikt als er sprake is van een 'internationale dimensie' van conflicten. De interventie in Somalië was de eerste, waarbij de Veiligheidsraad onder Hoofdstuk VII van het Handvest een operatie autoriseerde om in een intern conflict in te grijpen (resolutie 794)²³ zonder een beroep op mogelijke internationale dimensies van het conflict. Later werd dit voorbeeld gevolgd door Hoofdstuk VII-operaties in Rwanda (Resolutie 929)²⁴ en Haïti (Resolutie 940).²⁵ De Veiligheidsraad beschouwt interne conflicten met grootschalige humanitaire gevolgen tegenwoordig blijkbaar als een bedreiging voor de internationale vrede 'in their own right'. Daarmee heeft hij artikel 39 VN-Handvest een extensieve interpretatie gegeven.

Door steeds het unieke karakter van de omstandigheden rond deze operaties te benadrukken, beoogde de Veiligheidsraad het scheppen van precedënten te vermijden. Hoe

22 Dit liet onverlet dat de Veiligheidsraad de gevallen van mensenrechtenschendingen in Rhodesië (1966) en Zuid-Afrika (1977) al als een bedreiging voor de internationale vrede en veiligheid betitelde teneinde embargo's in te stellen. Het waren destijds vooral de ontwikkelingslanden in Azië en Afrika, die - gesteund door de Sovjet-Unie - druk uitoefenden om de Hoofdstuk VII-bepalingen van het VN-Handvest toe te passen op beide landen. In Westerse kring werd een dergelijke beoordeling oneigenlijk gevonden, omdat de situatie in Zuid-Afrika en Rhodesië feitelijk geen internationale militaire dreiging inhield.

23 Resolutie 794 (1992): 'the unique character of the present situation in Somalia and mindful of its deteriorating, complex and extraordinary nature, requiring an immediate and exceptional response'.

24 Resolutie 929 (1994): 'the current situation in Rwanda constitutes a unique case which demands an urgent response by the international community'.

25 Resolutie 940 (1994) m.b.t. Haïti: 'the unique character ... its deteriorating, complex and extraordinary nature, requiring an exceptional response.'

vaker de Raad zich echter beroept op uitzonderingssituaties, des te minder kan hij daarentegen het incidentele karakter van zijn beslissingen volhouden. De Veiligheidsraad lijkt dit te onderkennen. In Resolutie 1080 (1996) inzake het gebruik van geweld in Zaïre verwijst hij niet naar het 'unieke en complexe karakter' van de situatie ter plekke, maar wordt zonder nadere redengeving geconstateerd dat de situatie 'demands an urgent response by the international community'.

Bij bovenstaande ontwikkelingen dient te worden benadrukt dat de Veiligheidsraad ten principale een politiek forum is.²⁶ Het gezag van de Raad en zijn plaats in de internationale statengemeenschap zijn gebaseerd op het vertrouwen dat hij de bepalingen van het VN-Handvest adequaat zal uitvoeren en daarnaast op de erkenning van de rol die de permanente leden in de wereldpolitiek spelen, inclusief hun invloed op de besluitvormingsprocedures van de Veiligheidsraad (veto's). Hierdoor kunnen zich situaties voordoen, waarbij de Veiligheidsraad geen actie kan ondernemen, hoewel een dergelijke actie -bijvoorbeeld in geval van een ernstige humanitaire noodsituatie- wel gepast zou zijn. De Veiligheidsraad is in de jaren negentig in staat gebleken vergaande resoluties te aanvaarden, bijvoorbeeld met betrekking tot Somalië, Bosnië en Haïti. Maar hij heeft zich anderzijds niet uitgesproken over ingrijpen in de binnenlandse situatie van de permanente leden zelf (Tibet, Tsjetsjenië), noch over een militaire bemoeienis met conflicten, zoals die in Algerije.

Een belangrijke begrenzing van de mogelijkheden van de Veiligheidsraad ligt voorts in het feit dat hij voor de uitvoering van zijn interventies afhankelijk is van de bereidheid van de VN-lidstaten hiervoor militaire middelen ter beschikking te stellen. Afdwinging door de Verenigde Naties zelf zou alleen mogelijk zijn als er een zelfstandige VN-legermacht zou bestaan. Hoewel een dergelijke legermacht in het VN-Handvest zelf is voorzien, moet de kans dat het daarvan ooit daadwerkelijk zal komen nog steeds als uiterst klein worden beschouwd.²⁷ In de beslissingen van de Veiligheidsraad spelen daarom, naast politieke overwegingen ook praktische afwegingen een belangrijke rol: als de Veiligheidsraad het eens kan worden over de ernst van een situatie binnen een bepaalde staat, dan dient hij zich er daarnaast van te vergewissen of voldoende VN-lidstaten bereid zijn militaire middelen ter beschikking te stellen (via een VN-operatie danwel een 'coalition of the willing'). Een gebrek aan bereidheid onder de VN-lidstaten om deze middelen in voldoende mate ter beschikking te stellen, heeft de VN in het verleden voor problemen geplaatst, die er in een aantal gevallen toe hebben geleid dat de VN -soms aanzienlijke- beperkingen ondervond bij het initiëren of het uitvoeren van vredesoperaties.

26 Dit laat onverlet dat de Veiligheidsraad wel gebonden is aan het internationale recht. Zo oordeelde het Internationaal Gerechtshof in de Admissions Case (1948) dat 'The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgement' (Conditions of admission of a state to membership in the United Nations, Advisory opinion of May 28th 1948, p. 64).

27 Illustratief is de gang van zaken rond de Nederlandse inspanningen, onder voormalig Minister van Buitenlandse Zaken Van Mierlo, om te komen tot de oprichting van een VN-Brigade. Zowel de permanente leden van de Veiligheidsraad als een groot aantal Niet Gebonden Landen toonden zich -om uiteenlopende redenen- terughoudend over deze gedachte. Van een breed draagvlak voor een VN-legermacht lijkt momenteel dan ook geen sprake. Zie voor nadere aspecten van een VN-Brigade: D. Leurdijk (ed), 'A UN Rapid Deployment Brigade. Strengthening the capacity for quick response', Den Haag 1995.

IV.2 Mogelijke aanpassingen in de Veiligheidsraad

In de discussie over de effectiviteit van de Veiligheidsraad staan twee verschillende percepties tegenover elkaar. Enerzijds wordt betoogd dat de besluitvorming in de Veiligheidsraad, na een periode van grote dynamiek in de eerste helft van de jaren negentig, thans wordt bemoeilijkt door een argwanende houding van de Russische Federatie en China jegens de Westelijke permanente leden. Zonder fundamentele koerswijziging zou de Raad het risico lopen zichzelf door toenemende interne tegenstellingen 'buiten spel' te zetten. Anderzijds wordt erop gewezen dat de Veiligheidsraad nog steeds de meest actieve periode meemaakt sinds zijn oprichting. In deze laatste visie wordt benadrukt dat, na een inzinking halverwege de jaren negentig als gevolg van grote problemen rond verschillende VN-missies (UNOSOM en UNPROFOR), thans weer bijna 40.000 manschappen voor verschillende VN-operaties door de Veiligheidsraad zijn geautoriseerd. Bovendien toont een inventarisatie van het gebruik van het vetorecht aan dat de permanente leden van de Veiligheidsraad in de jaren negentig hiervan slechts in zeer beperkte mate gebruik hebben gemaakt,²⁸ terwijl het aantal resoluties van de Raad tegelijkertijd is gestegen. Met enige graduele aanpassingen zouden volgens deze visie de vooruitzichten voor een verbeterde effectiviteit en legitimiteit van de Veiligheidsraad nog niet zo slecht zijn. Niettemin moet toch worden geconstateerd dat juist de vooruitzichten voor een grotere effectiviteit van de Veiligheidsraad weinig hoopgevend zijn. Beraadslagingen over de hervorming van de Veiligheidsraad -zowel in formele VN-fora zoals de 'Open Ended Working Group'²⁹ als in informele gespreksgroepen zoals de 'Carlsson groep'³⁰- zijn geheel vastgelopen.

28	Periode	China*	Frank	V.K.	VS	Rusl/S.U.	Totaal
	Totaal	5	18	32	72	120	247
	1996-1999	2	-	-	2	-	4
	1986-1995	-	3	8	24	2	37
	1976-1985	-	9	11	34	6	60
	1966-1975	2	2	10	12	7	33
	1956-1965	-	2	3	-	26	31
	1946-1955	1	2	-	-	79	82

* Tussen 1946 en 1971 werd de Chinese zetel in de Veiligheidsraad bezet door de Republiek China (Taiwan), dat in één geval een veto heeft uitgesproken (toelating van Mongolië tot de VN in 1955).

De AIV en CAVV tekenen bij dit overzicht aan dat het gebruik van het vetorecht niet alles zegt over de besluitvaardigheid van de Veiligheidsraad. Niet opgenomen in het overzicht is het aantal malen dat een resolutievoorstel gestrand is door de dreiging een veto uit te spreken, of de gevallen waarbij permanente leden na lange onderhandelingen en onder grote druk akkoord zijn gegaan met een afgezwakte resolutietekst. Ook biedt het bovenstaande overzicht geen inzicht in het belang van de kwesties die door een veto werden geblokkeerd.

29 De volledige naam luidt: 'Open-ended Working Group on the Question of Equitable Representation on and Increase in the membership of the Security Council and other Matters related to the Security Council'

30 De Carlsson Groep -ook wel Groep van Zestien geheten- is op initiatief van Zweden opgericht om in informele sfeer een breed scala aan mogelijke VN-hervormingen te bespreken. De groep bestaat uit: Australië, Brazilië, Canada, Egypte, Ierland, India, Indonesië, Ivoorkust, Jamaica, Japan, Mexico, Nederland, de Tsjechische Republiek, Zuid-Afrika, Zuid-Korea en Zweden.

IV.2 Mogelijke aanpassingen in de Veiligheidsraad

In de discussie over de effectiviteit van de Veiligheidsraad staan twee verschillende percepties tegenover elkaar. Enerzijds wordt betoogd dat de besluitvorming in de Veiligheidsraad, na een periode van grote dynamiek in de eerste helft van de jaren negentig, thans wordt bemoeilijkt door een argwanende houding van de Russische Federatie en China jegens de Westelijke permanente leden. Zonder fundamentele koerswijziging zou de Raad het risico lopen zichzelf door toenemende interne tegenstellingen 'buiten spel' te zetten. Anderzijds wordt erop gewezen dat de Veiligheidsraad nog steeds de meest actieve periode meemaakt sinds zijn oprichting. In deze laatste visie wordt benadrukt dat, na een inzinking halverwege de jaren negentig als gevolg van grote problemen rond verschillende VN-missies (UNOSOM en UNPROFOR), thans weer bijna 40.000 manschappen voor verschillende VN-operaties door de Veiligheidsraad zijn geautoriseerd. Bovendien toont een inventarisatie van het gebruik van het vetorecht aan dat de permanente leden van de Veiligheidsraad in de jaren negentig hiervan slechts in zeer beperkte mate gebruik hebben gemaakt,²⁸ terwijl het aantal resoluties van de Raad tegelijkertijd is gestegen. Met enige graduele aanpassingen zouden volgens deze visie de vooruitzichten voor een verbeterde effectiviteit en legitimiteit van de Veiligheidsraad nog niet zo slecht zijn. Niettemin moet toch worden geconstateerd dat juist de vooruitzichten voor een grotere effectiviteit van de Veiligheidsraad weinig hoopgevend zijn. Beraadslagingen over de hervorming van de Veiligheidsraad -zowel in formele VN-fora zoals de 'Open Ended Working Group'²⁹ als in informele gespreksgroepen zoals de 'Carlsson groep'³⁰- zijn geheel vastgelopen.

28	Periode	China*	Frank	V.K.	VS	Rusl/S.U.	Totaal
	Totaal	5	18	32	72	120	247
	1996-1999	2	-	-	2	-	4
	1986-1995	-	3	8	24	2	37
	1976-1985	-	9	11	34	6	60
	1966-1975	2	2	10	12	7	33
	1956-1965	-	2	3	-	26	31
	1946-1955	1	2	-	-	79	82

* Tussen 1946 en 1971 werd de Chinese zetel in de Veiligheidsraad bezet door de Republiek China (Taiwan), dat in één geval een veto heeft uitgesproken (toelating van Mongolië tot de VN in 1955).

De AIV en CAVV tekenen bij dit overzicht aan dat het gebruik van het vetorecht niet alles zegt over de besluitvaardigheid van de Veiligheidsraad. Niet opgenomen in het overzicht is het aantal malen dat een resolutievoorstel gestrand is door de dreiging een veto uit te spreken, of de gevallen waarbij permanente leden na lange onderhandelingen en onder grote druk akkoord zijn gegaan met een afgezwakte resolutie-tekst. Ook biedt het bovenstaande overzicht geen inzicht in het belang van de kwesties die door een veto werden geblokkeerd.

29 De volledige naam luidt: 'Open-ended Working Group on the Question of Equitable Representation on and Increase in the membership of the Security Council and other Matters related to the Security Council'

30 De Carlsson Groep -ook wel Groep van Zestien geheten- is op initiatief van Zweden opgericht om in informele sfeer een breed scala aan mogelijke VN-hervormingen te bespreken. De groep bestaat uit: Australië, Brazilië, Canada, Egypte, Ierland, India, Indonesië, Ivoorkust, Jamaica, Japan, Mexico, Nederland, de Tsjechische Republiek, Zuid-Afrika, Zuid-Korea en Zweden.

De hervormingsdiscussies spitsen zich thans toe op uitbreiding van het ledental van de Veiligheidsraad en op inperking van het vetorecht. Wat de uitbreidingskwestie betreft, spelen in de discussies van de 'Open Ended Working Group' met name de kandidaturen van Duitsland en Japan voor een permanente zetel een belangrijke rol. Deze kandidaturen ontberen echter een breed politiek draagvlak als niet tegelijkertijd aandacht wordt geschonken aan de wens van de niet-Westelijke landen beter vertegenwoordigd te zijn in de Veiligheidsraad. Juist hier ligt één van de grootste struikelblokken. Het probleem is dat onder deze niet-Westelijke landen geen enkele overeenstemming bestaat over de staten die Azië, Latijns-Amerika en Afrika zouden moeten vertegenwoordigen.³¹

Ook de beraadslagingen over een mogelijke aanpassing van het vetorecht bevinden zich in een impasse. De permanente leden van de Veiligheidsraad zijn niet bereid in te stemmen met een wijziging van het VN-Handvest die herziening van hun vetorecht mogelijk maakt. Ook staan zij niet open voor 'zachtere opties' zoals het uitspreken van een verklaring waarin afstand wordt genomen van het gebruik van het vetorecht in zaken die niet Hoofdstuk VII van het VN-Handvest (internationale vrede en veiligheid) betreffen. Uiteindelijk is de 'Open Ended Working Group' in haar laatste rapport (30 juli 1999) niet verder gekomen dan een aanbeveling de beraadslagingen in 2000 voort te zetten.

De vraag waarop de adviesaanvraag zich met betrekking tot het functioneren van de Veiligheidsraad concentreert, is of deze door de uitbreiding van zijn ledental en aanpassing van het vetorecht werkelijk slagvaardiger zou worden, in het bijzonder in humanitaire noodsituaties. In de hervormingsdiscussies is het argument van de slagvaardigheid in elk geval ondergeschikt gemaakt aan andere doelstellingen, zoals representativiteit, gelijkwaardigheid en openheid. Alleen wat de laatste doelstelling aangaat heeft de Veiligheidsraad zich de afgelopen jaren in positieve zin kunnen aanpassen. Meer dan voorheen wordt tegenwoordig in open zittingen vergaderd. Ook is de informatieverstrekking aan -en wisselwerking met- de Algemene Vergadering aanzienlijk verbeterd. Tegelijk, echter, heeft zich daardoor ook een zekere 'vervlakking' van de debatten in de Veiligheidsraad voorgedaan. Deze debatten krijgen een toenemend plichtmatig karakter, terwijl de werkelijke onderhandelingen steeds meer elders -buiten de formele zittingen van de Veiligheidsraad- worden gevoerd. Bij een substantiële uitbreiding van de Veiligheidsraad kan deze 'vervlakking' verder toenemen. Door een groter aantal leden ontstaat bovendien het risico dat zich vaste politieke (Noord-Zuid) coalities zullen vormen die de besluitvorming van de Veiligheidsraad op een vergelijkbare wijze bemoeilijken als die van de Algemene Vergadering. Het karakter van het overleg van de Algemene Vergadering kan een dergelijke moeizame besluitvorming in het algemeen velen. Moeizame besluitvorming is evenwel onverenigbaar met de urgentie waarmee de Veiligheidsraad bij tijden besluiten dient te nemen. Ook benadrukken de AIV en CAVV hier dat slagvaardig optreden van de Veiligheidsraad niet *per se* afhangt van de afschaffing of relativering van het vetorecht. Dergelijke maatregelen zouden er namelijk juist toe kunnen leiden dat de permanente leden de Veiligheidsraad *per saldo* een steeds minder aantrekkelijk forum zouden vinden om eventuele acties in af te stemmen.

31 Overigens zijn ook de kandidaturen van Duitsland en Japan zelf niet onbetwist. Landen als Italië en India storen zich in hoge mate aan het gemak waarmee een permanente zetel, inclusief het vetorecht, beide kandidaten wordt toegedicht.

De CAVV en AIV constateren op grond van het voorgaande dat de kans klein is dat de hervormingsvoorstellen met betrekking tot het functioneren van de Veiligheidsraad, die in thans VN-verband worden besproken, binnen afzienbare tijd tot resultaten zullen leiden. Hoewel uitbreiding van de Veiligheidsraad en inperking van het vetorecht het draagvlak en de legitimiteit van de Veiligheidsraad kunnen vergroten, kunnen er vraagtekens worden geplaatst bij de potentiële betekenis hiervan voor de slagvaardigheid van de Veiligheidsraad.

V De Humanitaire interventie zonder mandaat van de Veiligheidsraad

Zoals uit het voorgaande hoofdstuk blijkt, mag thans niet teveel worden verwacht van de discussies over hervormingen van de Veiligheidsraad. Dit betekent dat zich ook in de toekomst humanitaire noodsituaties kunnen voordoen, waarbij de Veiligheidsraad om politieke redenen niet tot een effectieve besluitvorming kan of wil komen. Daarom blijft de volkenrechtelijke vraag actueel of staten in uitzonderlijke omstandigheden mogen besluiten tot een humanitaire interventie zonder autorisatie van de Veiligheidsraad.

Naar het oordeel van de CAVV en AIV dienen hierbij de volgende basisvragen te worden beantwoord:

- 1) Kan geweldsgebruik voor humanitaire doeleinden zonder mandaat van de Veiligheidsraad worden gezien als een recht in wording op basis van een zich ontwikkelend gewoonterecht?
- 2) Of kan een beroep op een humanitaire noodsituatie dienen als juridische rechtvaardigingsgrond voor een interventie die in de huidige stand van het volkenrecht nog steeds als onrechtmatig moet worden beschouwd?

Deze vragen worden allereerst naar de huidige stand van het internationale recht beantwoord; vervolgens (in paragraaf 5.2.) zal worden ingegaan op de (wenselijke) verdere rechtsontwikkeling.

V.1 Internationaalrechtelijk kader

Het algemene internationaalrechtelijke kader wordt in hoofdzaak beheerst door het VN-Handvest. Allereerst kan worden gewezen op artikel 2 (4) VN-Handvest, waarin het geweldsverbod is neergelegd, en het respect voor territoriale integriteit van staten. Op het interstatelijke geweldsverbod zijn in het Handvest drie uitzonderingen voorzien, namelijk:

- 1) artikel 42 en 53: de mogelijkheid van gewapend geweld, geautoriseerd door de Veiligheidsraad, nadat deze overeenkomstig artikel 39 heeft vastgesteld dat er sprake is van een bedreiging van de internationale vrede en veiligheid (zie daarvoor ook hoofdstuk 4 van dit advies);
- 2) artikel 51: het recht op individuele of collectieve zelfverdediging;
- 3) artikel 107: actie gericht tegen de vijanden van de oprichters van de VN tijdens de Tweede Wereldoorlog. Deze uitzondering heeft tegenwoordig geen betekenis meer.

De AIV en CAVV zijn van oordeel dat Artikel 2(4) VN-Handvest, behalve de drie hiervoor genoemde uitzonderingen, een dwingend verbod (*ius cogens*) bevat op het gebruik van of het dreigen met geweld en dus geen juridische ruimte laat voor gewapende interventie op het grondgebied van een andere staat zonder diens toestemming. Zowel de *travaux préparatoires*, de context en onderlinge verhouding van de diverse relevante bepalingen, alsook diverse resoluties van de Algemene Vergadering bevestigen dit.³²

32 De meest relevante resoluties in dit verband zijn:

- the Declaration on the Inadmissibility of Intervention (resolutie 2131 (XX), 1965);
- the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations (resolutie 2625 (XXV), 1970), en
- the Definition of Aggression (resolutie 3314 (XXIX), 1974).

Rechtsgrondslag

Voor een mogelijke grondslag in het huidige recht voor ongeautoriseerde humanitaire interventie is in de literatuur evenwel een beroep gedaan op de zogeheten 'link-theorie'. Volgens deze theorie zou het falen van het stelsel van collectieve veiligheid, zoals neergelegd in het VN-Handvest, een veronderstelde gewoonterechtelijke regel uit de periode vóór de totstandkoming van de VN inzake de rechtmatigheid van de humanitaire interventie doen herleven.³³ De AIV en CAVV onderschrijven in dit verband nog steeds de conclusie van het ACM/CAVV advies van 1992 dat bij de 'link-theorie' een aantal kanttekeningen kan worden geplaatst. Deze rechtvaardigen de conclusie dat deze theorie geen rechtsgrondslag kan vormen voor humanitaire interventie. Het belangrijkste bezwaar richt zich tegen de veronderstelling dat zich vóór 1945 ooit een gewoonterechtelijke regel heeft ontwikkeld die een juridische basis geeft aan humanitaire interventie. Bovendien zijn uit de statenpraktijk vóór 1945 geen goede voorbeelden te geven en ontbreekt de noodzakelijke rechtsovertuiging terzake. In de tweede plaats kan men zich afvragen of een dergelijke reeds bestaande gewoonterechtelijke regel kan voortbestaan naast het Handvest. De opstellers van het VN-Handvest heeft onder andere voor ogen gestaan aan het recht tot geweldsgebruik (*ius ad bellum*) een nieuwe invulling te geven door het opstellen van de eerder genoemde drie uitzonderingen op het geweldverbod.

Rechtvaardigingsgronden

De vraag rijst vervolgens of er op basis van het huidige internationaal gewoonterecht rechtvaardigingsgronden voor ongeautoriseerde humanitaire interventie kunnen worden aangevoerd. Het internationaal gewoonterecht erkent immers van oudsher dat er omstandigheden zijn die het onrechtmatig karakter van bepaalde handelingen van een staat teniet doen of daarvoor geen aansprakelijkheid doen ontstaan voor de betrokken staat; een redenering die in wezen neerkomt op het beginsel van 'nood breekt wet'. Sommige potentieel in aanmerking komende gewoonterechtelijke rechtvaardigingsgronden zijn door de International Law Commission (ILC) van de Verenigde Naties in het kader van het leerstuk van de staatsaansprakelijkheid omschreven in een aantal ontwerp-artikelen. De discussie daarover is nog niet afgerond.

In de eerste plaats kan worden gedacht aan de rechtvaardigingsgrond van 'state of necessity' zoals geformuleerd in artikel 33 van het ILC-ontwerp inzake de staatsaansprakelijkheid.³⁴ Volgens het commentaar van de Speciale Rapporteur en van de ILC bij

33 Deze 'link-theorie' strekt in feite tot toepassing van de *clausula rebus sic stantibus* op de bepalingen van het VN-Handvest inzake de bescherming en bevordering van de internationale vrede en veiligheid, waarmee naast de bestaande uitzonderingen een nieuwe uitzondering op het geweldverbod van Artikel 2 lid 4 van het VN-Handvest zou worden gecreëerd.

34 Artikel 33 luidt als volgt:

'1. A state of necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act of that State not in conformity with an international obligation of the state unless:

(a) the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and

(b) the act did not seriously impair an essential interest of the State towards which the obligation existed.

2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness:

(a) if the international obligation with which the act of the State is not in conformity arises out of a peremptory norm of general international law; or

(b) if the international obligation with which the act of the State is not in conformity is laid down by a treaty which, explicitly or implicitly, excludes the possibility of invoking the state of necessity with respect to that obligation; or

(c) if the State in question has contributed to the occurrence of the state of necessity.'

artikel 33 kan dit artikel geen aanknopingspunt bieden voor ongeautoriseerde humanitaire interventie.³⁵ Een beroep op 'state of necessity' is immers niet toegestaan voor schendingen van regels van dwingend volkenrecht, zoals het verbod op het gebruik van of het dreigen met geweld. Bovendien is in meer recente gevallen van humanitaire interventie uiterst zelden een beroep gedaan op deze rechtvaardigingsgrond.³⁶ Op basis van deze argumenten zijn de CAVV en AIV tot de conclusie gekomen dat artikel 33 zich niet leent als rechtvaardigingsgrond ten behoeve van ongeautoriseerde humanitaire interventie.

Ook kan de vraag worden gesteld of het beginsel van 'distress' uit artikel 32 van hetzelfde ILC-ontwerp inzake staatsaansprakelijkheid een rechtvaardigingsgrond voor humanitaire interventie zou kunnen opleveren.³⁷ De Speciale Rapporteur benadrukt in zijn rapport dat het historisch gegroeide toepassingsgebied van artikel 32 (in het bijzonder schepen en vliegtuigen betreffend) niet te ver zou moeten worden uitgebreid buiten die specifieke context 'and certainly not into the general field of humanitarian intervention'.³⁸ Het Verenigd Koninkrijk toonde zich daarentegen 'critical of the limitation of article 32 to persons in the care of the state concerned'. Het riep op 'for the draft articles explicitly to recognize emergency humanitarian intervention'.³⁹ In reactie hierop oordeelde de Speciale Rapporteur weer dat een dergelijke situatie juist zou moeten worden geregeld in het kader van artikel 33 en niet onder het beginsel van 'distress'.⁴⁰ De AIV en CAVV benadrukken in dit verband dat het pleidooi van het Verenigd Koninkrijk, dat overigens niet wordt onderschreven door de andere permanente leden van de Veiligheidsraad, slechts betrekking heeft op acties van zeer beperkte omvang en doelstelling, en dus niet op de in dit advies besproken interventies ter voorkoming of beëindiging van grootschalige schendingen van de fundamentele mensenrechten.

De AIV en CAVV concluderen uit het voorgaande dat er naar de huidige stand van het internationale recht onvoldoende rechtsgrondslag bestaat voor ongeautoriseerde humanitaire interventie. Evenmin mag voor een dergelijke interventie, volgens de thans gangbare interpretatie, een beroep worden gedaan op de bestaande gewoonterechtelijke rechtvaardigingsgronden 'state of necessity' en 'distress'.

35 International Law Commission, Second Report on State Responsibility by James Crawford, Special Rapporteur, A/CN.4/498/Add.2, paragrafen 286-287 en Report of the International Law Commission on the work of its fifty-first session 3 May-23 July 1999, A/54/10, pagina 185, paragraaf 384 en 387.

36 Het enige voorbeeld tot 1980 was de Belgische reddingsoperatie in Congo in 1960; de Veiligheidsraad heeft ten aanzien van dit argument toen geen standpunt ingenomen. Zie ook: A/CN.4/498/Add.2, pag. 26, noot 527.

37 Artikel 32 luidt als volgt:

'1. The wrongfulness of an act of a state not in conformity with an international obligation of that State is precluded if the author of the conduct which constitutes the act of that state had no other means, in a situation of extreme distress, of saving his life or that of persons entrusted to his care.
2. Paragraph 1 shall not apply if the state in question has contributed to the occurrence of the situation of extreme distress or if the conduct in question was likely to create a comparable or greater peril.'

38 A/AC.4/498/Add.2, pag. 23, paragraaf 272.

39 Ibidem, pag. 22, paragraaf 269.

40 Eerder vermeld Rapport ILC, A/54/10, pag. 180, paragraaf 367.

V.2 Rechtsontwikkeling

De vraag rijst evenwel of een beroep op een humanitaire noodzaak op zichzelf kan worden beschouwd als rechtvaardigingsgrond voor een ongeautoriseerde interventie, die naar de huidige stand van het volkenrecht nog steeds als onrechtmatig moet worden beschouwd. Of kan zelfs worden gesproken van nieuw recht in wording met betrekking tot ongeautoriseerde humanitaire interventie op basis van een zich ontwikkelend gewoonterecht?

Bij de beantwoording van dergelijke vragen speelt allereerst de verhouding tussen het VN-handvest en het algemeen volkenrecht een rol. In dit verband dient te worden gewezen op de uitspraak van het Internationaal Gerechtshof in de Nicaragua-zaak '...that the United Nations Charter ... by no means covers the whole area of the regulation of the use of force in international relations'.⁴¹ Anderzijds zijn de CAVV en AIV hiervoor al tot de conclusie gekomen dat er naast het VN-Handvest geen ruimte is voor het voortbestaan van een oude gewoonterechtelijke regel als rechtsgrond voor humanitaire interventie. Dit betekent evenwel niet dat identieke verdragsregels en gewoonterechtelijke regels met betrekking tot hetzelfde vraagstuk niet naast elkaar kunnen bestaan. Het Hof heeft deze mogelijkheid uitdrukkelijk erkend en er tevens op gewezen dat 'there are no grounds for holding that when customary international law is comprised of rules identical to those of treaty law, the latter 'supervenes' the former, so that the customary international law has no further existence of its own'.⁴² Wel is het zo dat identieke verdrags- en gewoonte-regels onderscheiden kunnen worden voor wat betreft hun interpretatie en toepassing.⁴³

Om evenwel, in afwijking van de bepalingen van het VN-Handvest inzake het verbod op het gebruik van geweld, aanknopingspunten te vinden voor een antwoord op beide hiervoor gestelde vragen, dient men zich te richten op de statenpraktijk gedragen door de rechtsovertuiging van staten. Zodoende kan een gewoonterechtelijke evolutie, of het begin ervan, worden aangeduid. Hierbij doet zich echter een aantal problemen voor:

- 1) De statenpraktijk van ongeautoriseerde humanitaire interventie na 1945 is uiterst beperkt. Tegen deze achtergrond moet rekening worden gehouden met de uitspraak van het Internationaal Gerechtshof in de Nicaragua-zaak waar het Hof in 1986 stelde: '...that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule. If a State acts in a way prima facie incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule'.⁴⁴

41 I.C.J. Reports, 1986, pag. 94, paragraaf 176.

42 I.C.J. Reports, 1986, pag. 95, paragraaf 177.

43 'A State may accept a rule contained in a treaty not simply because it favours the application of the rule itself, but also because the treaty establishes what that State regards as desirable institutions or mechanisms to ensure implementation of the rule. Thus, if that rule parallels a rule of customary international law, two rules of the same content are subject to separate treatment as regards the organs competent to verify their implementation, depending on whether they are customary rules or treaty rules' (I.C.J. Reports, 1986, pag. 95, paragraaf 178).

4 I.C.J. Reports, 1986, pag. 98, paragraaf 186.

Hoewel 'reliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards a modification of customary international law'⁴⁵, zal het ontstaan van een nieuwe rechtsgrond voor humanitaire interventie via de gewoonterechtelijke weg bijzonder moeilijk zijn.

- 2) In het licht van het voorgaande zou men geneigd kunnen zijn meer gewicht toe te kennen aan de rechtsovertuiging die door staten wordt uitgesproken. Maar ook hier dient zich een aantal problemen aan. De situaties en omstandigheden waarin staten hun juridisch standpunt terzake vertolken, kunnen immers tot uiteenlopende redeneringen leiden: het kan gaan om het verdedigen van een uitgevoerde humanitaire interventie ten overstaan van de internationale publieke opinie of voor de Veiligheidsraad, maar ook om pleidooien als verweerder in een gerechtelijke procedure voor het Internationaal Gerechtshof. Het kan ook een debat in de Veiligheidsraad betreffen over de noodzaak of mogelijkheid van een geautoriseerde humanitaire interventie of om het verlenen van een machtiging daartoe, dan wel om een debat in de Algemene Vergadering los van een concrete crisissituatie. Opnieuw menen de AIV en CAVV dat hier verwezen moet worden naar de uitspraak in de Nicaragua-zaak uit 1986. Hoewel het Hof enerzijds stelde dat 'it would ... seem apparent that the attitude referred to expresses an *opinio iuris* respecting such rule (or set of rules), to be thenceforth treated separately from the provisions, especially those of an institutional kind, to which it is subject on the treaty-law plane of the Charter', stelde het in dezelfde paragraaf dat deze *opinio iuris* 'may, though with all due caution, be deduced from, *inter alia*, the attitude of the Parties and the attitude of States towards certain General Assembly resolutions ...'.⁴⁶

Op basis van de *Official Records* van de 54e Algemene Vergadering van de Verenigde Naties (september 1999), die grotendeels in het teken stond van het debat over ongeautoriseerde humanitaire interventie en het NAVO-ingrijpen rond Kosovo, en van de *Provisional Verbatim Records* van de Veiligheidsraad -voor zover het debatten betrof waarin sprake was van een humanitaire noodsituatie⁴⁷- komen de AIV en CAVV tot het oordeel dat op grond van deze discussies niet kan worden geconcludeerd dat er een universele *opinio iuris* bestaat ten aanzien van de rechtmatigheid van humanitaire interventie. De CAVV en AIV stellen vast dat staten tijdens het debat van de 54ste Algemene Vergadering met betrekking tot ongeautoriseerde humanitaire interventie wel termen gebruikten zoals *legitimate, justified, in accordance with the provisions and/or purposes and principles of the UN-Charter, in accordance with general international law*. Het gebruik van dergelijke termen betekent op zichzelf echter niet dat daardoor ook kan worden gesproken van de feitelijke vorming van internationaal gewoonterecht terzake. Een *opinio iuris* lijkt namelijk niet aan het uitkristalliseren te zijn, gelet op vooral de andersluidende standpunten van belangrijke landen zoals Rusland, China en India.

45 Ibidem, pag. 109, paragraaf 207.

46 I.C.J. Reports, 1986, pag. 100, paragraaf 188.

47 Bestudeerd zijn de debatten rond de humanitaire crises in Irak (kwestie van de Koerden), Somalië, Bosnië-Herzegovina, Liberia, Rwanda, Haïti, Albanië, Sierra Leone, Centraal Afrikaanse Republiek, Kosovo en Oost-Timor.

Aan de hand van de discussies in VN-verband kan worden geconcludeerd dat in het bijzonder Westelijke landen zoeken naar een rechtvaardiging voor ongeautoriseerde humanitaire interventie. Bij de interventie in de Kosovo-crisis is binnen de NAVO geen overeenstemming bereikt over de rechtsgrondslag van dat optreden zonder uitdrukkelijke autorisatie van de Veiligheidsraad. Er bestond wel consensus over de noodzaak van dat optreden, doch iedere lidstaat behield zijn eigen opvattingen over de rechtvaardigingsgrond daarvan. Ook het nieuwe Strategisch Concept van de NAVO (Washington, mei 1999) waarin 'non-article 5 operations' (dus anders dan voor zelfverdediging) en 'crisis response operations' een belangrijke plaats innemen, geeft geen uitsluitel over de rechtsgrondslag van humanitaire interventie zonder machtiging van de Veiligheidsraad. Deze onduidelijkheid is ook niet weggenomen door de standpunten die de NAVO-lidstaten hebben verwoord tijdens het algemene debat van de 54e Algemene Vergadering van de Verenigde Naties. Wellicht dient hiervoor te worden gewacht op de pleidooien ten gronde in de procedure die de Federale Republiek Joegoslavië heeft aangespannen tegen een aantal NAVO-lidstaten -waaronder Nederland- voor het Internationaal Gerechtshof. Wat daarvan zij, en los van enkele voorbeelden van humanitaire interventie die uiteindelijk wel door de internationale gemeenschap zijn getolereerd, moet erop worden gewezen dat het uitoefenen van een eenzijdig gepostuleerd recht -door welke staat of groep van staten dan ook- tot ongeautoriseerde humanitaire interventie, leidt tot ondermijning van de basis-structuur van het VN-Handvest.⁴⁸ Het is daarom van groot belang in deze gevoelige materie naar een zo breed mogelijk draagvlak in de internationale gemeenschap te blijven streven.

In dit verband merken de AIV en CAVV ook op dat zelfs indien er zich een regionale *opinio iuris* met betrekking tot een rechtsgrondslag voor humanitaire interventie aan het ontwikkelen is, de fundamentele vraag zich blijft aandienen of een dergelijke gewoonterechtelijke rechtsvorming wel mogelijk is indien ze ingaat tegen regels van *ius cogens*, zoals het verbod op het gebruik van of de dreiging met geweld, tenzij de uitzondering wordt beschouwd als al deel uitmakend van deze *ius cogens* norm.

Op grond van het voorgaande stellen de CAVV en AIV vast dat er op dit moment niet alleen sprake is van onvoldoende rechtsgrondslag voor humanitaire interventie zonder mandaat van de Veiligheidsraad, maar dat een dergelijke rechtsgrondslag zich ook niet duidelijk ontwikkelt. Tezelfdertijd onderkennen de AIV en CAVV echter dat men bij de interpretatie en toepassing van het internationaal recht heden ten dage situaties niet meer kan negeren waarin fundamentele mensenrechten op grote schaal (dreigen te) worden geschonden en de internationale gemeenschap geen stappen onderneemt ter beëindiging of ter voorkoming daarvan. In dit verband hechten beide adviesraden grote waarde aan de toenemende betekenis van de plicht tot internationale bescherming en bevordering van de fundamentele mensenrechten. Deze plicht vormt, naar het oordeel van de CAVV en AIV, de basis voor de verdere ontwikkeling van een gewoonterechtelijke rechtvaardigingsgrond ten behoeve van humanitaire interventie zonder mandaat van de Veiligheidsraad.

⁴⁸ De commissieleden Dr. E.P.J. Myjer en Prof. Dr. K.C. Wellens zijn -in afwijking van het gestelde in de hoofdttekst- van oordeel dat het ontbreken van een ondubbelzinnige formulering in het NAVO Strategisch Concept ten voordele van de geldende exclusiviteit van de bevoegde VN-organen in verband met de uitzonderingen op het geweldsverbod, het openlaten van de mogelijkheid om in afwijking daarvan 'non-article 5 operations' uit te voeren -die niet noodzakelijkerwijze alleen maar met toestemming van en onder gezag van de VN zouden kunnen plaatsvinden- op zichzelf al een ondermijning van de basisstructuur van het VN-Handvest vormt.

In dit verband speelt vooral artikel 2(2) VN-Handvest een rol. Daarin wordt staten de verplichting opgelegd te goeder trouw de verplichtingen na te komen, die uit het Handvest voortvloeien. Daarbij moet ook worden gedacht aan de normen op het terrein van de internationale bescherming en bevordering van de rechten van de mens. Deze laatste zijn nader vorm gegeven in onder meer de artikelen 55 en 56 van het Handvest, op basis waarvan in VN-verband een groot aantal verdragen en resoluties tot stand is gebracht. Kortheidshalve zij hier verwezen naar de Universele Verklaring van de Rechten van de Mens van 1948, de VN-Verdragen inzake Burger- en Politieke rechten en inzake Economische, Sociale en Culturele Rechten (beide van 1966) en de Genocide-conventie van 1948. Deze mensenrechteninstrumenten -en ook de daarin voorziene handhavingsprocedures- hebben, naast gewoonterechtelijke regels, een wezenlijke en onomkeerbare beperking aangebracht in beginsel van respect door de VN voor zaken die wezenlijk binnen de bevoegdheid van een staat vallen (artikel 2(7) VN Handvest).⁴⁹

Ook moet worden gewezen op de uitspraak van het Internationaal Gerechtshof in de 'Case Concerning the Barcelona Traction Light and Power Company, Ltd' (1970). Het Hof bepaalde daarin dat er bepaalde rechten zijn waarvoor geldt dat 'all states can be held to have a legal interest in their protection'.⁵⁰ Het gaat daarbij, aldus het Hof, om verplichtingen jegens alle staten (*erga omnes*). Daarnaast moet in dit verband worden gewezen op de Slotverklaring van de Tweede VN-Wereldconferentie Rechten van de Mens (Wenen 1993) waarin is bepaald dat de 'promotion of all human rights is a legitimate concern of the international community'. Een derde, zeer recent voorbeeld van uitholling van nationale rechtsmacht ten gunste van de rechten van de mens betreft voorts de uitspraak van de Britse Law Lords in maart 1999 inzake de uitlevering van de voormalig Chileense president Pinochet. Daarin werd bepaald dat het leerstuk van de staatsimmunität weliswaar nog steeds van grote betekenis is, maar niet kan worden ingeroepen om een (voormalig) staatshoofd af te schermen tegen strafrechtelijke vervolging voor 'international crimes in the highest sense', zoals foltering.

De plicht tot internationale bescherming en bevordering van rechten die aan individuele mensen en groepen mensen toekomen, heeft zich, naar het oordeel van de AIV en CAVV, aldus ontwikkeld tot een overal ter wereld geldende en op alle staten van de wereldgemeenschap rustende verplichting, zowel individueel als collectief. Deze plicht heeft in toenemende mate invloed op de ontwikkeling en werking van het volkenrecht, dat van origine vooral een interstatelijk karakter had en de staatsraison diende. Daarom achten de CAVV en AIV het zeer gewenst dat in het kader van het leerstuk van de staatsaansprakelijkheid wordt gestreefd naar de verdere ontwikkeling van een rechtvaardigingsgrond voor humanitaire interventie zonder mandaat van de Veiligheidsraad.

Het is van belang dat een toetsingskader voor ongeautoriseerde humanitaire interventie wordt opgesteld om een rechtvaardigingsgrond terzake te kunnen toetsen en aanvaarden. Niet kan worden uitgesloten dat een rechtvaardigingsgrond zich op termijn zelfs ontwikkelt tot een rechtsgrond. Ook in dit verband kan een toetsingskader een belangrijke rol spelen. De CAVV en AIV achten het noodzakelijk dat bij de opstelling en

49 Zie daarvoor onder andere: C. Flinterman, 'Soevereiniteit en de Rechten van de Mens', Inaugurale rede, Universiteit Utrecht, januari 2000

50 I.C.J. Reports 1970, pag. 33, paragraaf 33.

interpretatie van dit toetsingskader, op basis van de notie 'approximate treaty application',⁵¹ zo nauw mogelijk aansluiting wordt gezocht bij de procedures en mechanismen die voorzien zijn in het collectieve veiligheidssysteem van de VN zoals neergelegd in het VN-Handvest. In hoofdstuk 6 wordt nader ingegaan op het hier genoemde toetsingskader.

Met nadruk moet worden gewezen op het gevaar dat staten misbruik maken van ongeautoriseerde humanitaire interventie indien een recht daartoe uitdrukkelijk zou zijn erkend. Men kan derhalve niet verder gaan dan te erkennen dat sprake kan zijn van een situatie van zodanig ernstige schendingen van mensenrechten, dat een staat zich genoopt zou kunnen achten te interveniëren. De staat zal zich jegens de statengemeenschap, in het kader van de Veiligheidsraad of Algemene Vergadering van de VN, moeten verantwoorden voor de interventie. Deze interventie vormt immers in beginsel een ernstige inbreuk op de internationale rechtsorde, die slechts gerechtvaardigd kan worden geacht wanneer de interveniërende staat aannemelijk kan maken dat hij aldus moest handelen om een veel grotere inbreuk op dezelfde rechtsorde te voorkomen of in te dammen. In het geval de bevoegde VN-organen geen actie ondernemen of autoriseren waar deze als menselijkerwijs onontkoombaar wordt ervaren, zou de essentiële plicht tot internationale bescherming van fundamentele mensenrechten de juridische rechtvaardigingsgrond kunnen vormen voor het zich onttrekken aan het verbod op het gebruik van geweld zoals neergelegd in het VN-Handvest.

Het voorgaande laat onverlet dat aan dwangmaatregelen met gebruik van geweld door de Veiligheidsraad (geautoriseerde humanitaire interventie) of door een regionale instelling met autorisatie van de Veiligheidsraad de voorkeur moet worden gegeven, ook omwille van de dan geldende institutionele en procedurele waarborgen die mogelijk misbruik beogen te voorkomen. In dit verband kunnen nadere beginselen of uitgangspunten worden geformuleerd, waardoor meer duidelijkheid wordt geschapen over de verhouding tussen het behoud van internationale vrede en veiligheid enerzijds en de internationale bescherming van de rechten van de mens anderzijds.⁵² Dit kan formeel niet leiden tot een inperking van de bevoegdheid van de Veiligheidsraad tot de interpretatie van Artikel 39. Wel kan hiermee een bijdrage worden geleverd aan meer duidelijkheid en consistentie bij de interpretatie van dit artikel en aan het bewerkstelligen van een evenwicht tussen de diverse doelstellingen van de VN. Deze uitgangspunten zouden te zijner tijd kunnen worden neergelegd in een resolutie van de Veiligheidsraad of van de Algemene Vergadering.

51 Dit principe werd door Sir Hersch Lauterpacht als volgt omschreven:

"It is a sound principle of law that whenever a legal instrument of continuing validity cannot be applied literally owing to the conduct of one of the parties, it must, without allowing that party to take advantage of its own conduct, be applied in a way approximating most closely to its primary object. To do that is to interpret and to give effect to the instrument - not to change it." (Admissibility of Hearings of Petitioners by the Committee on South West Africa, Separate opinion of Sir Hersch Lauterpacht, I.C.J. Reports 1956, p. 46), aldus geciteerd in de Gabcikovo-Nagymaros case, 25 september 1997, paragraaf 75.

52 Zoals voorgesteld door de vertegenwoordiger van Zimbabwe tijdens de speciale zitting van de Veiligheidsraad van 31 januari 1992 gehouden op het niveau van staats- en regeringsleiders: Provisional Verbatim record S/PV.3046, 1992, p. 131.

VI De legitimiteit van humanitaire interventies

De overwegingen in het voorgaande hoofdstuk leidden tot de conclusie dat op dit moment geen grond bestaat om ten aanzien van de humanitaire interventie zonder autorisatie van de Veiligheidsraad uit te gaan van een rechtsgrondslag, of van een rechtsgrondslag in wording. Niettemin worden in dit advies voldoende morele, politieke en juridische redenen aanwezig geacht om te trachten een aparte rechtvaardigingsgrond te ontwikkelen voor dergelijke humanitaire interventies. Om te verhoeden dat staten deze rechtvaardigingsgrond misbruiken voor de verwezenlijking van nationale politieke aspiraties, dient men, zoals ook in hoofdstuk 5 gesteld, niet verder te gaan dan een algemene erkenning dat sprake kan zijn van situaties van dermate ernstige schendingen van de mensenrechten dat staten zich -als vreedzame middelen geen uitkomst meer bieden- genoodzaakt zien militair in te grijpen. Deze staten zullen zich dan ook in VN-verband openlijk moeten verantwoorden voor hun militaire interventie.

Het voorgaande impliceert dat bij gebleken gebrek aan overeenstemming onder de permanente leden van de Veiligheidsraad op andere wijze een zo groot mogelijke legitimering moet worden verkregen. Een staat of een aantal staten zou daarom allereerst via een ontwerp-resolutie toestemming van de VR moeten trachten te verkrijgen voor geweldgebruik voor humanitaire doeleinden. Deze ontwerp-resolutie moet zijn voorzien van zo nauwkeurig mogelijk omschreven 'terms of reference' (identiteit van staten aan wie machtiging wordt verleend, doelstellingen, omvang en de duur van de machtiging, rapportageverplichting). Mocht deze poging tot autorisatie falen, dan ligt het in de rede dat de kwestie aanhangig wordt gemaakt bij de Algemene Vergadering van de VN (AVVN), waarbij inspiratie kan worden ontleend aan de in de 'Uniting for Peace'-Resolutie⁵³ neergelegde procedure.⁵⁴ De AVVN dient een resolutie van aanbeveling terzake dan met minimaal tweederde meerderheid aan te nemen.⁵⁵

Uit de tekst van de 'Uniting for Peace'-resolutie blijkt dat de Algemene Vergadering op twee manieren bijeen kan worden geroepen als zij niet in zitting is. Ten eerste op verzoek van een meerderheid van de leden van de VN, ten tweede op verzoek van de Veiligheidsraad (aangezien dit een procedurele kwestie is, is het vetorecht niet van toepassing).⁵⁶ Naar de mening van CAVV en AIV verdient het de voorkeur dat de AVVN bijeenkomt op verzoek van de Veiligheidsraad. Politiek gezien geeft dit meer gezag aan de door de AVVN aan te nemen besluiten. Bovendien wordt zo de kern van het in de adviesaanvraag gesignaleerde probleem aangepakt: de gebruikmaking van het vetorecht

53 AVN-Res. 377(V), 3 november 1950.

54 De kernpassage van deze resolutie luidt als volgt:

'The General Assembly resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force, when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any nine members, or by a majority of the Members of the United Nations'.

daar waar actie geboden is, wordt vermeden.

De hier bepleite betrokkenheid van de AVVN ligt voor de hand, enerzijds vanwege de secundaire verantwoordelijkheid van dit hoofddorgaan van de VN voor de handhaving van de internationale vrede en veiligheid (naast de primaire rol voor de Veiligheidsraad), anderzijds vanwege de in het verleden herhaaldelijk getoonde bemoeienis van de AVVN met de mensenrechtenbescherming.

VI.1 Het gebruik van een toetsingskader

De tussenkomst van de Algemene Vergadering van de VN kan een maximale legitimatie verschaffen aan humanitaire interventies die niet door de Veiligheidsraad zijn geautoriseerd. Het blijft echter de vraag of via de Algemene Vergadering voldoende daadkracht en snelheid van handelen kan worden bewerkstelligd voor een constructief optreden bij elke humanitaire crisis. Ook is het niet zeker dat VN-lidstaten bij toekomstige humanitaire noodsituaties altijd de politieke bereidheid zullen opbrengen de mogelijkheid van interventies te bespreken in de Algemene Vergadering. In het licht van dergelijke kanttekeningen, kan niet worden uitgesloten dat zich in de toekomst weer humanitaire interventies zonder VR-mandaat en zonder AVVN-betrokkenheid zullen voordoen. Dergelijke interventies kunnen op morele en politieke gronden te verantwoorden zijn, maar missen -zoals eerder in dit advies uiteengezet- een duidelijke juridische basis. Niettemin achten de CAVV en AIV voldoende redenen aanwezig om, in het kader van de ver-

55 In uitvoering van het principe van de 'approximate treaty application' (zie noot 51), en gelet op het beschreven primaat van het systeem van collectieve veiligheid van de Verenigde Naties op basis van het Handvest en het daarmee samenhangende dwingende verbod op het gebruik van geweld achten twee commissieleden, Dr. E.P.J. Myjer en Prof. Dr. K.C. Wellens, gebruik van geweld voor humanitaire doeleinden, als bedoeld in beschreven gevallen, zonder dat daarvoor eerst autorisatie van de Veiligheidsraad is verkregen, eerst dan aanvaardbaar, wanneer niets onbeproefd is gelaten om binnen het systeem van het Handvest de daarvoor benodigde instemming naar de regels van het volkenrecht te verkrijgen. Deze stappen dienen toetsbaar te zijn. Primair dient de Veiligheidsraad zich uit te spreken over de geoorlooftheid van zulk gebruik van geweld voor humanitaire doeleinden door zijn oordeel te geven over een ingediende ontwerpresolutie, een substantiële resolutie. Indien een dergelijke resolutie wordt geblokkeerd door een veto, dient alvorens gebruik van geweld buiten de VN om (in bedoelde uitzonderlijke gevallen) toelaatbaar kan worden geacht de Algemene Vergadering zich daarover op basis van zij secundaire (gedeelde) verantwoordelijkheid voor vrede en veiligheid uit te spreken, nu naast de Veiligheidsraad de Algemene Vergadering het enige orgaan van de VN is dat bevoegd is deze uitzondering op het geweldsverbod namens de VN toe te staan (Zie N. White, 'The legality of bombing in the name of humanity', in: *Journal of Conflict and Security Law* 5 (2000), pag. 27 tm 43). Teneinde zich daarover uit te spreken dient de Algemene Vergadering in een speciale spoedzitting te worden bijeengeroepen door middel van een procedurele resolutie op basis van de 'Uniting for Peace'-resolutie (zie UNGA Resolution 377 A(V) 'Uniting for Peace' (3 november 1950), UN Doc. A/1775), waarvoor in de praktijk een meerderheid van negen leden van de VR voldoende is (Vgl. Zieger/Rhode/Brokelmann/Khan in B. Simma, 'The Charter of the United Nations, a Commentary' (1994), pag. 346: 'Hence' there now appears to exist a rule that the convening of special sessions is a procedural matter not affected by the right of veto.'). De heren Wellens en Myjer stellen zich op het standpunt dat uitsluitend het voorleggen van beide beschreven resoluties en zo mogelijk een oordelende resolutie van de Algemene Vergadering *de minimis* een bruikbaar procedureel en substantieel criterium oplevert voor gebruik van geweld buiten het Handvest om.'

56 In het verleden heeft de Veiligheidsraad een aantal keren een dergelijk verzoek tot de AVVN gericht, en daarbij hebben ook permanente leden tegen de ontwerpresolutie gestemd; bijv. tijdens de Suez-crisis (Frankrijk, Verenigd Koninkrijk) en in de kwestie Afghanistan (Sovjet Unie).

dere ontwikkeling van een gewoonterechtelijke rechtvaardigingsgrond, humanitaire interventies in extreme gevallen en bij wijze van 'nooduitgang'⁵⁷ toelaatbaar te achten. Voor de beoordeling van deze interventies vinden de AIV en CAVV ten minste een toetsingskader noodzakelijk.

Zulk een toetsingskader kan duidelijkheid verschaffen over de minimumvoorwaarden die in acht moeten worden genomen. Verder kan het de beraadslagingen in de VN (Veiligheidsraad danwel Algemene Vergadering) over de desbetreffende interventie helpen structureren. Ook biedt een toetsingskader aanknopingspunten voor de VN-statengemeenschap om eenmaal uitgevoerde ongeautoriseerde humanitaire interventies te beoordelen en in voorkomend geval te gedogen, indien voldoende aan 'legitimiteitsoverwegingen' tegemoet is gekomen.

Voorts kan een toetsingskader van belang zijn voor de verdere rechtsontwikkeling rond humanitaire interventie, omdat het een handreiking biedt om een aparte juridische rechtvaardigingsgrond voor ongeautoriseerde humanitaire interventie -waarbij de nood van de humaniteit de wet van het geweldsverbod doorbreekt- door de statengemeenschap aanvaard te krijgen. De CAVV en AIV achten het mede daarom van groot belang dat bij de opstelling en interpretatie van een toetsingskader zo nauw mogelijk aansluiting wordt gezocht bij de procedures en mechanismen die voorzien zijn in het collectieve veiligheidssysteem van de VN zoals neergelegd in Hoofdstuk VII van het VN-Handvest, en dit op basis van de notie van de 'approximate treaty application'.

Overigens kan niet worden uitgesloten dat de ontwikkeling van een toetsingskader ook leidt tot incorporatie van de daarin gestelde uitgangspunten en normen in de overwegingen van de Veiligheidsraad zelf. Een dergelijk gebruik van een toetsingskader voor de eigen beraadslagingen van de Veiligheidsraad lijkt bovendien nu al bespreekbaar.⁵⁸ Het gebruik van een toetsingskader als 'richtsnoer' zou de debatten in de Veiligheidsraad in de aanloop naar interventies zeker kunnen structureren. Benadrukt moet echter worden dat een dergelijk toetsingskader nog geen garantie biedt voor een slagvaardiger besluitvorming van de Veiligheidsraad en nauwelijks uitkomst biedt in de gevallen waarin de Veiligheidsraad op politieke gronden toch al niet tot besluitvorming kan of wil komen.

VI.2 Aanzet tot een toetsingskader

De AIV en CAVV kiezen voor humanitaire interventies zonder autorisatie van de Veiligheidsraad nadrukkelijk voor het uitwerken van een toetsingskader dat als minimum voorwaarde voor ongeautoriseerde humanitaire interventies in acht moet worden genomen, en niet louter voor een lijst van losse criteria. De gedachte hierachter is dat interveniërende staten niet alleen moeten voldoen aan criteria, maar ook aan een aantal procedurele waarborgen en inhoudelijke afwegingen. Tegen deze achtergrond kunnen vier kernvragen voor een toetsingskader worden onderscheiden, welke hierna afzonderlijk zullen worden behandeld.

⁵⁷ Danish Institute of International Affairs, 'Humanitarian Intervention. Legal and Political Aspects', Kopenhagen 1999, p. 116.

⁵⁸ Niet uitgesloten kan worden dat dit onderwerp in het najaar van 2000 aan de orde komt gedurende de 'Millennium Summit' van de Verenigde Naties, voorafgaande aan de 55e Algemene Vergadering.

1) Welke staten mogen overgaan tot een humanitaire interventie?⁵⁹

- a) De bescherming van een ruim geïnterpreteerd recht op leven behoort tot de categorie verplichtingen (*obligationes erga omnes*) bij de naleving waarvan iedere staat wordt geacht een juridisch belang te hebben. Hoewel het juridisch belang bij de naleving van het recht op leven dus aan elke staat toekomt, zal de operationele uitoefening van de humanitaire interventie in de praktijk in het algemeen steeds worden bepaald door de algemene politieke context en de situatie die de aanleiding vormt voor het militaire optreden. In dit verband menen de CAVV en AIV dat mag worden verwacht dat de staten die tot humanitaire interventie overgaan partij zijn bij regionale en universele verdragen ter bescherming van de mensenrechten. Het is voorts vanzelfsprekend dat de interveniënde staten op geen enkele wijze zelf betrokken kunnen zijn bij de ernstige schendingen van fundamentele mensenrechten ter bestrijding waarvan wordt geïntervenieerd.
- b) Met inachtneming van de andere punten van het hier beschreven toetsingskader zou voorts om operationele redenen de voorkeur kunnen worden gegeven aan de betrokkenheid van landen in de regio, omdat zij feitelijk in staat zijn tijdig tot de humanitaire interventie over te gaan danwel essentiële logistieke ondersteuning te verlenen. Er dient evenwel voor te worden gewaakt dat hun geografische nabijheid niet risico's van misbruik in de hand werkt.
- c) Het verdient, mede in het licht van het voorgaande, de voorkeur dat de humanitaire interventie wordt uitgevoerd door een groep van staten die optreden in het kader van een internationale organisatie. Verwacht mag worden dat de voorwaarden en waarborgen van een toetsingskader meer kans maken in acht te worden genomen in een institutioneel kader dan wanneer een individuele staat tot de militaire operatie overgaat. Procedureel verdient het de voorkeur om te pogen de collectieve interventie binnen of met steun van een regionale organisatie in het kader van Hoofdstuk VIII VN-Handvest te laten plaatsvinden.

2) Wanneer mogen staten overgaan tot een humanitaire interventie?

- a) Er moet sprake zijn van een situatie, waarin fundamentele mensenrechten op grootschalige wijze ernstig (dreigen te) worden geschonden en ingrijpen urgent is. Hierbij dient primair gedacht te worden aan aantastingen door de legitieme regering van een ruim geïnterpreteerd recht op leven. De hier gehanteerde formulering bevat zowel een kwalitatief element ('ernstig' en 'fundamenteel') als een kwantitatief element ('grootschalig'). Onder ernstige schendingen van fundamentele mensenrechten vallen niet alleen uitroeiing door middel van standrechtelijke executies, gerichte gewapende of politionele aanvallen op willekeurige burgerdoelen, maar ook folteringen, gijzelingen, verkrachtingen en ernstige aantastingen van de menselijke waardigheid zoals vernederende behandeling.
- b) Met betrekking tot de -in sommige opzichten verder reikende- 'misdrijven tegen de menselijkheid', verwijzen de AIV en CAVV uitdrukkelijk naar de Statuten van de Joegoslavië- en Rwanda Tribunalen en naar artikel 7 van het Statuut van Rome voor een Internationaal Strafhof (zie bijlage 3). Niet alle schendingen als omschreven in

⁵⁹ Met 'staten' wordt in het kader van dit advies in het bijzonder bedoeld op 'een staat danwel een groep van staten'.

artikel 7 zijn op zichzelf voldoende aanleiding om over te gaan tot humanitaire interventie. Bij zo'n interventie dient immers ook sprake te zijn van een aantal bijkomende voorwaarden, zoals de urgentie van ingrijpen. Niettemin is het van groot belang dat 'grootschaligheid' en 'het systematische karakter' van schendingen van mensenrechten geen cumulatieve voorwaarden meer zijn voor internationaal ingrijpen. Daarnaast benadrukken de AIV en CAVV dat ernstige en grootschalige schendingen van de fundamentele mensenrechten ook kunnen worden begaan door niet-statelijke actoren en dus de aanleiding kunnen vormen tot een humanitaire interventie.

- c) De legitieme, internationaal erkende regering is niet in staat of bereid om adequate zorg aan de slachtoffers te verlenen. Zij doet geen beroep op derde staten of internationale organisaties en verleent deze geen toegang tot haar grondgebied. Dat autoriteiten wel bereid maar niet in staat zijn om de rechtsorde te handhaven, en dus grootschalige schendingen van mensenrechten te voorkomen, wordt overigens door de Secretaris-Generaal vermeld als één van de factoren waarmee de Veiligheidsraad rekening zou moeten houden bij beslissingen terzake.⁶⁰ Ook zijn situaties denkbaar van volledige afwezigheid van elke vorm van regering of andere gezagsuitoefening. De in het volkenrecht noodzakelijke toestemming aan vreemde troepen om het grondgebied te betreden kan dan niet worden verleend. Ook zal een bezettingsmacht in het algemeen geen toestemming verlenen voor een humanitaire interventie.
- d) Bij humanitaire interventie kan het zowel gaan om een interne crisis als om een in hoofdzaak interne humanitaire noodsituatie met beperkte (grensoverschrijdende vluchtelingenstromen), dan wel omvangrijke (destabilisering van de regio) internationale gevolgen. Een aantoonbare dreiging van een intern of internationaal gewapend conflict volstaat op zichzelf niet om te voldoen aan de voorwaarden voor humanitaire interventie. Anderzijds is een bedreiging van de internationale vrede en veiligheid als gevolg van de ernstige en grootschalige schendingen van fundamentele mensenrechten geen afzonderlijke voorwaarde.
- e) De inzet van militaire middelen is onontkoombaar om de humanitaire noodsituatie in kwestie alsnog te doen keren of in te dammen; de overheersende doelstelling van de interventie moet dan wel humanitair te zijn. Dit wil zeggen dat de actie moet zijn gericht op het voorkomen of het beëindigen van de hiervoor beschreven humanitaire noodsituatie. De interveniërende staat dient vooraf de humanitaire doelstellingen van de interventie duidelijk kenbaar te maken aan de internationale gemeenschap en aan de staat op het grondgebied waarvan de interventie zal plaatsvinden, teneinde het risico van een beroep op Artikel 51 VN-Handvest zoveel mogelijk te beperken, en om controle achteraf door de internationale gemeenschap mogelijk te maken. Het feit dat overwegingen van nationaal (veiligheids-)belang kunnen meespelen bij de beslissing tot interventie over te gaan, laat onverlet dat deze duidelijk ondergeschikt dienen te zijn aan de humanitaire doelstelling van de interventie. Idealiter vallen bevordering van de internationale rechtsorde, inclusief handhaving van mensenrechten, en nationaal belang samen.

60 Paragraaf 40 van de Recommendations geformuleerd door de Secretaris-Generaal in: Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, S/1999/957. Zie ook VR-Resolutie 1265(1999) van 17 september 1999.

f) De interveniërende staat heeft te goeder trouw tevergeefs alle in aanmerking komende niet-militaire middelen uitgeput om op te treden tegen de staat die de mensenrechten schendt. Dit betreft onder meer pogingen de humanitaire crisis in kwestie te bezweren door ondersteuning van de 'civil society' van deze staat. Voorts moet worden gedacht aan pogingen in het kader van regionale of internationale organisaties, belast met toezicht op naleving van mensenrechten. Ook gaat het hierbij om het (laten) indienen van een ontwerpresolutie bij de VR. Indien onder de permanente leden van de Veiligheidsraad geen overeenstemming is te bereiken, ligt het in de rede dat de eerder in dit hoofdstuk beschreven procedure wordt gevolgd.⁶¹ Hierbij dient ook rekening te worden gehouden met een mogelijke snelle verslechtering van de humanitaire noodsituatie, die soms een onverwijlde militaire inzet noodzakelijk maakt. Te lang wachten om te bezien of het gehele niet-militaire scala aan mogelijkheden is uitgeput, kan zelfs een averechts effect bewerkstelligen, omdat dit in de crisisgebieden in kwestie de perceptie kan doen postvatten van een aarzende internationale gemeenschap. Zelfs militaire middelen bieden geen uitkomst meer als een crisis eenmaal tot een onbeheersbare chaos is geëscaleerd.

3) *Waaraan hebben staten zich te houden tijdens de uitvoering van de humanitaire interventie?*

a) De humanitaire interventie dient proportioneel te zijn ten opzichte van de ernst van de situatie. Dit betreft voor een belangrijk deel de wijze van gebruik van of dreiging met geweld. De regels van het humanitaire recht zijn hierbij onverkort van toepassing. In dit verband kan ervan worden uitgegaan dat de Conventies van Genève van 1949 gewoonterecht zijn en onverkort dienen te worden nageleefd. Indien wordt geïntervenieerd door een groep van staten die niet alle partij zijn bij de Aanvullende Protocollen van 1977 en andere humanitairrechtelijke verdragen⁶² moeten de regels van het gewoonterecht terzake in acht worden genomen.⁶³ Staten die het proportionaliteitsvereiste niet in acht nemen, kunnen worden geconfronteerd met onvoorziene juridische complicaties.⁶⁴

b) Een tweede vereiste van proportionaliteit betreft de gevolgen voor de internationale vrede en veiligheid. Indien de ernstige en grootschalige schendingen van fundamentele mensenrechten op zichzelf of door hun gevolgen een bedreiging van internationale vrede en veiligheid vormen, mag de humanitaire interventie zelf geen grotere bedreiging voor de internationale vrede en veiligheid inhouden. In andere gevallen,

61 Te weten: ontwerpresolutie in de VR voor machtiging van geweldsgebruik, eventueel gevolgd door inschakeling van de AVVN, geïnspireerd op de in de 'Uniting for Peace' Resolutie neergelegde procedure. Zie evenwel het voorbehoud van Prof. Dr. K.C. Wellens en Dr. E.P.J. Myjer, vermeld in noot 55.

62 Onder meer het Cultuurgoederenverdrag van 1954 met protocollen, Dubieuze Wapensverdrag van 1980 met protocollen, Ottawaverdrag inzake Landmijnen van 1997 en het Statuut voor het Internationaal Strafhof van 1998.

63 In dit verband verwijzen CAVV en AIV naar een in 2001 te verschijnen onderzoek van het Internationaal Comité van het Rode Kruis naar regels van gewoonterecht binnen het humanitair recht.

64 Dit zou niet alleen de mogelijkheid openen voor de staat op het grondgebied waarvan de interventie plaatsvindt een beroep te doen op Artikel 51 van het VN-Handvest, maar tevens om een eis tot schadevergoeding in te dienen.

waarbij geen vooraf bestaande bedreiging bestaat van internationale vrede en veiligheid door de schendingen van de rechten van de mens of de gevolgen ervan, kan de humanitaire interventie zelf door het enkele uitvoeren ervan een bedreiging vormen voor de internationale vrede en veiligheid. De CAVV en AIV erkennen dat zich hierbij een dilemma kan voordoen: het gebruik van geweld of het dreigen ermee moet krachtig genoeg zijn om het gewenste effect te sorteren, maar dient tevens voldoende gedoseerd te zijn om geen aanleiding te geven tot het destabiliseren van de regionale verhoudingen. Een dergelijke destabilisering kan immers een nog massaler verlies aan mensenlevens tot gevolg hebben dan het verlies dat de inzet van interventie vormt.

c) Het effect van de humanitaire interventie op de staatsstructuur van het land waartegen die interventie is gericht, dient te worden beperkt tot hetgeen noodzakelijk is voor het bereiken van het humanitaire doel. Dit kan niettemin betekenen dat de humanitaire interventie de structuur van een staat en vormen van gezagsuitoefening beoogt te wijzigen, waardoor wordt bewerkstelligd dat in de toekomst de rechten van de mens worden gehandhaafd (onder andere door vrije verkiezingen). De rol van nationale overheden bij grootschalige schendingen van de fundamentele mensenrechten in de jaren negentig is in sommige gevallen dermate groot geweest dat het einde van dergelijke schendingen slechts te bewerkstelligen was door het zittende regime zelf aan te pakken.

d) De staten die tot humanitaire interventie overgaan rapporteren onmiddellijk en uitvoerig aan de Veiligheidsraad over de aanleiding, omvang, verloop en vermoedelijke duur van de operatie.

4) Wanneer en op welke wijze dienen staten hun humanitaire interventie te beëindigen?

a) De interveniërende staten dienen er zich bij voorbaat toe te verbinden de humanitaire interventie op te schorten zodra de betrokken staat bereid en in staat is om zelf een einde te maken aan de grootschalige schendingen van de mensenrechten, of de Veiligheidsraad of een regionale organisatie met autorisatie van de Veiligheidsraad overgaat tot het nemen van dwangmaatregelen met gebruik van geweld voor dezelfde humanitaire doeleinden.

b) De interveniërende staten dienen hun interventie te beëindigen wanneer het doel van de humanitaire interventie, namelijk het stopzetten van de schendingen van de mensenrechten, is bereikt. Ook hierbij speelt het proportionaliteitsvereiste een rol, hoewel veel zal afhangen van de omstandigheden. Immers, in situaties van ernstige en grootschalige schendingen van mensenrechten ontbreken veelal de voorwaarden om op korte termijn deze rechten op effectieve wijze te kunnen waarborgen. Enerzijds kan de interventie dus niet voortijdig worden stopgezet en dienen voorwaarden tot een proces van 'post conflict peace building' aanwezig te zijn. Anderzijds mag de operatie een redelijke duur niet overschrijden teneinde de humanitaire doelstelling ervan niet in gevaar te brengen.

VII Conclusies en aanbevelingen

In vele wetenschappelijke studies en tijdens vele internationale congressen is de afgelopen jaren uitgebreid stilgestaan bij de problematiek van de humanitaire interventie. Deze inspanningen hebben echter niet geleid tot een eensluidende en ondubbelzinnige beantwoording van de vraag of, -en zo ja, onder welke omstandigheden en condities- een gewapend ingrijpen ten gunste van herstel van respect voor de rechten van de mens geboden en legitiem is. Ook de gevallen waarbij staten zich al dan niet tijdens gewapende interventies hebben beroepen op humanitaire gronden, hebben onvoldoende bijgedragen tot een verduidelijking van het vraagstuk.

Een heldere analyse van de problematiek van de humanitaire interventie vergt een duidelijke definiëring van het onderwerp in kwestie. De zeer uiteenlopende interpretaties van het begrip 'humanitaire interventie' leidden in het verleden vaak tot spraakverwarring. De strikte definitie van humanitaire interventie luidt:

'De dreiging met of het gebruik van geweld door één of meer staten, eventueel in het kader van een internationale organisatie, binnen het territoir van een andere staat:

- a) met het doel het beëindigen van bestaande, dan wel het voorkomen van dreigende grootschalige ernstige schendingen van fundamentele mensenrechten, in het bijzonder het recht op leven van individuen, ongeacht hun nationaliteit;
- b) zonder voorafgaande autorisatie van de Veiligheidsraad en zonder toestemming van de legitieme regering van de staat, op het grondgebied waarvan de interventie plaatsvindt.'

Hoewel het begrip 'humanitaire interventie' dus alleen betrekking zou moeten hebben op het gebruik van geweld voor humanitaire doeleinden *zonder* autorisatie van de Veiligheidsraad, wordt in het dagelijkse spraakgebruik echter ook het gebruik van geweld voor humanitaire doeleinden *met* VR-autorisatie tot humanitaire interventie bestempeld. In het licht daarvan geven CAVV en AIV er de voorkeur aan een tweedeling te hanteren tussen 'humanitaire interventie met een mandaat van de Veiligheidsraad' en 'humanitaire interventie zonder mandaat van de Veiligheidsraad'.

Algemeen kader

Zowel in volkenrechtelijke, als in morele en politieke zin vereist een beoordeling van humanitaire interventie dat men rekening houdt met zowel het belang van het verbod op het gebruik van geweld tussen staten en het respect voor de territoriale integriteit, als met dat van de verplichting tot handhaving en bevordering van de rechten van de mens. *Naar het oordeel van de AIV en CAVV vormen beide een essentieel onderdeel van de internationale statelijke ordening, zoals die is gebaseerd op het VN-Handvest; beide zijn ook van groot belang voor de stabiliteit en de duurzaamheid van die ordening.*

In de loop van de jaren negentig manifesteerde zich echter een steeds sterkere spanning tussen enerzijds het verbod op het gebruik van of de dreiging met geweld, en anderzijds de verplichting tot handhaving en bevordering van de rechten van de mens. Dit is niet alleen het gevolg van de toegenomen mogelijkheden tot gewapende interventie als gevolg van het einde van de Koude Oorlog. Ten minste zo belangrijk is de tendens in de internationale praktijk meer en meer rekening te houden met de belangen en rechten van het individu, en niet alleen met de soevereiniteit van de staat. De staat wordt in dit opzicht in toenemende mate door internationale fora op zijn verantwoordelijkheden aangesproken. Mede als gevolg daarvan is de staatssoevereiniteit, zoals die bij het opstellen van het VN-Handvest in 1945 als uitgangspunt werd genomen, in praktische zin sterk van karakter aan het veranderen. Tegelijkertijd bleef het verbod van of

de dreiging met geweld stevig verankerd in het VN-handvest en is dit een belangrijke pijler gebleken van de stabiliteit in de interstatelijke verhoudingen.

Dergelijke ontwikkelingen spelen zich af tegen de achtergrond van een veranderend internationaal veiligheidsbeeld als gevolg van het einde van de Koude Oorlog. Veel conflicten van de jaren negentig hangen samen met het uiteenvallen van staten; in sommige landen nemen regeringen hun toevlucht tot rigoureuze middelen om de eenheid te bewaren. Omdat de gehele samenleving bij een dergelijk conflict betrokken raakt, is niet meer duidelijk wie tot de strijdende partijen behoort. Oorlogvoering en humanitaire crises zijn zodoende steeds minder uit elkaar te houden. Vanwege de enorme kosten die zijn gemoeid met een militaire interventie, de onzekerheid van een succesvolle afloop, de risico's die ingezette militairen lopen en de beperkte militaire middelen, zijn veel regeringen, die over het vereiste militaire potentieel kunnen beschikken, terughoudend om bij dergelijke conflicten in te grijpen. *In dit opzicht concluderen AIV en CAVV dat er weliswaar sprake is van een toenemend belang in de internationale betrekkingen van de rechten van de mens, maar dat dit toenemend belang niet heeft geleid tot een evenredig grotere bereidheid tot militair ingrijpen, anders dan onder zeer uitzonderlijke en ernstige omstandigheden.*

De Veiligheidsraad

Het einde van de Koude Oorlog heeft ook grote invloed gehad op de besluitvorming in de Veiligheidsraad. Deze is bereid gebleken tot het extensief interpreteren van zijn bevoegdheden onder Hoofdstuk VII van het VN-Handvest en is daarmee niet alleen interstatelijk geweld, maar ook grootschalige mensenrechtenschendingen gaan beschouwen als een bedreiging voor de internationale vrede en veiligheid. Tegelijkertijd moet echter worden geconstateerd dat het politieke karakter van de besluitvorming in de Veiligheidsraad en de afhankelijkheid van de bereidheid van de lidstaten om troepen ter beschikking te stellen, een selectiviteit in de hand werken, die ertoe leidt dat de Raad niet bij elke humanitaire noodsituatie in gelijke mate kan of wil ingrijpen. *De AIV en CAVV zijn tot de conclusie gekomen dat geen bevredigend antwoord kan worden gegeven op de vraag van de Minister van Buitenlandse Zaken hoe het vermogen van de VR kan worden vergroot om daadkrachtiger op te treden bij humanitaire noodsituaties, tenminste als men tegelijkertijd het draagvlak van de Veiligheidsraad in stand wenst te houden.*

De beraadslagingen die in VN-verband worden gehouden over de hervorming van de Veiligheidsraad, spitsen zich toe op de uitbreiding van het ledental van de Raad en op de inperking van het vetorecht. Gezien de uiterst moeizame onderhandelingen tussen de VN-lidstaten is niet te verwachten dat deze beraadslagingen binnen afzienbare tijd tot resultaten leiden. *De CAVV en AIV menen bovendien dat een uitbreiding van het ledental van de Veiligheidsraad en een inperking van het vetorecht niet per definitie ook tot een grotere daadkracht van de Veiligheidsraad leiden.* Hoewel dergelijke aanpassingen de legitimiteit van de Veiligheidsraad bij de VN-lidstaten kunnen vergroten, kunnen deze tegelijkertijd de besluitvorming aanzienlijk compliceren. Inperking van het vetorecht zou er daarnaast juist toe kunnen leiden dat de permanente leden de Veiligheidsraad per saldo een steeds minder aantrekkelijk forum zouden vinden voor de afstemming van hun acties.

Een rechtsgrondslag voor ongeautoriseerde humanitaire interventie?

Of de discussies over de hervorming van de Veiligheidsraad vruchten zullen afwerpen of niet, verwacht kan worden dat de Veiligheidsraad ook in de toekomst om politieke redenen niet in elke humanitaire noodsituatie met geweld zal willen of kunnen ingrijpen. Daarmee blijft de vraag actueel of staten op grond van humanitaire overwegingen

gerechtigd zijn zonder toestemming van de Veiligheidsraad met geweld in te grijpen in andere staten. De CAVV en AIV zijn tot de conclusie gekomen dat het internationale recht hiervoor thans geen rechtsgrondslag biedt, en dat een dergelijke rechtsgrondslag zich ook nog niet ontwikkelt. Tegelijk menen beide adviesraden dat men niet meer voorbij kan gaan aan de steeds krachtiger gevoelde noodzaak van optreden in situaties waarin fundamentele rechten van de mens op grote schaal (dreigen te) worden geschonden, ook als de Veiligheidsraad hierover geen actie onderneemt. In dit verband hechten de AIV en CAVV grote waarde aan het groeiende belang van de plicht tot internationale bescherming en bevordering van de fundamentele mensenrechten.

Een volkenrechtelijke rechtvaardigingsgrond?

Met betrekking tot de vraag van de Minister van Buitenlandse Zaken hoe het concept van humanitaire interventie duidelijker volkenrechtelijk vorm kan worden gegeven, verwijzen de AIV en CAVV naar het internationaal gewoonterecht, waarin wordt erkend dat in sommige omstandigheden het onrechtmatige karakter aan bepaalde handelingen van een staat kan worden ontnomen, dan wel voor die handelingen geen juridische aansprakelijkheid doen ontstaan, hetgeen in wezen overeenkomt met het uitgangspunt van 'nood breekt wet'. Deze zogeheten 'rechtvaardigingsgronden' zijn door de International Law Commission van de Verenigde Naties in het kader van haar discussie over staatsaansprakelijkheid neergelegd in een aantal ontwerp-artikelen. De CAVV en AIV achten het wenselijk dat -op basis van het groeiende belang van de plicht tot internationale bescherming en bevordering van de mensenrechten- in het kader van het leerstuk van de staatsaansprakelijkheid een aparte rechtvaardigingsgrond voor humanitaire interventie wordt uitgewerkt.

De CAVV en AIV onderkennen dat een uitdrukkelijk erkende rechtvaardigingsgrond voor humanitaire interventies zonder Veiligheidsraadsmandaat door staten kan worden misbruikt voor de verwezenlijking van nationale politieke aspiraties. Dit gebiedt dat men niet verder gaat dan een erkenning dat in algemene zin sprake kan zijn van situaties van zodanig ernstige en grootschalige schendingen van de mensenrechten dat staten zich genooddakt voelen militair in te grijpen. De interveniërende staten zullen zich dan ook in VN-verband moeten verantwoorden voor hun militaire interventie. Deze vormt immers in volkenrechtelijke zin nog steeds een inbreuk op de internationale rechtsorde. Zo'n inbreuk is naar het oordeel van de AIV en CAVV slechts dan gerechtvaardigd wanneer interveniërende staten aannemelijk kunnen maken dat zij aldus moesten handelen om een veel grotere inbreuk op dezelfde rechtsorde te voorkomen of tegen te gaan.

Het voorgaande impliceert dat bij gebleken gebrek aan overeenstemming onder de permanente leden van de Veiligheidsraad op andere wijze een zo groot mogelijke legitimering moet worden verkregen. De meest zuivere procedure daarvoor veronderstelt dat staten allereerst via een ontwerpresolutie de formele toestemming van de VR trachten te verkrijgen voor geweldgebruik voor humanitaire doeleinden. Deze ontwerpresolutie moet voorzien zijn van zo nauwkeurig mogelijk omschreven 'terms of reference'. Mocht een poging tot autorisatie door de Veiligheidsraad falen, dan ligt het in deze benadering in de rede dat de kwestie aanhangig wordt gemaakt bij de AVVN, waarbij de in de 'Uniting for Peace'-Resolutie neergelegde procedure kan worden gehanteerd als bron van inspiratie.

Een toetsingskader

De inschakeling van de Algemene Vergadering van de VN draagt bij aan het verschaffen van een maximale legitimatie voor humanitaire interventies die niet door de Veiligheidsraad zijn geautoriseerd. De procedure biedt echter niet altijd uitkomst. Daarom kan niet worden uitgesloten dat zich ook in de toekomst weer humanitaire interventies zonder VR-mandaat en zonder betrokkenheid van de AVVN voordoen. Dergelijke interventies

kunnen op morele en politieke gronden gerechtvaardigd zijn, maar missen vooralsnog een duidelijke juridische basis. Niettemin achten de CAVV en AIV voldoende redenen aanwezig om, in afwachting van de verdere ontwikkeling van een volkenrechtelijke rechtvaardigingsgrond, humanitaire interventies in extreme gevallen en bij wijze van 'nooduitgang' toelaatbaar te achten. Voor de beoordeling van deze interventies vinden de AIV en CAVV ten minste een toetsingskader noodzakelijk. Dit toetsingskader verschaft duidelijkheid over de minimumvoorwaarden die staten in acht dienen te nemen. Verder kan zo'n toetsingskader de beraadslagingen in de VN over de desbetreffende interventie helpen structureren. Ook biedt het aanknopingspunten voor de VN-statengemeenschap om eenmaal uitgevoerde humanitaire interventies zonder mandaat van de Veiligheidsraad te beoordelen en te gedogen als voldoende aan 'legitimitéitsoverwegingen' tegemoet is gekomen. Naar het oordeel van de CAVV en AIV kan een toetsingskader, indien strikt in acht genomen, bevorderen dat een aparte volkenrechtelijke rechtvaardigingsgrond voor ongeautoriseerde humanitaire interventie door de statengemeenschap aanvaard wordt, waarbij de nood van de humaniteit de wet van het interstatelijk geweldsverbod doorbreekt.

Overigens menen de AIV en CAVV dat niet kan worden uitgesloten dat de ontwikkeling van het hier beschreven toetsingskader ook leidt tot incorporatie van de daarin gestelde uitgangspunten en normen in de overwegingen van de Veiligheidsraad. Dit zou de debatten in de Veiligheidsraad in de aanloop naar interventies zeker kunnen helpen structureren, maar biedt geen garantie voor een slagvaardiger besluitvorming van de Veiligheidsraad, en nauwelijks uitkomst in de gevallen waarin de Veiligheidsraad op politieke gronden toch al niet tot besluitvorming kan of wil komen.

In het toetsingskader dat dit advies voor ogen heeft, onderscheiden de AIV en CAVV vier kernvragen, welke in het advies ieder afzonderlijk zijn uitgewerkt:

- 1) Welke staten mogen overgaan tot een humanitaire interventie?
- 2) Wanneer mogen staten overgaan tot een humanitaire interventie?
- 3) Waaraan hebben interveniërende staten zich te houden?
- 4) Wanneer en hoe dienen staten een humanitaire interventie te beëindigen?

Beide adviesraden benadrukken dat dit toetsingskader in voorkomende gevallen als minimum voorwaarde voor een ongeautoriseerde humanitaire interventie in acht moet worden genomen.

Nederlandse inzet

In zijn adviesaanvraag verzoekt de Minister van Buitenlandse Zaken de AIV en CAVV met betrekking tot het vraagstuk van de humanitaire interventie zowel te kijken naar hetgeen uit politiek en moreel oogpunt wenselijk is, als naar hetgeen uit een oogpunt van het volkenrecht mogelijk is. Zoals eerder in dit advies is uiteengezet, achten de CAVV en AIV het allereerst wenselijk dat voor humanitaire interventie zonder mandaat van de Veiligheidsraad een aparte rechtvaardigingsgrond wordt ontwikkeld, die brede internationale steun verwerft en het toegenomen internationale belang van de rechten van de mens duidelijk reflecteert. In dit verband suggereren de AIV en CAVV dat Nederland de ontwikkeling van zulk een rechtvaardigingsgrond, in samenhang met een toetsingskader voor humanitaire interventies, actief bevordert.

De AIV en CAVV hebben eerder in dit advies voorgesteld een zo groot mogelijke legiti-mering voor humanitaire interventies trachten te bereiken door een procedure te hante-ren waarbij allereerst een ontwerpresolutie aan de Veiligheidsraad wordt aangeboden. Bij gebleken onoverbrugbare onenigheid onder de permanente leden van de Veiligheids-raad ligt het in de rede de kwestie vervolgens aanhangig te maken bij de Algemene

Vergadering van de VN, waarbij de 'Uniting for Peace'-procedure als bron van inspiratie kan dienen. *De AIV en CAVV menen dat Nederland nader kan onderzoeken of -en hoe- deze procedure zodanig vorm kan worden gegeven dat deze politiek aanvaardbaar is voor een ruime meerderheid van de VN-lidstaten en niet leidt tot vertraging -of zelfs verlamming- van de VN-besluitvorming.*

Wat de ontwikkeling van een toetsingskader voor humanitaire interventies betreft, kunnen naar de mening van de AIV en CAVV door Nederland in principe twee strategieën worden gevolgd:

- 1) *Ten eerste achten de CAVV en AIV het van belang dat Nederland, samen met gelijkgezinde landen, in Westelijke kring (EU, NAVO, mogelijk ook OVSE) overeenstemming poogt te bereiken over een zelf te hanteren toetsingskader langs de in dit advies geschetste lijnen. Daarbij zouden criteria, procedurele waarborgen en inhoudelijke afwegingen voor humanitaire interventies zoveel mogelijk voor de eigen besluitvorming (en in tweede instantie in de afwegingen van deze regionale organisaties in VN-debatten) kunnen worden benut.*
- 2) *Ten tweede zou Nederland op daartoe geschikte momenten discussies over humanitaire interventie en een toetsingskader in VN-verband moeten bevorderen, bijvoorbeeld in de Veiligheidsraad, andere competente VN-fora ('Open Ended Working Group', Special Committee on Peacekeeping) of via een informele groep van gelijkgezinde landen ('Friends of ...'). Vooralsnog kunnen discussies over humanitaire interventie niet worden losgemaakt van de 'geest van Kosovo' en de desbetreffende gevoeligheden van een aantal invloedrijke VN-lidstaten, zoals Rusland en China. Mede gezien de politieke debatten en de volkenrechtelijke complicaties -waarvan dit advies ook getuigt- die op de NAVO-acties volgden, mag voorts worden verondersteld dat veruit de meeste VN-lidstaten voor internationaal gewapend ingrijpen verre de voorkeur geven aan de ondubbelzinnige rechtsgrond en de krachtige politieke basis van een mandaat van de Veiligheidsraad.*

Wat de VN-discussies over de hervorming van de Veiligheidsraad betreft, benadrukken de CAVV en AIV dat de kans klein is dat deze zullen leiden tot aanbevelingen die de slagvaardigheid van de Raad vergroten. Dit laat onverlet dat beide adviesraden de onverminderde Nederlandse betrokkenheid bij deze VN-discussies gewenst achten, met name gezien het belang ervan in het kader van de beraadslagingen over de bredere VN-hervormingen.

De behoedzaamheid die uit het voorgaande spreekt, laat onverlet dat de internationale gemeenschap op het gebied van 'early warning', 'early action' en preventie van humanitaire crises nog veel werk kan verzetten, en dat Nederland daarbij een eigen rol kan vervullen. Bij preventie kan allereerst worden gedacht aan verdere uitwerking en toespitsing van de doelstellingen van het Nederlandse buitenlands beleid op de gebieden van democratisering, de bevordering van de mensenrechten, goed bestuur, armoedebestrijding en sociaal-economische ontwikkeling. Daarnaast zijn er specifieke vormen van internationale assistentie denkbaar die in bepaalde gevallen de problematiek van de zwakke staten kan helpen aanpakken. Gedacht kan worden aan assistentie bij de ontwikkeling van staatsopbouw, van vormen van regionale decentralisatie en een zekere mate van culturele autonomie. Ook kunnen ondersteuning van een onafhankelijke pers en maatregelen tegen media die tot haat oproepen, in dit verband van belang zijn.

Dergelijke elementen vallen buiten het beslag van dit advies, maar de AIV en CAVV stellen vast dat het belang moeilijk kan worden overschat van een ontschot en integrale benadering van buitenlands beleid, waarbij -mede gelet op artikel 90 Grondwet-

de bevordering van de internationale rechtsorde, mensenrechtenbeleid, ontwikkelings-samenwerking en veiligheidsbeleid in onderlinge samenhang worden gezien.

Bijlagen

Aan de Voorzitter van de Commissie Advies
inzake Volkenrechtelijke Vraagstukken
Prof. dr. K.C. Wellens

en de Voorzitter van de Adviesraad
Internationale Vraagstukken
Prof. Drs R.F.M. Lubbers

Postbus 20061
2500 EB Den Haag

Den Haag, 12 oktober 1999

Mijne Heren,

Het verbod op het gebruik van geweld buiten de eigen grenzen, zoals dat na de Tweede Wereldoorlog is neergelegd in het Handvest van de Verenigde Naties, is gebaseerd op het idee dat soevereine staten ieder voor zich verantwoordelijkheid dragen voor handhaving van recht en orde binnen hun eigen grenzen. Deze veronderstelling blijkt echter niet altijd op te gaan. De Veiligheidsraad heeft daarom soms militair ingrijpen op het grondgebied van een andere staat toegestaan op basis van een ruime interpretatie van Art. 39 van Hoofdstuk VII van het VN-Handvest, met als doel het beëindigen van groot-schalig menselijk lijden ¹⁾. De ervaring leert echter dat de Veiligheidsraad niet altijd in staat is tijdig doeltreffende maatregelen te nemen. In een dergelijke situatie kan een land (of een groep landen) ondanks het ontbreken van autorisatie door de Veiligheidsraad en zonder toestemming van het betrokken land besluiten een poging te doen om met geweld of de dreiging met geweld een einde te maken aan deze mensenrechtenschendingen. In een dergelijk geval is volgens de definitie in het gezamenlijk advies van de Commissie inzake Volkenrechtelijke Vraagstukken en de Adviesraad Mensenrechten Buitenlands Beleid uit 1992 sprake van "humanitaire interventie" ²⁾.

Hoewel een dergelijke humanitaire interventie op politieke en morele gronden gerechtvaardigd kan zijn, is er geen sprake van een heldere en algemeen aanvaarde juridische basis. Wanneer op dit punt rechtsontwikkeling achterwege blijft, brengt dit een tweetal gevaren met zich mee. Ten eerste kan worden gesteld dat zolang humanitaire interventie geen duidelijke en algemeen aanvaarde rechtsbasis heeft, het concept kan worden misbruikt als dekmantel voor andersoortige militaire operaties. Ten tweede kan de positie van het volkenrecht onbedoeld worden aangetast wanneer het geen mogelijkheid biedt om in te grijpen bij grove schendingen van algemeen aanvaarde mensenrechten. Ik acht het daarom van groot belang dat het concept van humanitaire interventie verder wordt ontwikkeld. Dat betekent enerzijds dat duidelijke richtlijnen moeten worden opgesteld waaraan een humanitaire interventie moet voldoen, en anderzijds dat gezocht moet worden naar een zo breed mogelijk draagvlak voor het aldus preciezer omschreven concept.

Hierbij zal zowel moeten worden gekeken naar hetgeen uit politiek en moreel oogpunt nodig of wenselijk is, als naar hetgeen uit een oogpunt van volkenrecht mogelijk is. In het licht van de samenhang tussen politieke, morele en juridische overwegingen vraag ik de AIV en de CAVV een gezamenlijk advies uit te brengen over de vraag hoe het vermogen vergroot kan worden om een einde te maken aan grootschalige schendingen van mensenrechten in een bepaald land. Allereerst zouden mogelijkheden kunnen wor-

den geïnventariseerd om te komen tot vergroting van het vermogen van de Veiligheidsraad om op te treden. daarbij zou ook de mogelijkheid van aanpassing van het veto-recht aan de orde kunnen komen. Daarnaast leg ik beide adviesraden de vraag voor hoe het concept van humanitaire interventie duidelijker volkenrechtelijk vorm zou kunnen worden gegeven.

Met het oog op een door mij uit te brengen nota over dit onderwerp zou ik het advies graag uiterlijk eind maart 2000 ontvangen.

Met de meeste hoogachting,

J.J. van Aartsen

- 1) Art. 39: "De Veiligheidsraad moet het bestaan van een bedreiging voor de vrede, een inbreuk op de vrede of een aanvalsdad vaststellen en moet aanbevelingen doen of beslissen, welke maatregelen overeenkomstig de artikelen 41 en 42 moeten worden genomen om de internationale vrede en veiligheid te handhaven of te herstellen."
- 2) Commissie van Advies inzake Volkenrechtelijke Vraagstukken en Adviescommissie mensenrechten Buitenlands Beleid, Advies nummer 15 (1992): "Het gebruik van geweld voor humanitaire doeleinden - Dwangmaatregelen voor humanitaire doeleinden en humanitaire interventies".

Samenstelling van de werkgroep 'Humanitaire Interventie'

Voorzitters

Prof. Dr. C. Flinterman (*AIV/Commissie Mensenrechten*)

Prof. Dr. K.C. Wellens (*CAVV*)

Leden

Prof. Dr. P.R. Baehr (*AIV/Commissie Mensenrechten*)

Prof. Jhr. Dr. G. van Benthem van den Bergh (*AIV/Commissie Vrede en Veiligheid*)

Dr. N. M. Blokker (*CAVV*)

Prof. Dr. Th. van Boven (*CAVV, AIV/Commissie Mensenrechten*)

Mw. Dr. M.C. Castermans-Holleman (*AIV/Commissie Mensenrechten*)

Lt.gen. b.d. G.J. Folmer (*AIV/Commissie Vrede en Veiligheid*)

Prof. Dr. B. de Gaay Fortman (*AIV/Commissie Ontwikkelingssamenwerking*)

Prof. Dr. W.J.M. van Genugten (*AIV/Commissie Mensenrechten*)

Prof. Dr. T. Heukels (*CAVV*)

Mw. Prof. Dr. E. Hey (*CAVV*)

Drs. D.A. Leurdijk (*AIV/Commissie Vrede en Veiligheid*)

Mw. Prof. Dr. B. Kwiatkowska (*CAVV*)

Mr. Dr. E.P.J. Myjer (*CAVV*)

Mw. Mr. J.W.H.M. van Sambeek (*CAVV*)

Prof. Dr. N.J. Schrijver (*CAVV, AIV/Commissie Ontwikkelingssamenwerking*)

Prof. Dr. A.H.A. Soons (*CAVV*)

Drs. E.P. Wellenstein (*AIV/Commissie Vrede en Veiligheid*)

Ambtelijk adviseurs

Mr. P.R.J. Dumoré (*Ministerie van Buitenlandse Zaken*)

Drs B. ter Haar (*Ministerie van Buitenlandse Zaken*)

Prof. Dr. J.G. Lammers (*Ministerie van Buitenlandse Zaken*)

Drs. T. Sneek LLM (*Ministerie van Defensie*)

Secretariaat

Drs. W. van Reenen (*CAVV-secretariaat*)

Mr. A. van Woudenberg (*CAVV-secretariaat*)

Drs. H.A. Würzner (*Secretaris van de Commissie Vrede en Veiligheid van de AIV*)

AIV-stagiaires: S. van der Heijden en B.J. Rip.

Leden Adviesraad Internationale Vraagstukken

Voorzitter

Prof. drs. R.F.M. Lubbers

Leden

Prof. Mr. F.H.J.J. Andriessen

Dhr. A.L. ter Beek

Mw. Prof. Dr. C.E. von Benda-Beckmann-Droogleever Fortuijn

Prof. Jhr. Dr. G. van Benthem van den Bergh

Mw. Dr. O.B.R.C. van Cranenburgh

Prof. Mr. C. Flinterman

Prof. Dr. E.J. de Kadt

Dr. B. Knapen

Ambtelijk adviseurs

Drs. D.J. van den Berg (*Ministerie van Buitenlandse Zaken*)

Drs. E. Kwast (*Ministerie van Defensie*)

Secretaris

Drs. F. van Beuningen

Postbus 20061

2500 EB Den Haag

telefoon 070 - 348 5108/6060

fax 070 - 348 6256

E-mail AIV@minbuza.nl

Internet www.AIV-Advies.nl

Artikel 7 van het Statuut van Rome voor een Internationaal Strafhof.

Crimes against humanity

1. For the purpose of this Statute, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a) Murder;
- b) Extermination;
- c) Enslavement;
- d) Deportation or forcible transfer of population;
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f) Torture;
- g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- i) Enforced disappearance of persons;
- j) The crime of apartheid;
- k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

- d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - f) "Forced pregnancy" means the unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

LIJST VAN GEBRUIKTE AFKORTINGEN

ACM	Adviescommissie Mensenrechten Buitenlands Beleid
AIV	Adviesraad Internationale Vraagstukken
AV(VN)	Algemene Vergadering (van de Verenigde Naties)
CAVV	Commissie van Advies inzake Volkenrechtelijke Vraagstukken
ICJ	International Court of Justice (Internationaal Gerechtshof)
IFOR	Implementation Force
ILC	International Law Commission
NAVO	Noord Atlantische Verdragsorganisatie
NGO	Non Goevernementeale Organisatie
SFOR	Stabilisation Force
SGVN	Secretaris-Generaal van de Verenigde Naties
UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force
VN	Verenigde Naties
VR	Veiligheidsraad

* De adviezen zijn ook beschikbaar in het Engels.

Door de Adviesraad Internationale Vraagstukken uitgebrachte adviezen*

- 1 EUROPA INCLUSIEF, *oktober 1997*
- 2 CONVENTIONELE WAPENBEHEERSING: dringende noodzaak, beperkte mogelijkheden, *april 1998*
- 3 DE DOODSTRAF EN DE RECHTEN VAN DE MENS; recente ontwikkelingen, *april 1998*
- 4 UNIVERSALITEIT VAN DE RECHTEN VAN DE MENS EN CULTURELE VERSCHIEDENHEID, *juni 1998*
- 5 EUROPA INCLUSIEF II, *november 1998*
- 6 HUMANITAIRE HULP: NAAR EEN NIEUWE BEGRENZING, *november 1998*
- 7 COMMENTAAR OP DE CRITERIA VOOR STRUCTURELE BILATERALE HULP *november 1998*
- 8 ASIELINFORMATIE EN DE EUROPESE UNIE, *juli 1999*
- 9 NAAR RUSTIGER VAARWATER: een advies over betrekkingen tussen Turkije de Europese Unie, *juli 1999*
- 10 DE ONTWIKKELINGEN IN DE INTERNATIONALE VEILIGHEIDSSITUATIE IN DE JAREN NEGENTIG: van onveilige zekerheid naar onzekere veiligheid, *september 1999*
- 11 HET FUNCTIONEREN VAN DE VN-COMMISSIE VOOR DE RECHTEN VAN DE MENS *september 1999*
- 12 DE IGC 2000 EN DAARNA: op weg naar een Europese Unie van dertig lidstaten, *januari 2000*

Door de Commissie van Advies inzake Volkenrechtelijke Vraagstukken uitgebrachte adviezen

ADVIEZEN IN HET KADER VAN DE CENTENNIAL, *december 1999*:

- * commentaar inzake het preadvies 'Peaceful Settlement of Disputes' van Fransisco Orrego Vicuna en Christopher Pinto;
- * commentaar inzake het preadvies 'International Humanitarian Law and the Laws of War', van Christopher Greenwood;
- * commentaar inzake het preadvies 'the Development of International Law relating to disarmament and arms control since the First Hague Peace Conference in 1899', van Hans Blix.

ADVIES BETREFFENDE DE ILC-ONTWERPARTIKELEN INZAKE IMMUNITEIT VAN STATEN EN HUN EIGENDOM, *oktober 1999*

ADVIES BETREFFENDE DE ILC-ONTWERPARTIKELEN INZAKE 'INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROBITED BY INTERNATIONAL LAW', *december 1999*

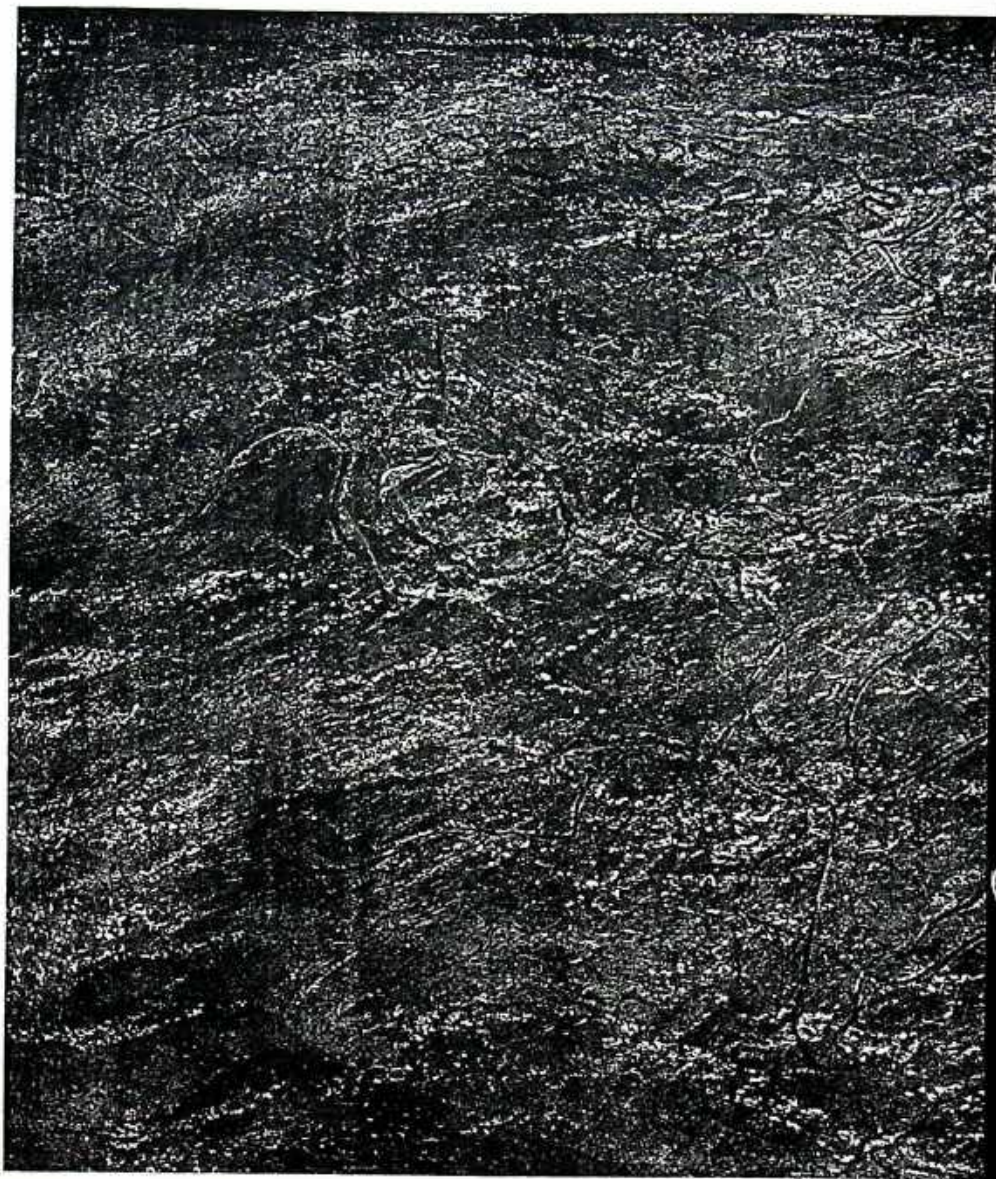
ADVIES BETREFFENDE 'UNILATERAL ACTS OF STATES', *maart 2000*

De Adviesraad Internationale Vraagstukken is een adviesorgaan van de regering. Hij brengt adviezen uit aan de minister van Buitenlandse Zaken, de minister van Defensie, de minister voor Ontwikkelingssamenwerking en de staatssecretaris van Buitenlandse Zaken. De Adviesraad kent vier permanente commissies voor de advisering op de beleidsterreinen van mensenrechten, vrede en veiligheid, ontwikkelingssamenwerking en Europese integratie. De staf van de Adviesraad en permanente commissies bestaat uit: drs. F. van Beuningen, mw. drs. C.E. van Dullemen, mw. drs. M.M.J. Louwerens, drs. T.D.J. Oostenbrink en drs. H.A. Würzner.

De Commissie van Advies inzake Volkenrechtelijke Vraagstukken heeft tot taak de regering en de beide Kamers der Staten-Generaal te adviseren inzake vraagstukken van internationaal recht. Het secretariaat van de Commissie wordt gevoerd door mr. A. van Woudenberg en drs. W. van Reenen.

ADVIESRAAD INTERNATIONALE VRAAGSTUKKEN
POSTBUS 20061, 2500 EB DEN HAAG
TELEFOON 070.348 5108/60 60 FAX 070.348 62 56
E-MAIL AIV@MINBUZA.NL
INTERNET WWW.AIV-ADVIES.NL

COMMISSIE VAN ADVIES INZAKE VOLKENRECHTELIJKE VRAAGSTUKKEN
POSTBUS 20061, 2500 EB DEN HAAG
TELEFOON 070.348 61 44/51 53 FAX 070.348 513 28



BEZUIDENHOUTSEWEG 67, POSTBUS 20061, 2500 EB DEN HAAG, TELEFOON 070.348 51 08/60 60 FAX 070.348 62 56
P.O.BOX 20061, 2500 EB THE HAGUE, THE NETHERLANDS, PHONE +31.70.348 51 08/60 60 FAX +31.70.348 62 56 E-MAIL AIV@SBO.MINBUZA

daarom geen plan bevatten voor eenvoudige oplossingen in gecompliceerde situaties die morele dilemma's per definitie zijn. Er zijn vrijwel geen standaardoplossingen voor de veelsoortige morele dilemma's. Een boek over militaire ethiek kan alleen al daarom geen soort bijbel zijn in de zin dat dit boek het enig juiste en laatste woord biedt op het terrein van de militaire ethiek. Wel biedt het stof tot bezinning en aanknopingspunten voor een goede voorbereiding op de vervulling van de militaire taken. Het slaat wezenlijke piketpalen voor het handelen in kritische situaties. Er is gezocht naar een ethiek die moet kunnen functioneren in een harde en weerbarstige praktijk.

Militaire ethiek mag dan ook niet worden beschouwd als moreel luchtflitsen.

Srebrenica leert dat op zich gevoornemens kunnen ontaarden in naïviteit met als resultaat een ramp die ons nog steeds bezighoudt.

Wil militaire ethiek in de militaire praktijk voldoen, dan is bezinning nodig en volstaat lezing en bestudering van een boek niet. Vooral omdat militaire ethiek pas echt goed kan functioneren als zij deel is geworden van de persoonlijke beroepshouding en er vooral naar wordt gehandeld, zo goed als militairen dat met andere onderdelen van hun beroep gewend zijn te doen. Met de militaire ethiek gaat het als met de andere vaardigheden van elk beroep. Men wordt er goed in door eerst te leren en zich in de stof te verdiepen. En vervolgens veel oefenen en doen, waarmee het een deel wordt van het eigen karakter of gewoonte. Zoals met verschillende aspecten van elk beroep; ze moeten worden geïnternaliseerd om echt resultaat af te werpen.

Het beperkte recht tot geweld

De Nederlandse krijgsmacht is een instrument in handen van de politiek. In Nederland bepaalt de politiek de militaire taken en hoe en onder welke omstandigheden de Nederlandse krijgsmacht wordt ingezet. In het uiterste geval kan de regering besluiten de zwaarmacht in te zetten om geweld te gebruiken. Daarmee is het vraagstuk van het "ius ad bellum", de vraag of het rechtvaardig is ten strijde te trekken, ook wel de traditie van de rechtvaardige oorlog genoemd, eigenlijk meer een vraagstuk van politieke dan van

militaire ethiek. Dit vraagstuk kent zowel een juridische als ethische benadering.

In de juridische benadering geldt eigenlijk volgens het Handvest van de VN een verbod op het voeren van oorlog. Dit bepaalt dat staten hun onderlinge geschillen langs vreedzame wegen zullen oplossen en dat alle leden zich van bedreiging of gebruik van geweld tegen een andere staat zullen onthouden. Er zijn juridisch gezien eigenlijk maar twee uitzonderingen op het geweldverbod: het recht op zelfverdediging krachtens artikel 51 en de bevoegdheid van de Veiligheidsraad onder hoofdstuk VII van het Handvest tot het nemen van

dwangmaatregelen ter handhaving, dan wel herstel van de internationale vrede en veiligheid. Een groot probleem is dat de schrijvers van het Handvest feitelijk alleen hebben gedacht aan gewapende conflicten tussen staten. Er is bitter weinig rekening gehouden met binnenlandse conflicten. Wel wordt artikel 51 zo geïnterpreteerd dat het recht van zelfverdediging niet uitsluitend van toepassing is bij een gewapende aanval door een andere staat. Onder een gewapende aanval wordt verstaan een gewapende schending van de territoriale integriteit en politieke onafhankelijkheid van een andere staat, haar schepen en voertuigen. Dat houdt in dat het recht op zelfverdediging ook kan worden geactiveerd als bendes, huurlingen of rebellen zijn gestuurd of worden gesteund door een staat. Dit legitimeerde de aanval op Afghanistan, dat Al Qaida steunde die de VS op 11 september 2001 had aangevallen. De VS poog-



den hun recente aanval op Irak naast het bezit van massavernietigingswapens onder andere ook aan de hand van een zelfde redenering, namelijk veronderstelde banden van het regime van Saddam Hoessein met Al Qaida, te rechtvaardigen. Een vorm van creatief interpreteren, want naar de letter zijn de juridische regels van "ius ad bellum" behoorlijk strak. Volgens de meeste volkenrechtdeskundigen geeft het Handvest een limitatieve opsomming van toelaatbare vormen van gewapende conflicten.

Humanitaire interventie

Hoewel op het eerste zicht wellicht niet te verwachten, biedt de ethische benadering meer ruimte voor hantering van geweld. Daar-

bij staat vooral de vraag centraal of men ten strijde trekt voor een rechtvaardige zaak, bijvoorbeeld het stoppen van genocide en bevordering van de mensenrechten. Er moeten in elk geval ook goede bedoelingen aan ten grondslag liggen en geen smal eigen belang. Probleem is dat het empirisch nogal lastig blijkt om de juiste bedoeling goed te kunnen vaststellen. Bovendien leert de geschiedenis dat in het geval van oorlog of gewapend conflict beide partijen claimen een rechtvaardige zaak te dienen en de tegenstander altijd in het ongelijk wordt gesteld.

Laten we aannemen dat mensenrechten ernstig in het geding zijn. Is dan humanitaire interventie gerechtvaardigd zonder voorafgaande autorisatie van de Veiligheidsraad? Blijkens de Defensienota 2000 worstelt ook de regering met het dilemma. Ze onderkent de mogelijkheid dat de Veiligheidsraad wordt verlamd door bijvoorbeeld een enkel veto. Wat dan? Het kan niet zo zijn dat de wereld werkeloos blijft toezien. Volgens haar legt het genocideverdrag een morele verplichting op, al reikt het geen mechanisme voor uitvoering aan. Ze verklaart dat landen die in de positie verkeren een eind te maken aan een massaslachting een eigen ethische verantwoordelijkheid hebben en zet daarmee de deur open voor interventie op zuiver humanitaire gronden. Wel vindt ze dat strikte voorwaarden en criteria moeten worden opgesteld, waaraan humanitaire interventie kan worden getoetst om te voorkomen dat territoriale ambities en valse humanitaire argumenten tot misbruik leiden van het leerstuk van humanitaire interventie. Hoe dan ook, ethici hebben het vaak gemakkelijker humanitaire interventie te rechtvaardigen dan de juristen die hun heil zoeken in het absolute karakter van de staatssoevereiniteit. In elk geval moet worden vastgesteld dat we nog ver weg zijn van de strikte voorwaarden en criteria die de regering graag zou zien. Vooralsnog lijkt er sprake van nogal wat wille-

keur. In het geval van de crisis in Kosovo vonden de tien lidstaten van de NAVO die deelnamen aan de bombardementen op Joegoslavië hun optreden op grond van humanitaire gronden goed gelegitimeerd. Bij de daaraan voorafgaande veel grotere massamoord in Rwanda keek de wereld de andere kant op.

Politiek primaat en militaire vrijheid

Zoals uiteengezet is het vraagstuk van de rechtvaardige oorlog of het "*ius ad bellum*" naar verhouding meer van politieke dan van militair-ethische aard. Bij het "*ius in bello*", of wel het stelsel van regels en gewoonten dat betrekking heeft op de manier waarop een gewapende strijd wordt gevoerd, ligt de nadruk meer op het militair handelen. Op het eerste gezicht betreft het dus meer een vraagstuk van militaire ethiek dan van politieke ethiek. Zo'n standpunt behoeft nuancering. Het zijn immers politieke besluitvormers die bepalen over welke middelen de krijgsmacht beschikt om het gevecht kunnen voeren. Daar blijft het niet bij. Politieke besluitvormers nemen veelal ook beslissingen over grote lijnen met betrekking tot de wijze van inzet van die wapens. Zo moesten alle lidstaten van de NAVO in 1999 tijdens de luchtacties tegen Joegoslavië in de Kosovo crisis hun goedkeuring hechten aan de lijst van doelen die mochten worden gebombardeerd. Elke lidstaat was in de positie een veto over doelen uit te spreken. Het wekt dan ook geen verbazing dat na 11 september 2001 de Verenigde Staten bij de aanval op Afghanistan geen behoefte hadden aan een NAVO-operatie, hoewel voor de eerste keer in de geschiedenis het zogenaamde bijstandsartikel 5 van het bondgenootschap werd geactiveerd.

Voor militaire commandanten zal het niet altijd een pretje zijn als politici de beslissende stem hebben over de inzet van wapensystemen. Militairen zijn immers de deskundigen. Politici blijven

echter hoe dan ook verantwoordelijk voor de politieke gevolgen van de inzet van wapens en worden in elk geval geacht ook beter te overzien. Nochtans zullen militairen zich vooral laten leiden door overwegingen van wat zij als militaire noodzaak beschouwen als hun politieke meesters eenmaal hebben besloten een conflict uit te vechten. De militaire noodzaak heeft betrekking op de urgentie de vijand te verslaan en een eigen nederlaag te vermijden. Uiteraard met inachtneming van de regels van het oorlogsrecht. Het is begrijpelijk dat commandanten een zo groot mogelijke vrijheid van handelen bepleiten. Hoe meer zij aan restricties zijn gebonden, hoe groter de kans dat de tegenpartij daar



Jon van der Meijden

Vredeszomerberaad 2003

11

zijn voordeel mee doet. Toch zullen ze zich moeten houden aan de door de politiek bepaalde richtlijnen. Dat geldt uiteraard ook bij vredesoperaties, waarvoor niet alleen het mandaat, maar ook de regels wanneer geweld mag worden aangewend, politiek worden bepaald. Toch hebben militairen zowel bij een gewapend conflict als bij vredesoperaties, binnen de politiek gestelde grenzen, een grote mate van eigen verantwoordelijkheid voor de sluiten die zij in een operatiegebied nemen. De militair moet zelf in staat zijn onder buitengewoon moeilijke omstandigheden, waarbij mensenlevens in het geding kun-

Dit jaar was duidelijk de meerderheid van de commissieleden, vooral van de studentleden en adviseurs bij de beraadslagingen aanwezig. In een zeer aangename sfeer werden met name de verbeteringsmogelijkheden op de gebieden van onderwijs en onderzoeksfinanciering besproken. De geplande internationale conferentie over conversie kreeg ook enige welverdiende aandacht.

nen zijn, lastige afwegingen te maken. Dan tellen niet alleen Haagse politieke richtlijnen, maar ook de regels en de gewoonten van het eerdergenoemde "ius in bello". De kern ervan vormt het begrip humaniteit. Het gaat dan om de wens nodeloos leed bij gevechten te vermijden en non-combattanten te ontzien.

Proportionaliteit

Zoals eerder uiteengezet, liggen de minimumregels vast in het oorlogs- en humanitair recht. Daar zijn alle militairen van alle partijen steeds aan te houden. Wie dat niet doet pleegt een oorlogsmisdrijf. Daarnaast is er een aantal uitgangspunten. Heel belangrijk is het criterium van de proportionaliteit. Dat speelt overigens ook al een belangrijke rol in het eerder besproken "ius ad bellum", dat wil zeggen bij de rechtvaardiging om überhaupt ten strijd te trekken. Men behoort zich eerst de vraag te stellen of het zware middel van het voeren van oorlog proportioneel is met het oog op het te bereiken doel. Of kunnen de politieke doelen ook met minder zware middelen worden bereikt. In het "ius in bello" geldt dat niet meer geweld mag worden toegepast dan nodig om het doel te bereiken. Militair geweld dat overbodig leed veroorzaakt en op zich niet nodig is voor het bereiken van het doel, bijvoorbeeld uit overwegingen van wraak, is ontoelaatbaar. Daarnaast moet het geweld discriminatoir zijn. Bij de keuze van het doelwit moet onderscheid worden gemaakt tussen combattanten en non-combattanten. Het geweld mag dus niet zijn gericht op onschuldige burgers. Als ten gevolge van oorlogshandelingen toch burgers omkomen, dan mag dat in elk geval niet zijn beoogd. Het directe effect van geweld, namelijk het uitschakelen van de tegenstander is toelaatbaar, maar het indirecte effect van die handeling, als gevolg waarvan toch onschuldige burgerslachtoffers vallen, mag in elk geval niet zijn beoogd. Fraaie uitgangspunten in de boze werkelijkheid van gewapend conflict, maar nu de militaire praktijk.

Naast een enkele terugblik op behaalde successen, zoals onder andere de indrukwekkende opkomst van studenten bij het keuze-college Techniek, Vrede en Veiligheid met behulp van 'attractieve' gastdocenten, het verzamelen van reeds ver uitgewerkte voorstellen voor (promotie)onderzoek op het raakvlak van Techniek en Vrede en geslaagde uitgaven van het VredesTerts Periodiek, boog men zich over de voorwaarden die deze successen kunnen continueren en, waar mogelijk, zelfs uitbreiden.

De zorgvuldige voorbereiding en organisatie van de hoogwaardige trimestersymposia en lunchlezingen en een mogelijk gedeeltelijke opname van deze in de collegereeks zou de toegankelijkheid van deze waardevolle openbare conferenties voor studenten kunnen verhogen. Dit kan mogelijk bereikt worden, indien bepaalde data van deze bijeenkomsten op het collegerooster afgestemd zouden worden. In zekere zin komen dan ook - overeenkomstig het universitaire ideaal - onderwijs en onderzoek dichter bij elkaar. Dit in het kort het verslag van een inspirerende brainstormnamiddag.

Redactie

Wat is proportionaliteit precies? Lastig. Mogen bijvoorbeeld bij een aanval op een grote stad als niet beoogd indirect effect 1.000 of 5.000 burgerslachtoffers vallen? Ook heeft een commandant het aantal slachtoffers onder zijn eigen eenheid mee te wegen. Standaardantwoorden zijn niet te geven. Het hangt allemaal mede af van de urgentie van het bereiken van het militaire doel. Dat kan bovendien op tactisch en strategisch niveau aanmerkelijk verschillen. Een aanval op lokaal niveau kan bijvoorbeeld veel slachtoffers vergen, maar daardoor kan op het hogere strategisch niveau het totale aantal slachtoffers beperkt blijven. Een juiste afweging vergt kennis, beheersing, zorgvuldigheid ter plaatse en vooral ook het goed wegen van de gevolgen van het optreden.

Bij wat aanvaardbaar is spelen ook kwesties van strijdmiddelen en strijdmethoden een belangrijke rol. Wat betreft wapens leert de ervaring bijvoorbeeld dat landmijnen een non-discriminatoir karakter hebben omdat ze onevenredig veel burgerslachtoffers vergen. Een belangrijke reden voor de ontwikkeling van "slimme bommen" en andere precisiewapens ligt juist in het discriminatoire karakter ervan. Ze beogen met precisie het militaire doel uit te schakelen, waardoor de zogeheten collaterale schade beperkt kan blijven. Bij de strijdmethoden gaat het niet alleen om wapens en munitiesoorten, maar om tactiek. Een tapijtbombardement is knap verdacht, maar eigenlijk alleen toelaatbaar in een goed afgebakend gebied met grote vijandige troepenconcentraties. Kerncentrales mogen niet worden aangevallen vanwege de grote disproportionele gevolgen.

De weerbarstige praktijk

Helaas moet worden geconstateerd dat in de praktijk verschillende verboden strijdmethoden de toepassing van het proportionaliteitsbeginsel frustreren. Wij kennen het verboden gebruik van menselijke schilden. Het plaatsen van militaire middelen in de nabijheid

van burgers of civiele installaties. Het verboden vechten in burgerkleding. Het maakt het voor de tegenpartij moeilijk steeds een goed onderscheid te kunnen maken tussen combattanten en non-combattanten. Toch is in het Haags Landoorlogsreglement en in artikel 4a van de Derde Conventie van Genève vastgelegd, waaraan bevoegde combattanten zich dienen te houden:

- a ze staan onder bevel van een persoon die verantwoordelijk is voor het gedrag van zijn manschappen;
- b ze dragen vaste uiterlijke kentekenen, meestal een uniform, waarmee ze zijn te onderscheiden van burgers;
- c ze dragen hun wapens openlijk;
- d ze gedragen zich en behoren zich te gedragen overeenkomstig het oorlogsrecht.

Tal van militieën lappen die regels aan hun laars. De prijs voor het vervaagde onderscheid tussen combattanten en non-combattanten kan dan hoog uitvallen. In het gevecht overleven militairen immers doordat zij de vijand eerder kunnen uitschakelen dan die hen. Als combattanten er niet langer op kunnen vertrouwen dat mensen die er uit zien als burgers zich vreedzaam zullen gedragen, is de neiging groot, alleen al om redenen van puur lijfsbehoud in iedereen een potentiële vijand te zien. In de praktijk wordt soms pas duidelijk of er sprake is van vijandelijk intentie als het bijna te laat is. Als tegenmaatregel neigen militairen er dan toe het zekere voor het onzekere te nemen en het vuur te openen.

Bij een meer dan incidentele vervaging van het onderscheid tussen combattanten en non-combattanten ontstaan voor reguliere militairen krachtige prikkels om het humanitaire - en oorlogsrecht terzijde te schuiven. Het zal dan veel zelfbeheersing en tegenwoordigheid van geest vergen om weerstand te bieden aan het gevoel van eerst schieten en pas daarna vragen stellen. Toch is dat juist wat van een respectabel militair mag worden verwacht. Het lastige van de militaire ethiek is dat militairen onder zeer moeilijke omstandigheden, waarin chaos, onzekerheid, gevaar, geweld en stress zich voordoen, hoge morele waarden moeten zien toe te passen. Moraliteit moet samengaan met militaire professionaliteit. Dat heeft veel van doen met karaktervorming en beheersing en dat leer je niet met een trukendoos. Het vergt grondige bezinning op de uitoefening van het militaire beroep door militairen, zowel met betrekking tot de gevolgen van het handelen jegens collega's alsook naar derden. Het Bureau voor Ethiek en Krijgsmacht tracht daaraan een bijdrage te leveren, niet alleen door publicatie van een boek, ook door onderwijs in militaire ethiek en het verzorgen van dilemmatrainingen. Het zal daarmee niet altijd ellende en tragiek kunnen voorkomen. Als ze die met aangeboden middelen kan beperken, is dat belangrijke winst, zowel voor de militair zelf, als voor de omgeving waarmee hij te maken heeft.

Drs. J.H. van der Meijden.

De schrijver is verbonden met het Bureau voor Ethiek en Krijgsmacht van het ministerie van Defensie. Deze bijdrage is een weergave van een lunchlezing op 19 juni 2003.

Het bevorderen van vrede doc

Aansluitend op de bijdrage van Van der Meijden zal ik mij voornamelijk richten op de aspecten van de inzet van het luchtwapen in relatie tot humanitair oorlogsrecht en ethiek. Ik wil hier graag een link leggen met de doelstellingen van het Vredescentrum. Deze doelstelling past één op één op mijn thema.

Het grote verschil met vroeger

Ik zal in dit artikel een korte toelichting geven op het humanitair oorlogsrecht, zoals Van der Meijden heeft uiteengezet. Vervolgens zal ik een aantal aspecten van de inzet van het luchtwapen behandelen en tenslotte zal ik een aanzet geven tot discussie en vragen rond ethiek en de toepassing door militairen in de praktijk.

De reden dat militairen zich steeds vaker bezig houden met het humanitair oorlogsrecht ligt in de gewijzigde taakstelling van de krijgsmacht. Het inzet spectrum van de krijgsmacht is vele malen complexer dan ten tijde van de Koude Oorlog. Nu moet bij vredesoperaties soms binnen enkele minuten een totaal verschillende reactie worden gegeven op naderende onbekenden, het ene moment komt een rebel behangen met wapens op je af en het volgende een moeder met vier kinderen die op zoek is naar voedsel. De inzet bij vredesoperaties is vele malen complexer dan het oude vijanddenken met de hoofdreiging uit het oosten.

Ook de rol van de media is hierbij belangrijk. Politici en militairen zijn zich bewust van het CNN effect bij het thuisfront. Als er iets uit de hand loopt of verkeerd uitpakt is het dezelfde avond nog op TV te zien: beelden van wat vader, zoon of echtgenoot moeten doorstaan of misschien wel mede hebben veroorzaakt. Dit legt een grote nadruk op "transparantie" bij de inzet van het militaire apparaat.

Principes van het humanitair oorlogsrecht bij de inzet van het luchtwapen

Bij inzet van militaire middelen in de toepassing van "gelegitim geweld" moet onderscheid worden gemaakt maken tussen burgers en militaire objecten. Burgers zijn altijd beschermd maar ook tegen militaire objecten moet geweld beheerst en beperkt zijn. Zowel wat betreft wapenkeuze als wapeninzet, teneinde onnodig lijden te voorkomen. Onder alle omstandigheden moeten beschermende en beschermde emblemen en objecten gerespecteerd worden. Het doel van het humanitair oorlogsrecht is het beschermen van hen die niet (meer) vechten. *Dit alles omwille van de menselijkheid.*

Wanneer een oorlogscampagne met de luchtmacht wordt ontwikkeld, worden keuzes gemaakt tijdens de planningsfase en tijdens de uitvoering daarvan. In het planningsproces worden doelen geïdentificeerd en bekeken op aspecten van het humanitair oorlogsrecht. Is het een legitiem doel, is het een militair object? Ook worden verboden doelen aangegeven teneinde deze te kunnen respecteren. Hier spelen politieke, strategische en tactische aspecten een rol. Vooral wanneer objecten zowel militair als civiel gebruik kennen. De keuzes die gemaakt worden kunnen achteraf worden bekritiseerd door juristen: het "ius post bellum". Commandanten en individuele militairen kunnen ter verantwoording worden geroepen om te motiveren waarom ze een bepaalde keuze hebben gemaakt.

en rationele en humane wijze van conflictbeheersing

13

Deze keuzes worden beïnvloed door opleiding en ervaring maar ook door een bezinning vooraf op ethische waarden, op grond van het humanitair oorlogsrecht. De militair kan hier voor dilemma's komen te staan. Bewustwording van tevoren zal deze keuzes wellicht niet gemakkelijker maken maar wel meer verantwoord. Uiteindelijk zal de vlieger zelf zijn doel moeten herkennen. Niet ieder land of individu maakt dezelfde keuzes. Een belangrijke rol spelen hierbij de factoren van invloed op het doelkeuze proces. Door de VS wordt het model van kolonel Warden aangehangen waarbij als eerste doelen de politieke leiding van een tegenstander wordt beoogd, vervolgens zijn industrie en infrastructuur en als laatste pas de strijdkrachten. Mijns inziens het tegenovergestelde van de principes van het humanitair oorlogsrecht.

Naast deze keuzes wordt inzet ook nog bepaald door weersinvloeden, elektronische fouten in een wapen of programmeerfouten bij het invoeren van gegevens in een "slimme" bom. Ook elektronica kan het begeven. Al deze factoren worden zo goed mogelijk afgewogen om te voorkomen dat ongewenste nevenschade ontstaat.

De uitvoering en de ethiek daarbij

Zoals gezegd is de vlieger (of de tankcommandant) verantwoordelijk voor zijn handelen. Dit is nog te begrijpen wanneer de vlieger zijn doel zelf kan zien, maar hoe zit het met het inzetten van bommen op een bepaalde coördinaat of gehinderd door wolken? Wat indien een lid van de "Special Forces" zijn laser-pointer op een doel richt en de vlieger niet weet wat het is? Wie is dan verantwoordelijk? Door toename van de technische hulpmiddelen is de vlieger niet meer alleen afhankelijk van zijn blote oog, maar hulpmiddelen zoals infra - rood en een doelzoekende camera zijn hem behulpzaam. Hierdoor is hij beter in staat om onderscheid te maken tussen burger en militaire objecten. Grondregel is en blijft, val geen burgerobjecten aan en vermijd schade.

Een van de aspecten die zowel bij het Joegoslavië tribunaal als bij het Statuut van het Internationale Strafhof spelen, is het begrip "Command Responsibility". Ben je als commandant bereid je personeel te wijzen op hun verantwoordelijkheden, kun je ze voldoende keuzevrijheid geven en geef je ze het vertrouwen mee dat verantwoorde keuzes gerespecteerd worden? Deze ethische vragen komen ook op het individuele vlak naar voren. Ben je als individu bereid om je verantwoordelijkheid te nemen en verantwoordelijkheid af te leggen? Het maakt niet uit of je wordt ingezet als vlieger, tankcommandant of soldaat in een gevechtsoptelling.

Vragen

Dezelfde vragen leg ik ook voor aan u als lezer, ingenieurs (al of niet in de dop). Waar ligt uw ethische verantwoordelijkheid? Moeten we wel alles ontwikkelen wat er is uitgevonden? Moeten we de goedkoopste wapens maken zonder beveiligingsmechanismen? Moeten we wel de grootste klap voor het minste geld willen hebben?

Tenslotte wil ik u een aantal vragen voorleggen om over na te denken, mede in het licht van de doelstelling van het Vredescentrum: Verlagen slimme wapens de oorlogsdrempel en hoe zit dat dan met



Hendrik Faber

arme landen (een kapmes in Rwanda kostte maar een paar centen)? Vraagt u zich wel eens af of de ontwikkeling, aanschaf, invoering van een nieuw wapen, een nieuw middel of een nieuwe methode bij de inzet daarvan, in strijd kan zijn met de bepalingen van het humanitair oorlogsrecht (zoals verwoord in art 36 Aanvullend Protocol I bij de Conventies van Genève? Is de doelstelling van het Vredescentrum ook een individuele verantwoordelijkheid?

The sky is the limit but not unlimited!

Hendrik Faber,

De schrijver is luitenant-kolonel bij de Nederlandse Luchtmacht. Deze bijdrage is een weergave van een lunchlezing op 19 juni 2003.

Ethiek en humanitair oorlogsrecht - een reactie

14

Op donderdag 19 juni 2003 vonden onder bovenstaande titel lunchlezingen plaats van Drs. Jan van der Meijden en Lt.kol. Hendrik Faber. Het is niet mijn bedoeling de lezingen en de discussie daarna hier te rapporteren. De lezing van Van der Meijden zat zeer goed in elkaar en was gebaseerd op ethiek in het algemeen en de grenzen daarvan in het militaire bedrijf. De lezing van Faber, die uitblonk door de mooie presentatie, ging vooral over de ethische keuzes waar de militair in het veld zich voor gesteld ziet. In beide lezingen kwamen interessante raakvlakken tussen ethiek en andere disciplines naar voren. Deze zijn de aanleiding voor het onderhavige artikel.

Het primaat van het internationaal recht

Van der Meijden meldde, dat ethiek en internationaal recht op gespannen voet kunnen staan. Het internationaal recht is voor een groot deel verankerd in het Handvest van de Verenigde Naties en daardoor leunt het zwaar op het principe van de soevereiniteit van nationale staten. Ingrijpen in situaties waarin mensenrechten worden geschonden binnen een staat, wordt door de regels van het internationaal recht daarom moeilijk of onmogelijk gemaakt. Daarom zouden afwijkingen van het internationaal recht ethisch verantwoord kunnen zijn. De inval in Irak, bijvoorbeeld, was in strijd met het internationaal recht, want niet gesanctioneerd door de Veiligheidsraad van de Verenigde Naties, maar volgens de voorstanders gerechtvaardigd omdat de oorlog een eind maakte aan een wreed en gewelddadig regiem.

Deze redenering is uiterst gevaarlijk en misleidend. De regels van het internationaal recht zijn eenduidig, die van de ethiek in de internationale verhoudingen zijn dat helaas aller-minst. Het toepassen van ethische overwegingen is geen objectieve aangelegenheid: de beoordeling van welke situaties getolereerd zouden kunnen worden en welke niet, hangt in hoge mate af van de politieke instelling van de beoordelaar en van zijn militaire sterkte. Bovendien is de ethische beoordeling niet te scheiden van de politieke en militaire belangen van de staat of de staten van de beoordelaars. In het geval van Irak, bijvoorbeeld, ging het zeker niet alleen om de eliminatie van een vreselijke dictator, maar natuurlijk ook om de controle over de productie en verkoop van olie en over de machtsverdeling in het Midden-Oosten. Een zowel ethische als juridische grond voor de oorlog tegen Irak bestond uit de veronderstelde aanwezigheid van massavernietigingswapens (mvw). De Veiligheidsraad wilde terecht niet ingrijpen voordat die aanwezigheid door de wapeninspecteurs zou zijn vastgesteld. De VS en Groot-Brittannië weigerden daarop te wachten. Het feit, dat de mvw's nog altijd niet zijn gevonden (ik schrijf dit op 18 juli 2003) haalt de rechtvaardiging van

de oorlog volledig onderuit en bevestigt, dat het ging om het opleggen van de Pax Americana.

Mensenrechten via de VN

Het zou zeker toe te juichen zijn, indien mensenrechten beter beveiligd zouden kunnen worden en schendingen ervan niet als binnenlandse aangelegenheden eindeloos zouden kunnen worden voortgezet. De enige weg om dit te bereiken loopt langs de Verenigde Naties. Niet omdat de VN ideaal functioneren, verre van dat. Bureaucratie en politieke onenigheden tussen staten dreigen de VN vaak te verlammen. Maar dit neemt niet weg, dat er eenvoudigweg geen ander orgaan bestaat waaraan een wereldwijd gezag kan worden toegekend. Alleen door de VN gesanctioneerd (economisch of militair) ingrijpen kan aan de verdenking van motivatie door nationale eigenbelangen ontkomen. Daarom dient het internationaal recht strikt gehandhaafd te worden. Een betere beveiliging van mensenrechten binnen staten zou mogelijk moeten worden door een hierop gerichte aanpassing van het Handvest van de VN met volstrekt heldere en eenduidige regels. Ook andere hervormingen van de VN dienen te worden nagestreefd, met name betreffende de samenstelling van de Veiligheidsraad en de vertegenwoordiging van de internationale gemeenschap in de VN in het algemeen. Maar het gaat te ver om in het kader van dit stuk daar nader op in te gaan. Totdat de regels zijn aangepast zullen we het moeten doen met de regels zoals ze nu zijn.

Het dilemma van de "slimme wapens"

Een tweede raakvlak van ethiek en een andere discipline kwam naar voren in de lezing van Faber. Hij besprak ondermeer de verschillen tussen verschillende typen wapens: sommige wapens zijn



Op de voorgrond: Piet Schram

on nauwkeurig, maken veel burgerslachtoffers en richten veel onbedoelde schade aan. Bij andere, meer geavanceerde wapens, denk aan de zogenoemde "slimme bommen", is dit veel minder het geval. Hieraan verbond Faber de vraag of geavanceerde technologie er toe kan leiden, dat de drempel voor militair geweld wordt verlaagd.

Op zich een interessante vraag, maar ook een enigszins misleidende vraag. Indien het ons doel is een humanitaire wereld te bevorderen en daarom ellende als gevolg van alle soorten geweld uit te bannen, dan gaat het niet om drempels als zodanig, maar om een bredere analyse van mogelijk geweld. Een lagere drempel betekent een hogere waarschijnlijkheid. In de statistiek hanteert men het begrip "verwachtingswaarde", dit is de waarschijnlijkheid van een gebeurtenis vermenigvuldigd met een maat voor het effect daarvan. De verwachtingswaarde van een bepaalde mate van verwoesting door wapens zou vanuit een humanitair gezichtspunt

geminimaliseerd moeten worden. Drempelverlaging door de keuze van een nieuw wapen kan dus in vergelijking met het gebruik van oude wapens een relatief goede zaak zijn, indien het effect ervan zodanig is, dat er vrijwel geen burgerslachtoffers vallen en onbedoelde schade wordt voorkomen. Een voorbeeld om dit punt nog iets verder toe te lichten wordt aangereikt door de kernwapens. Het gebruik van nucleaire wapens, dat van strategische kernwapens in het bijzonder, heeft een zeer hoge drempel, is dus uiterst onwaarschijnlijk. Maar het effect van dat gebruik is welhaast onbegrensde verwoesting en ellende. Daardoor is de verwachtingswaarde van dood en verwoesting zeker niet klein. Dus is er ondanks de hoge drempel alle reden om kernwapens de wereld uit te helpen."

Piet Schram.

Dit artikel is een reactie op de bijdragen van Van der Meijden en Faber

Geschiedenis, visie en doelstellingen van WILPF

Voorgeschiedenis

WILPF werd op 28 april 1915 opgericht in Den Haag, op een internationale vredesconferentie georganiseerd door prominente vrouwen uit de Internationale Alliantie voor Vrouwenkiesrecht (International Suffrage Alliance). Deze vrouwen zagen een connectie tussen de strijd voor gelijke rechten en de strijd voor vrede. Het analyseren van de oorzaken die aan oorlog ten grondslag liggen en het elimineren van die oorzaken behoren tot de doelstellingen van WILPF. WILPF heeft nationale



Carolien van de Stadt-Sabel, oud bestuurslid WILPF - Nederland

secties in ruim 40 landen in alle continenten. Het internationale werk wordt gecoördineerd door haar kantoren in Genève en New York. Vrede kan niet bestaan waar er een kloof is tussen arm en rijk en waar macht zo ongelijk is verdeeld, waar afschrikking met (nucleaire) wapens, wapenexport en militarisering de belangrijkste middelen lijken in de strijd om macht en ter bescherming van economische belangen. WILPF werkt op geweldloze wijze aan verandering van deze structuren. Sinds de oprichting van de Verenigde Naties is de band tussen de VN en WILPF van groot belang, als bron van informatie en als kanaal om invloed uit te oefenen. WILPF promoot het werk van de Organisatie voor Veiligheid en Samenwerking in Europa (OVSE). In de voetsporen van onze voormoeders is deelname van vrouwen bij vredesonderhandelingen en aanwezigheid op besluitvormende posities een belangrijke doelstelling. In 1899 en 1907 waren er reeds vredesconferenties op regeringsni-

veau gehouden. Toen de voorgenomen regeringsconferentie van 1915 werd geannuleerd, besloot een aantal vrouwen van de IAVV onder wie dr. Aletta Jacobs en Jane Adams, dat dit een reden te meer was om als vrouwen een internationale vredesconferentie te beleggen: juist nu politici en regeringsvertegenwoordigers formeel niet meer communiceerden omdat ze 'in oorlog' waren met elkaar. Meer dan duizend vrouwen uit 12 landen kwamen bijeen, uit oorlogvoerende en neutrale landen. Het Vredespaleis was te klein dus weken ze uit naar de dierentuin! Het congres nam 20 resoluties aan. Deze resoluties vormden het uitgangspunt voor een plan voor permanente vrede: concrete voorstellen zoals een voortdurende bemiddeling door een conferentie van neutrale landen waarbij de bezette landen om voorstellen werden gevraagd en tegelijkertijd voorstellen voor vrede werden gedaan.

Zeven afgevaardigden van de IAVV, waaronder Aletta Jacobs, bezochten met dit 'vredesplan' 14 landen. Zij spraken o.a. met president Wilson. Jane Adams en Emily Green Balch ontvingen de Nobelprijs voor de vrede in respectievelijk 1931 en 1946. Bemiddeling, is een onveranderde doelstelling van WILPF gebleven: partijen bij elkaar brengen en houden en tegelijk invloed uitoefenen via de formele kanalen zoals regeringen en de VN. Tegenwoordig gebeurt dat vooral als participant in nationale en internationale netwerken. WILPF-internationaal organiseerde sinds 1926 vele 'factfinding missions' naar conflictgebieden, in het voorjaar van 2002 nog een 'solidarity mission' naar Palestina. De WILPF-secties van Palestina, Israël en Libanon hebben gedurende alle jaren contact met elkaar gehouden. Er zijn talloze verklaringen opgesteld en verstuurd naar de VN en de politiek in het kader van mensenrechten, ontwapening, conflictpreventie, duurzame ontwikkeling en een rechtvaardige verdeling van welvaart en hulpbronnen.

Lees verder op pagina 18

Press Release . Communiqué de presse
(Exclusively for the use of the media. Not an official document)

**OFFICE OF THE
PROSECUTOR**

BUREAU DU PROCUREUR

The Hague, 13 June 2000
PR/ P.I.S./ 510-e

PROSECUTOR'S REPORT ON THE NATO BOMBING CAMPAIGN

As announced in her address to the UN Security Council on Friday 2 June, 2000, the Prosecutor, Carla Del Ponte, has decided not to open a criminal investigation into any aspect of NATO's 1999 air campaign against the Federal Republic of Yugoslavia.

Since mid-1999 various complaints, allegations and a considerable body of information, have been submitted to the Prosecutor's Office concerning allegations that NATO, or more accurately NATO personnel and leaders, may have committed crimes falling within the jurisdiction of the Tribunal during the NATO air campaign.

The complaints, allegations and supporting material were received from a number of sources, including academic writers, lawyers acting on behalf of the Federal Republic of Yugoslavia, and a Russian Parliamentary Commission. The Federal Republic of Yugoslavia also submitted a substantial amount of material concerning particular incidents. In addition, a number of reports and commentaries on the bombing campaign have been published by human rights organisations and others, including the recent Amnesty International report.

In May 1999, the former Prosecutor, Justice Louise Arbour, established a working group within her Office to examine and assess all complaints, allegations and the accompanying material. This team comprised military lawyers, military analysts, prosecuting attorneys and other experts. The work of the group continued under Prosecutor Del Ponte. Following its creation, the team assessed all new allegations and material on its arrival in the Prosecutor's Office. The analysis of the material has taken many months, and has involved an examination of all facts and a detailed legal analysis of all aspects involving the Tribunal's jurisdiction.

Since the International Tribunal has jurisdiction over all potential war crimes in the former Yugoslavia, the former and current Prosecutors considered that it was their obligation and responsibility, as independent Prosecutors, to assess the complaints and allegations.

In this regard, Article 18.1 of the Tribunal's Statute provides:

The Prosecutor shall initiate investigations ex officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

As part of the assessment, the Prosecutor's team also conducted an extensive review of all information released into the public domain by NATO concerning a broad range of attacks on targets in Kosovo and throughout Serbia. When questions arose about specific incidents which were not fully explained in available sources, NATO was given the opportunity to respond, and NATO provided some further information. The resulting body of all assembled information, some of it very detailed, was then collated, allowing each incident or allegation to be analysed in terms of international humanitarian law, particularly the requirements of

the law concerning modern air warfare.

As mentioned, the Prosecutor has announced her conclusion, following a full consideration of her team's assessment, that there is no basis for opening an investigation into any of the allegations or into other incidents related to the NATO air campaign. Although some mistakes were made by NATO, the Prosecutor is satisfied that there was no deliberate targeting of civilians or unlawful military targets by NATO during the campaign.

It is not the Prosecutor's normal policy to make public the details about investigations or allegations received but not investigated. Standard practice is to comment only about indictments that have been made public. Even then, any comment by the Prosecutor outside the courtroom must be extremely limited. The Prosecutor considers that individuals against whom allegations are made should, under normal circumstances, be entitled to the presumption of innocence. The good reputation of innocent persons would undoubtedly be damaged by public disclosure that they are being investigated for serious crimes. For this reason, in the absence of any indictment, which would provide an opportunity for such persons to defend their name, it is not proper to divulge details of who may be under investigation by the Prosecutor. The NATO air campaign, however, does not raise such considerations and there has already been much public debate about the allegations. The Prosecutor considers that in this situation, quite unforeseen when the Tribunal came into existence, she should take the unusual step of making her reasoning public.

The report upon which the Prosecutor has based her conclusion is now publicly available.

Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia

Table of Contents

I Background and Mandate

II Review Criteria

III Work Program

IV Assessment

A. General Issues

- i. Damage to the Environment
- ii. Use of Depleted Uranium Projectiles
- iii. Use of Cluster Bombs
- iv. Legal Issues Related to Target Selection

- a. Overview of Applicable Law
- b. Linkage Between Law Concerning Recourse to Force and Law Concerning How Force May Be Used
- c. The Military Objective
- d. The Principle of Proportionality

v. Casualty Figures

vi. General Assessment of the Bombing Campaign

B. Specific Incidents

- i. The Attack on a Civilian Passenger Train at the Grdelica Gorge on 12/4/99
- ii. The Attack on the Djakovica Convoy on 14/4/99
- iii. The Attack on the RTS (Serbian Radio and TV Station) in Belgrade on 23/4/99
- iv. The Attack on the Chinese Embassy on 7/5/99
- v. The Attack on Korisa Village on 13/5/99

V. Recommendations

I Background and Mandate

1. The North Atlantic Treaty Organization (NATO) conducted a bombing campaign against the Federal Republic of Yugoslavia (FRY) from 24 March 1999 to 9 June 1999. During and since that period, the Prosecutor has received numerous requests that she investigate allegations that senior political and military figures from NATO countries committed serious violations of international humanitarian law during the campaign, and that she prepares indictments pursuant to Article 18(1) & (4) of the Statute.
2. Criticism of the NATO bombing campaign has included allegations of varying weight: a) that, as the resort to force was illegal, all NATO actions were illegal, and b) that the NATO forces deliberately attacked civilian infrastructure targets (and that such attacks were unlawful), deliberately or recklessly attacked the civilian population, and deliberately or recklessly caused excessive civilian casualties in disregard of the rule of proportionality by trying to fight a "zero casualty" war for their own side. Allegations concerning the "zero casualty" war involve suggestions that, for example, NATO aircraft operated at heights which enabled them to avoid attack by Yugoslav defences

and consequently, made it impossible for them to properly distinguish between military or civilian objects on the ground. Certain allegations went so far as to accuse NATO of crimes against humanity and genocide.

3. Article 18 of the Tribunal's Statute provides:

"The Prosecutor shall initiate investigations *ex officio* or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed".

On 14 May 99 the then Prosecutor established a committee to assess the allegations and material accompanying them, and advise the Prosecutor and Deputy Prosecutor whether or not there is a sufficient basis to proceed with an investigation into some or all the allegations or into other incidents related to the NATO bombing.

4. In the course of its work, the committee has not addressed in detail the issue of the fundamental legality of the use of force by NATO members against the FRY as, if such activity was unlawful, it could constitute a crime against peace and the ICTY has no jurisdiction over this offence. (See, however, paras 30 - 34 below). It is noted that the legitimacy of the recourse to force by NATO is a subject before the International Court of Justice in a case brought by the FRY against various NATO countries.

II Review Criteria

5. In the course of its review, the committee has applied the same criteria to NATO activities that the Office of the Prosecutor (OTP) has applied to the activities of other actors in the territory of the former Yugoslavia. The committee paid particular heed to the following questions:
- Are the prohibitions alleged sufficiently well-established as violations of international humanitarian law to form the basis of a prosecution, and does the application of the law to the particular facts reasonably suggest that a violation of these prohibitions may have occurred? and
 - upon the reasoned evaluation of the information by the committee, is the information credible and does it tend to show that crimes within the jurisdiction of the Tribunal may have been committed by individuals during the NATO bombing campaign?

This latter question reflects the earlier approach in relation to Article 18(1) of the Statute taken by the Prosecutor when asserting her right to investigate allegations of crimes committed by Serb forces in Kosovo (*Request by the Prosecutor, Pursuant to Rule 7 bis*) (B) that the President Notify the Security Council That the Federal Republic of Yugoslavia Has Failed to Comply With Its Obligations Under Article 29, dated 1 February 1999). The threshold test expressed therein by the Prosecutor was that of "credible evidence tending to show that crimes within the jurisdiction of the Tribunal may have been committed in Kosovo". That test was advanced to explain in what situation the Prosecutor would consider, for jurisdiction purposes, that she had a legal entitlement to investigate. (As a corollary, any investigation failing to meet that test could be said to be arbitrary and capricious, and to fall outside the Prosecutor's mandate). Thus formulated, the test represents a negative cut-off point for investigations. The Prosecutor may, in her discretion require that a higher threshold be met before making a positive decision that there is sufficient basis to proceed under Article 18(1). (In fact, in relation to the situation on the ground in Kosovo, the Prosecutor was in possession of a considerable body of evidence pointing to the commission of widespread atrocities by Serb forces.) In practice, before deciding to open an investigation in any case, the Prosecutor will also take into account a number of other factors concerning the prospects for obtaining evidence sufficient to prove that the crime has been committed by an individual who merits prosecution in the international forum.

**Final Report to the Prosecutor by the Committee Established to Review the NATO
Bombing Campaign Against the Federal Republic of Yugoslavia**

Table of Contents

I Background and Mandate

II Review Criteria

III Work Program

IV Assessment

A. General Issues

- i. Damage to the Environment
- ii. Use of Depleted Uranium Projectiles
- iii. Use of Cluster Bombs
- iv. Legal Issues Related to Target Selection
 - a. Overview of Applicable Law
 - b. Linkage Between Law Concerning Recourse to Force and Law Concerning How Force May Be Used
 - c. The Military Objective
 - d. The Principle of Proportionality
- v. Casualty Figures
- vi. General Assessment of the Bombing Campaign

B. Specific Incidents

- i. The Attack on a Civilian Passenger Train at the Gredelica Gorge on 12/4/99
- ii. The Attack on the Djakovica Convoy on 14/4/99
- iii. The Attack on the RTS (Serbian Radio and TV Station) in Belgrade on 23/4/99
- iv. The Attack on the Chinese Embassy on 7/5/99
- v. The Attack on Korisa Village on 13/5/99

V. Recommendations

I Background and Mandate

1. The North Atlantic Treaty Organization (NATO) conducted a bombing campaign against the Federal Republic of Yugoslavia (FRY) from 24 March 1999 to 9 June 1999. During and since that period, the Prosecutor has received numerous requests that she investigate allegations that senior political and military figures from NATO countries committed serious violations of international humanitarian law during the campaign, and that she prepares indictments pursuant to Article 18(1) & (4) of the Statute.
2. Criticism of the NATO bombing campaign has included allegations of varying weight: a) that, as the resort to force was illegal, all NATO actions were illegal, and b) that the NATO forces deliberately attacked civilian infrastructure targets (and that such attacks were unlawful), deliberately or recklessly attacked the civilian population, and deliberately or recklessly caused excessive civilian casualties in disregard of the rule of proportionality by trying to fight a "zero casualty" war for their own side. Allegations concerning the "zero casualty" war involve suggestions that, for example, NATO aircraft operated at heights which enabled them to avoid attack by Yugoslav defences and,

III Work Program

6. The committee has reviewed:

- a. documents sent to the OTP by persons or groups wishing the OTP to commence investigations of leading persons from NATO countries,
- b. public documents made available by NATO, the US Department of Defense and the British Ministry of Defence,
- c. documents filed by the FRY before the ICJ, a large number of other FRY documents, and also the two volume compilation of the FRY Ministry of Foreign Affairs entitled *NATO Crimes in Yugoslavia (White Book)*,
- d. various documents submitted by Human Rights Watch including a letter sent to the Secretary General of NATO during the bombing campaign, a paper on *NATO's Use of Cluster Munitions*, and a report on *Civilian Deaths in the NATO Air Campaign*,
- e. a UNEP study: *The Kosovo Conflict: Consequence for the Environment and Human Settlements*,
- f. documents submitted by a Russian Parliamentary Commission,
- g. two studies by a German national, Mr. Ekkehard Wenz, one concerning the bombing of a train at the Gredelica Gorge and the other concerning the bombing of the Djakovica Refugee Convoy,
- h. various newspaper reports and legal articles as they have come to the attention of committee members,
- i. the response to a letter containing a number of questions sent to NATO by the OTP, and
- j. an Amnesty International Report entitled *"Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*.

7. It should be noted that the committee did not travel to the FRY and it did not solicit information from the FRY through official channels as no such channels existed during the period when the review was conducted. Most of the material reviewed by the committee was in the public domain. The committee has relied exclusively on documents. The FRY submitted to the Prosecutor a substantial amount of material concerning particular incidents. In attempting to assess what happened on the ground, the committee relied upon the Human Rights Watch Report entitled *Civilian Deaths in the NATO Air Campaign* and upon the documented accounts in the FRY Ministry of Foreign Affairs volumes entitled *NATO Crimes in Yugoslavia*. The committee also relied heavily on NATO press statements and on the studies done by Mr. Ekkehard Wenz. The information available was adequate for making a preliminary assessment of incidents in which civilians were killed or injured. Information related to attacks on objects where civilians were not killed or injured was difficult to obtain and very little usable information was obtained.

8. To assist in the preparation of an Interim Report, a member of the Military Analysis Team reviewed the documents available in the OTP at the time, that is, all those referred to in paragraph 6 above except the FRY volumes entitled *NATO Crimes in Yugoslavia*, the HRW report on *Civilian Deaths in the NATO Air Campaign*, the studies by Mr. Wenz, NATO's response to the letter sent by the OTP to NATO, and the Amnesty International Report. The analyst prepared: a) a list of key incidents, b) a list of civilian residential targets, c) a list of civilian facility targets, d) a list of cultural property targets, e) a list of power facility targets, f) a list of targets the destruction of which might significantly affect the environment, and g) a list of communications targets. Very little information was available concerning the targets in lists (b) through (g).

9. The committee reviewed the above lists and requested the preparation of a file containing all available information on certain particular incidents, and on certain target categories. (It should be noted that the use of the terms "target" or "attack" in this report does not mean that in every case the site in question was deliberately struck

by NATO. The terms are convenient shorthand for incidents in which it is alleged that particular locations were damaged in the course of the bombing campaign).

The key incidents and target categories were:

- a. the attack on a civilian passenger train at the Grdelica Gorge - 12/4/99 - 10 or more civilians killed, 15 or more injured,
- b. the attack on the Djakovica Convoy - 14/4/99 - 70-75 civilians killed, 100 or more injured,
- c. the attack on Surdulica, - 27/4/99 - 11 civilians killed, 100 or more injured,
- d. the attack on Cuprija - 8/4/99 - 1 civilian killed, 5 injured,
- e. the attack on the Cigota Medical Institute - 8/4/99 - 3 civilians killed,
- f. the attack on Hotels Baciste and Putnik - 13/4/99 - 1 civilian killed,
- g. the attacks on the Pancevo Petrochemical Complex and Fertilizer Company - 15/4/99 and 18/4/99 - no reported civilian casualties,
- h. the attack on the Nis Tobacco Factory - 18/4/99 - no reported civilian casualties,
- i. the attack on the Djakovica Refugee Camp - 21/4/99 - 5 civilians killed, 16-19 injured,
- j. the attack on a bus at Lu`ane - 1/5/99 39 civilians killed,
- k. the attack on a bus at Pec - 3/5/99 - 17 civilians killed, 44 injured,
- l. the attack at Korisa village - 13/5/99 - 48-87 civilians killed,
- m. the attack on the Belgrade TV and Radio Station - 23/4/99 - 16 civilians killed,
- n. the attack on the Chinese Embassy in Belgrade - 7/5/99 - 3 civilians killed, 15 injured,
- o. attack on Nis City Centre and Hospital - 7/5/99 - 13 civilians killed, 60 injured,
- p. attack on Istok Prison - 21/5/99 - at least 19 civilians killed,
- q. attack on Belgrade Hospital - 20/5/99 - 3 civilians killed, several injured,
- r. attack on Surdulica Sanatorium - 30/5/99 - 23 killed, many injured,
- s. attack on journalists convoy Prizren-Brezovica Road - 31/5/99 - 1 civilian killed - 3 injured
- t. attack on Belgrade Heating Plant - 4/4/99, - 1 killed,
- u. attacks on Trade and Industry Targets.

10. On 23 July 1999, each committee member was provided with a binder including all available material. The committee members reviewed material in the binders.

11. In addition to reviewing factual information, the committee has also gathered legal materials and reviewed relevant legal issues, including the legality of the use of depleted uranium projectiles, the legality of the use of cluster munitions, whether or not the bombing campaign had an unlawfully adverse impact on the environment, and legal issues related to target selection.

12. The committee prepared an interim report on the basis of its analysis of the legal and factual material available and this was presented to the Prosecutor on 6 December 1999. At the direction of the Prosecutor, the committee then further updated the incident list and prepared a list of general questions and questions related to specific incidents. A letter enclosing the questionnaire and incident list was sent to NATO on 8 February 2000. A general reply was received on 10 May 2000.

13. It has not been possible for the committee to look at the NATO bombing campaign on a bomb by bomb basis and that was not its task. The committee has, however, reviewed public information concerning several incidents, including all the more well known incidents, with considerable care. It has also endeavored to examine, and has posed questions to NATO, concerning all other incidents in which it appears three or more civilians were killed.

In conducting its review, the committee has focused primarily on incidents in which civilian deaths were alleged and/or confirmed. The committee reviewed certain key incidents in depth for its interim report. These key incidents included 10 incidents in which 10 or more civilians were killed. The review by Human Rights Watch revealed 12 incidents in which 10 or more civilians were killed, all of the incidents identified by the committee plus two additional incidents: a) the attack on the Aleksinac "Deligrad" military barracks on 5/5/99 in which 10 civilians were killed and 30 wounded (a bomb aimed at the barracks fell short), and b) the attack on a military barracks in Novi Pazar on 31/5/99 in which 11 civilians were killed and 23 wounded (5 out of 6 munitions hit the target but one went astray). The committee's review of incidents in which it is alleged fewer than three civilians were killed has been hampered by a lack of reliable information.

IV Assessment

A. General Issues

i. Damage to the Environment

14. The NATO bombing campaign did cause some damage to the environment. For instance, attacks on industrial facilities such as chemical plants and oil installations were reported to have caused the release of pollutants, although the exact extent of this is presently unknown. The basic legal provisions applicable to protection of the environment in armed conflict are Article 35(3) of Additional Protocol I, which states that '[i]t is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment' and Article 55 which states:

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

2. Attacks against the natural environment by way of reprisals are prohibited

15. Neither the USA nor France has ratified Additional Protocol I. Article 55 may, nevertheless, reflect current customary law (see however the 1996 Advisory Opinion on the *Legality of Nuclear Weapons*, where the International Court of Justice appeared to suggest that it does not (*ICJ Rep.* (1996), 242, para. 31)). In any case, Articles 35(3) and 55 have a very high threshold of application. Their conditions for application are extremely stringent and their scope and contents imprecise. For instance, it is generally assumed that Articles 35(3) and 55 only cover very significant damage. The adjectives 'widespread, long-term, and severe' used in Additional Protocol I are joined by the word 'and', meaning that it is a triple, cumulative standard that needs to be fulfilled.

Consequently, it would appear extremely difficult to develop a *prima facie* case upon the basis of these provisions, even assuming they were applicable. For instance, it is thought that the notion of 'long-term' damage in Additional Protocol I would need to be measured in years rather than months, and that as such, ordinary battlefield damage of the kind caused to France in World War I would not be covered.

The great difficulty of assessing whether environmental damage exceeded the threshold of Additional Protocol I has also led to criticism by ecologists. This may partly explain the disagreement as to whether any of the damage caused by the oil spills and fires in the 1990/91 Gulf War technically crossed the threshold of Additional Protocol I.

It is the committee's view that similar difficulties would exist in applying Additional Protocol I to the present facts, even if reliable environmental assessments were to give rise to legitimate concern concerning the impact of the NATO bombing campaign. Accordingly, these effects are best considered from the underlying principles of the law of armed conflict such as necessity and proportionality.

16. The conclusions of the Balkan Task Force (BTF) established by UNEP to look into the Kosovo situation are:

"Our findings indicate that the Kosovo conflict has not caused an environmental catastrophe affecting the Balkans region as a whole.

Nevertheless, pollution detected at some sites is serious and poses a threat to human health.

BTF was able to identify environmental 'hot spots', namely in Pancevo, Kragujevac, Novi Sad and Bor, where immediate action and also further monitoring and analyses will be necessary. At all of these sites, environmental contamination due to the consequences of the Kosovo conflict was identified.

Part of the contamination identified at some sites clearly pre-dates the Kosovo conflict, and there is evidence of long-term deficiencies in the treatment and storage of hazardous waste.

The problems identified require immediate attention, irrespective of their cause, if further damage to human health and the environment is to be avoided."

17. The OTP has been hampered in its assessment of the extent of environmental damage in Kosovo by a lack of alternative and corroborated sources regarding the extent of environmental contamination caused by the NATO bombing campaign. Moreover, it is quite possible that, as this campaign occurred only a year ago, the UNEP study may not be a reliable indicator of the long term environmental consequences of the NATO bombing, as accurate assessments regarding the long-term effects of this contamination may not yet be practicable.

It is the opinion of the committee, on the basis of information currently in its possession, that the environmental damage caused during the NATO bombing campaign does not reach the Additional Protocol I threshold. In addition, the UNEP Report also suggests that much of the environmental contamination which is discernible cannot unambiguously be attributed to the NATO bombing.

18. The alleged environmental effects of the NATO bombing campaign flow in many cases from NATO's striking of legitimate military targets compatible with Article 52 of Additional Protocol I such as stores of fuel, industries of fundamental importance for the conduct of war and for the manufacture of supplies and material of a military character, factories or plant and manufacturing centres of fundamental importance for the conduct of war. Even when targeting admittedly legitimate military objectives, there is a need to avoid excessive long-term damage to the economic infrastructure and natural environment with a consequential adverse effect on the civilian population. Indeed, military objectives should not be targeted if the attack is likely to cause collateral environmental damage which would be excessive in relation to the direct military advantage which the attack is expected to produce (A.P.V. Rogers, "Zero Casualty Warfare," *IRRC*, March 2000, Vol. 82, pp. 177-8).

19. It is difficult to assess the relative values to be assigned to the military advantage gained and harm to the natural environment, and the application of the principle of proportionality is more easily stated than applied in practice. In applying this principle, it is necessary to assess the importance of the target in relation to the incidental damage expected: if the target is sufficiently important, a greater degree of risk to the environment may be justified.

20. The adverse effect of the coalition air campaign in the Gulf war upon the civilian infrastructure prompted concern on the part of some experts regarding the notion of "military objective." This has prompted some experts to argue that where the presumptive effect of hostilities upon the civilian infrastructure (and consequently the civilian population) is grave, the military advantage conferred by the destruction of the military objective would need to

be decisive (see below, paras. 40-41). Similar considerations would, in the committee's view, be warranted where the grave threat to the civilian infrastructure emanated instead from excessive environmental harm resulting from the hostilities. The critical question is what kind of environmental damage can be considered to be excessive. Unfortunately, the customary rule of proportionality does not include any concrete guidelines to this effect.

21. The military worth of the target would need to be considered in relation to the circumstances prevailing at the time. If there is a choice of weapons or methods of attack available, a commander should select those which are most likely to avoid, or at least minimize, incidental damage. In doing so, however, he is entitled to take account of factors such as stocks of different weapons and likely future demands, the timeliness of attack and risks to his own forces (A.P.V. Rogers, *ibid*, at p. 178). Operational reality is recognized in the Statute of the International Criminal Court, an authoritative indicator of evolving customary international law on this point, where Article 8(b)(iv) makes the infliction of incidental environmental damage an offence only if the attack is launched intentionally in the knowledge that it will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated. The use of the word 'clearly' ensures that criminal responsibility would be entailed only in cases where the excessiveness of the incidental damage was obvious.

22. Taken together, this suggests that in order to satisfy the requirement of proportionality, attacks against military targets which are known or can reasonably be assumed to cause grave environmental harm may need to confer a very substantial military advantage in order to be considered legitimate. At a minimum, actions resulting in massive environmental destruction, especially where they do not serve a clear and important military purpose, would be questionable. The targeting by NATO of Serbian petro-chemical industries may well have served a clear and important military purpose.

23. The above considerations also suggest that the requisite *mens rea* on the part of a commander would be actual or constructive knowledge as to the grave environmental effects of a military attack; a standard which would be difficult to establish for the purposes of prosecution and which may provide an insufficient basis to prosecute military commanders inflicting environmental harm in the (mistaken) belief that such conduct was warranted by military necessity. (In the *Hostages* case before the Nuremberg Military Tribunals, for instance, the German General Rendulic was acquitted of the charge of wanton devastation on the grounds that although Rendulic may have erred in believing that there was military necessity for the widespread environmental destruction entailed by his use of a 'scorched earth' policy in the Norwegian province of Finnmark, he was not guilty of a criminal act (11 *Trials of War Criminals*, (1950), 1296)). In addition, the notion of 'excessive' environmental destruction is imprecise and the actual environmental impact, both present and long term, of the NATO bombing campaign is at present unknown and difficult to measure.

24. In order to fully evaluate such matters, it would be necessary to know the extent of the knowledge possessed by NATO as to the nature of Serbian military-industrial targets (and thus, the likelihood of environmental damage flowing from their destruction), the extent to which NATO could reasonably have anticipated such environmental damage (for instance, could NATO have reasonably expected that toxic chemicals of the sort allegedly released into the environment by the bombing campaign would be stored alongside that military target?) and whether NATO could reasonably have resorted to other (and less environmentally damaging) methods for achieving its military objective of disabling the Serbian military-industrial infrastructure.

25. It is therefore the opinion of the committee, based on information currently available to it, that the OTP should not commence an investigation into the collateral environmental damage caused by the NATO bombing campaign.

ii. Use of Depleted Uranium Projectiles

26. There is evidence of use of depleted uranium (DU) projectiles by NATO aircraft during the bombing campaign. There is no specific treaty ban on the use of DU projectiles. There is a developing scientific debate and concern expressed regarding the impact of the use of such projectiles and it is possible that, in future, there will be a consensus view in international legal circles that use of such projectiles violate general principles of the law applicable to use of weapons in armed conflict. No such consensus exists at present. Indeed, even in the case of nuclear warheads and other weapons of mass-destruction – those which are universally acknowledged to have the most deleterious environmental consequences – it is difficult to argue that the prohibition of their use is in all cases absolute. (*Legality of Nuclear Weapons, ICJ Rep.* (1996), 242). In view of the uncertain state of development of the legal standards governing this area, it should be emphasised that the use of depleted uranium or other potentially hazardous substance by any adversary to conflicts within the former Yugoslavia since 1991 has not formed the basis of any charge laid by the Prosecutor. It is acknowledged that the underlying principles of the law of armed conflict such as proportionality are applicable also in this context; however, it is the committee's view that analysis undertaken above (paras. 14-25) with regard to environmental damage would apply, *mutatis mutandis*, to the use of depleted uranium projectiles by NATO. It is therefore the opinion of the committee, based on information available at present, that the OTP should not commence an investigation into use of depleted uranium projectiles by NATO.

iii. Use of Cluster Bombs

27. Cluster bombs were used by NATO forces during the bombing campaign. There is no specific treaty provision which prohibits or restricts the use of cluster bombs although, of course, cluster bombs must be used in compliance with the general principles applicable to the use of all weapons. Human Rights Watch has condemned the use of cluster bombs alleging that the high "dud" or failure rate of the submunitions (bomblets) contained inside cluster bombs converts these submunitions into antipersonnel landmines which, it asserts, are now prohibited under customary international law. Whether antipersonnel landmines are prohibited under current customary law is debatable, although there is a strong trend in that direction. There is, however, no general legal consensus that cluster bombs are, in legal terms, equivalent to antipersonnel landmines. It should be noted that the use of cluster bombs was an issue of sorts in the *Martić* Rule 61 Hearing Decision of Trial Chamber I on 8 March 1996. In that decision the Chamber stated there was no formal provision forbidding the use of cluster bombs as such (para. 18 of judgment) but it regarded the use of the Orkan rocket with a cluster bomb warhead in that particular case as evidence of the intent of the accused to deliberately attack the civilian population because the rocket was inaccurate, it landed in an area with no military objectives nearby, it was used as an antipersonnel weapon launched against the city of Zagreb and the accused indicated he intended to attack the city as such (paras. 23-31 of judgment). The Chamber concluded that "the use of the Orkan rocket in this case was not designed to hit military targets but to terrorise the civilians of Zagreb" (para. 31 of judgment). There is no indication cluster bombs were used in such a fashion by NATO. It is the opinion of the committee, based on information presently available, that the OTP should not commence an investigation into use of cluster bombs as such by NATO.

iv. Legal Issues Related to Target Selection

a. Overview of Applicable Law

28. In brief, in combat military commanders are required: a) to direct their operations against military objectives, and b) when directing their operations against military objectives, to ensure that the losses to the civilian population and the damage to civilian property are not disproportionate to the concrete and direct military advantage anticipated. Attacks which are not directed against military objectives (particularly attacks directed against the civilian population) and attacks which cause disproportionate civilian casualties or civilian property damage may constitute the *actus reus* for the offence of unlawful attack under Article 3 of the ICTY Statute. The *mens rea* for the offence is intention or recklessness, not simple

negligence. In determining whether or not the *mens rea* requirement has been met, it should be borne in mind that commanders deciding on an attack have duties:

- a) to do everything practicable to verify that the objectives to be attacked are military objectives,
- b) to take all practicable precautions in the choice of methods and means of warfare with a view to avoiding or, in any event to minimizing incidental civilian casualties or civilian property damage, and
- c) to refrain from launching attacks which may be expected to cause disproportionate civilian casualties or civilian property damage.

29. One of the principles underlying international humanitarian law is the principle of distinction, which obligates military commanders to distinguish between military objectives and civilian persons or objects. The practical application of this principle is effectively encapsulated in Article 57 of Additional Protocol which, in part, obligates those who plan or decide upon an attack to "do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects". The obligation to do everything feasible is high but not absolute. A military commander must set up an effective intelligence gathering system to collect and evaluate information concerning potential targets. The commander must also direct his forces to use available technical means to properly identify targets during operations. Both the commander and the aircrew actually engaged in operations must have some range of discretion to determine which available resources shall be used and how they shall be used. Further, a determination that inadequate efforts have been made to distinguish between military objectives and civilians or civilian objects should not necessarily focus exclusively on a specific incident. If precautionary measures have worked adequately in a very high percentage of cases then the fact they have not worked well in a small number of cases does not necessarily mean they are generally inadequate.

b) Linkage Between Law Concerning Recourse to Force and Law Concerning How Force May Be Used

30. Allegations have been made that, as NATO's resort to force was not authorized by the Security Council or in self-defence, that the resort to force was illegal and, consequently, all forceful measures taken by NATO were unlawful. These allegations justify a brief discussion of the *jus ad bellum*. In brief, the *jus ad bellum* regulates when states may use force and is, for the most part, enshrined in the UN Charter. In general, states may use force in self defence (individual or collective) and for very few other purposes. In particular, the legitimacy of the presumed basis for the NATO bombing campaign, humanitarian intervention without prior Security Council authorization, is hotly debated. That being said, as noted in paragraph 4 above, the crime related to an unlawful decision to use force is the crime against peace or aggression. While a person convicted of a crime against peace may, potentially, be held criminally responsible for all of the activities causing death, injury or destruction during a conflict, the ICTY does not have jurisdiction over crimes against peace.

31. The *jus in bello* regulates how states may use force. The ICTY has jurisdiction over serious violations of international humanitarian law as specified in Articles 2-5 of the Statute. These are *jus in bello* offences.

32. The precise linkage between *jus ad bellum* and *jus in bello* is not completely resolved. There were suggestions by the prosecution before the International Military Tribunal at Nuremberg and in some other post World War II war crimes cases that all of the killing and destruction caused by German forces were war crimes because the Germans were conducting an aggressive war. The courts were unreceptive to these arguments. Similarly, in the 1950's there was a debate concerning whether UN authorized forces were required to comply with the *jus in bello* as they represented the good side in a battle between good and evil. This debate died out as the participants realized that a certain crude reciprocity was essential if the law was to have any positive impact. An argument that the "bad" side had to comply with

the law while the "good" side could violate it at will would be most unlikely to reduce human suffering in conflict.

33. More recently, a refined approach to the linkage issue has been advocated by certain law of war scholars. Using their approach, assuming that the only lawful basis for recourse to force is self defence, each use of force during a conflict must be measured by whether or not it complies with the *jus in bello* and by whether or not it complies with the necessity and proportionality requirements of self defence. The difficulty with this approach is that it does not adequately address what should be done when it is unclear who is acting in self defence and it does not clarify the obligations of the "bad" side.

34. As a matter of practice, which we consider to be in accord with the most widely accepted and reputable legal opinion, we in the OTP have deliberately refrained from assessing *jus ad bellum* issues in our work and focused exclusively on whether or not individuals have committed serious violations of international humanitarian law as assessed within the confines of the *jus in bello*.

c. The military objective

35. The most widely accepted definition of "military objective" is that in Article 52 of Additional Protocol I which states in part:

In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

36. Where objects are concerned, the definition has two elements: (a) their nature, location, purpose or use must make an effective contribution to military action, and (b) their total or partial destruction, capture or neutralization must offer a definite military advantage in the circumstances ruling at the time. Although this definition does not refer to persons, in general, members of the armed forces are considered combatants, who have the right to participate directly in hostilities, and as a corollary, may also be attacked.

37. The definition is supposed to provide a means whereby informed objective observers (and decision makers in a conflict) can determine whether or not a particular object constitutes a military objective. It accomplishes this purpose in simple cases. Everyone will agree that a munitions factory is a military objective and an unoccupied church is a civilian object. When the definition is applied to dual-use objects which have some civilian uses and some actual or potential military use (communications systems, transportation systems, petrochemical complexes, manufacturing plants of some types), opinions may differ. The application of the definition to particular objects may also differ depending on the scope and objectives of the conflict. Further, the scope and objectives of the conflict may change during the conflict.

38. Using the Protocol I definition and his own review of state practice, Major General A.P.V. Rogers, a former Director of British Army Legal Services has advanced a tentative list of military objectives:

military personnel and persons who take part in the fighting without being members of the armed forces, military facilities, military equipment, including military vehicles, weapons, munitions and stores of fuel, military works, including defensive works and fortifications, military depots and establishments, including War and Supply Ministries, works producing or developing military supplies and other supplies of military value, including metallurgical, engineering and chemical industries supporting the war effort; areas of land of military significance such as hills, defiles and bridgeheads; railways, ports, airfields, bridges, main roads as well as tunnels and canals; oil and other power installations; communications installations, including broadcasting and television stations and telephone and telegraph stations used for military communications. (Rogers, *Law on the*

Battlefield (1996) 37)

The list was not intended to be exhaustive. It remains a requirement that both elements of the definition must be met before a target can be properly considered an appropriate military objective.

39. In 1956, the International Committee of the Red Cross (ICRC) drew up the following proposed list of categories of military objectives:

I. The objectives belonging to the following categories are those considered to be of generally recognized military importance:

- (1) Armed forces, including auxiliary or complementary organisations, and persons who, though not belonging to the above-mentioned formations, nevertheless take part in the fighting.
- (2) Positions, installations or constructions occupied by the forces indicated in sub-paragraph 1 above, as well as combat objectives (that is to say, those objectives which are directly contested in battle between land or sea forces including airborne forces).
- (3) Installations, constructions and other works of a military nature, such as barracks, fortifications, War Ministries (e.g. Ministries of Army, Navy, Air Force, National Defence, Supply) and other organs for the direction and administration of military operations.
- (4) Stores of army or military supplies, such as munition dumps, stores of equipment or fuel, vehicles parks.
- (5) Airfields, rocket launching ramps and naval base installations.
- (6) Those of the lines and means of communications (railway lines, roads, bridges, tunnels and canals) which are of fundamental military importance.
- (7) The installations of broadcasting and television stations; telephone and telegraph exchanges of fundamental military importance.
- (8) Industries of fundamental importance for the conduct of the war:
 - (a) industries for the manufacture of armaments such as weapons, munitions, rockets, armoured vehicles, military aircraft, fighting ships, including the manufacture of accessories and all other war material;
 - (b) industries for the manufacture of supplies and material of a military character, such as transport and communications material, equipment of the armed forces;
 - (c) factories or plant constituting other production and manufacturing centres of fundamental importance for the conduct of war, such as the metallurgical, engineering and chemical industries, whose nature or purpose is essentially military;
 - (d) storage and transport installations whose basic function it is to serve the industries referred to in (a)-(c);
 - (e) 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.

(9) Installations constituting experimental, research centres for experiments on and the development of weapons and war material.

II. The following however, are excepted from the foregoing list:

(1) Persons, constructions, installations or transports which are protected under the Geneva Conventions I, II, III, of August 12, 1949;

(2) Non-combatants in the armed forces who obviously take no active or direct part in hostilities.

III. The above list will be reviewed at intervals of not more than ten years by a group of Experts composed of persons with a sound grasp of military strategy and of others concerned with the protection of the civilian population.

(Y. Sandoz, C. Swinarski, B. Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987) at 632-633.

40. The Protocol I definition of military objective has been criticized by W. Hays Parks, the Special Assistant for Law of War Matters to the U.S. Army Judge Advocate General as being focused too narrowly on definite military advantage and paying too little heed to war sustaining capability, including economic targets such as export industries. (W. Hays Parks, "Air War and the Law of War," 32 *A.F.L. Rev.* 1, 135-45 (1990)). On the other hand, some critics of Coalition conduct in the Gulf War have suggested that the Coalition air campaign, directed admittedly against legitimate military objectives within the scope of the Protocol I definition, caused excessive long-term damage to the Iraqi economic infrastructure with a consequential adverse effect on the civilian population. (Middle East Watch, *Needless Deaths in the Gulf War: Civilian Casualties during the Air Campaign and Violations of the Laws of War* (1991); Judith G. Gardam, "Proportionality and Force in International Law," 87 *Am. J. Int'l L.* 391, 404-10 (1993)).

41. This criticism has not gone unexplored. Françoise Hampson, a British scholar, has suggested a possible refinement of the definition:

In order to determine whether there is a real subject of concern here, it would be necessary to establish exactly what the effect has been of the damage to the civilian infrastructure brought about by the hostilities. If that points to a need further to refine the law, it is submitted that what is needed is a qualification to the definition of military objectives. Either it should require the likely cumulative effect on the civilian population of attacks against such targets to be taken into account, or the same result might be achieved by requiring that the destruction of the object offer a definite military advantage in the context of the war aim. Françoise Hampson, "Means and Methods of Warfare in the Conflict in the Gulf," in P. Rowe, ed., *The Gulf War 1990-91 in International and English Law* 89 (1983) 100.

42. Although the Protocol I definition of military objective is not beyond criticism, it provides the contemporary standard which must be used when attempting to determine the lawfulness of particular attacks. That being said, it must be noted once again neither the USA nor France is a party to Additional Protocol I. The definition is, however, generally accepted as part of customary law.

43. To put the NATO campaign in context, it is instructive to look briefly at the approach to the military objective concept in history of air warfare. The Protocol I standard was not applicable during World War II. The bomber offensives conducted during that war were conducted with technological means which rendered attacks on targets occupying small areas almost impossible. In general, depending upon the period in the conflict, bomber attacks could be relied upon, at best, to strike within 5 miles, 2 miles or 1 mile of the designated

target. The mission for the US/UK Combined Bomber Offensive from the UK was:

"To conduct a joint United States-British air offensive to accomplish the progressive destruction and dislocation of the German military, industrial and economic system, and the undermining of the morale of the German people to a point where their capacity for armed resistance is fatally weakened. This is construed as meaning so weakened as to permit initiation of final combined operations on the Continent."

(A. Verrier, *The Bomber Offensive* (1968) 330).

The principal specific objectives of the offensive were designated as:

"Submarine construction yards and bases.
German aircraft industry.
Ball bearings.
Oil.
Synthetic rubber and tires.
Military transport vehicles."
(A. Verrier, *ibid*, at 330).

Notwithstanding the designation of specific targets and the attempt, at least by US Army Air Force commanders on occasion, to conduct a precision bombing campaign, for the most part World War II bombing campaigns were aimed at area targets and intended, directly or indirectly, to affect the morale of the enemy civilian population. It is difficult to describe the fire bombing of Hamburg, Dresden and Tokyo as anything other than attacks intended to kill, terrorize or demoralize civilians. Whether or not these attacks could be justified legally in the total war context of the time, they would be unlawful if they were required to comply with Protocol I.

44. Technology, law, and the public consensus of what was acceptable, at least in demonstrably limited conflicts, had evolved by the time of the 1990-91 Gulf Conflict. Technological developments, such as precision guided munitions, and the rapid acquisition of control of the aerospace by coalition air forces significantly enhanced the precision with which targets could be attacked.

Target sets used during the Gulf Conflict were:

"Leadership; Command, Control, and Communications; Strategic Air Defenses; Airfields; Nuclear, Biological, and Chemical Research and Production; Naval Forces and Port Facilities; Military Storage and Production; Railroads and Bridges, Electrical Power; and Oil Refining and Distribution Facilities. Schwarzkopf added the Republican Guard as a category and Scuds soon emerged as a separate target set. After the beginning of Desert Storm, two more categories appeared: fixed surface-to-air missile sites in the KTO and breaching sites for the ground offensive."

(W. Murray, *Air War in the Persian Gulf* (1995) 32)

45. In the words of the Cohen, Shelton Joint Statement on Kosovo given to the US Senate:

"At the outset of the air campaign, NATO set specific strategic objectives for its use of force in Kosovo that later served as the basis for its stated conditions to Milosevic for stopping the bombing. These objectives were to:

-- Demonstrate the seriousness of NATO's opposition to Belgrade's aggression in the Balkans;

-- Deter Milosevic from continuing and escalating his attacks on helpless civilians and create conditions to reverse his ethnic cleansing; and

-- Damage Serbia's capacity to wage war against Kosovo in the future or spread the war to neighbors by diminishing or degrading its ability to wage military operations...

Phases of the Campaign. Operation Allied Force was originally planned to be prosecuted in five phases under NATO's operational plan, the development of which began in the summer of 1998. Phase 0 was the deployment of air assets into the European theater. Phase 1 would establish air superiority over Kosovo and degrade command and control over the whole of the FRY. Phase 2 would attack military targets in Kosovo and those FRY forces south of 44 degrees north latitude, which were providing reinforcement to Serbian forces into Kosovo. This was to allow targeting of forces not only in Kosovo, but also in the FRY south of Belgrade. Phase 3 would expand air operations against a wide range of high-value military and security force targets throughout the FRY. Phase 4 would redeploy forces as required. A limited air response relying predominantly on cruise missiles to strike selected targets throughout the Phase 1. Within a few days of the start of NATO's campaign, alliance aircraft were striking both strategic and tactical targets throughout Serbia, as well as working to suppress and disrupt the FRY's integrated air defence system.

At the NATO Summit in Washington on April 23, 1999, alliance leaders decided to further intensify the air campaign by expanding the target set to include military-industrial infrastructure, media, and other strategic targets"

46. The NATO Internet Report *Kosovo One Year On* (<http://www.nato.int/kosovo/repo> 2000, 21 Mar 00) described the targets as:

"The air campaign set out to weaken Serb military capabilities, both strategically and tactically. Strikes on tactical targets, such as artillery and field headquarters, had a more immediate effect in disrupting the ethnic cleansing of Kosovo. Strikes against strategic targets, such as government ministries and refineries, had long term and broader impact on the Serb military machine.

The bulk of NATO's effort against tactical targets was aimed at military facilities, fielded forces, heavy weapons, and military vehicles and formations in Kosovo and southern Serbia...

Strategic targets included Serb air defences, command and control facilities, Yugoslav military (VJ) and police (MUP) forces headquarters, and supply routes".

47. Most of the targets referred to in the quotations above are clearly military objectives. The precise scope of "military-industrial infrastructure, media and other strategic targets" as referred to in the US statement and "government ministries and refineries" as referred to in the NATO statement is unclear. Whether the media constitutes a legitimate target group is a debatable issue. If the media is used to incite crimes, as in Rwanda, then it is a legitimate target. If it is merely disseminating propaganda to generate support for the war effort, it is not a legitimate target.

d) The Principle of Proportionality

48. The main problem with the principle of proportionality is not whether or not it exists but what it means and how it is to be applied. It is relatively simple to state that there must be an acceptable relation between the legitimate destructive effect and undesirable collateral effects. For example, bombing a refugee camp is obviously prohibited if its only military significance is that people in the camp are knitting socks for soldiers. Conversely, an air strike on an ammunition dump should not be prohibited merely because a farmer is plowing a field in the area. Unfortunately, most applications of the principle of proportionality are not quite so clear cut. It is much easier to formulate the principle of proportionality in general

terms than it is to apply it to a particular set of circumstances because the comparison is often between unlike quantities and values. One cannot easily assess the value of innocent human lives as opposed to capturing a particular military objective.

49. The questions which remain unresolved once one decides to apply the principle of proportionality include the following:

- a) What are the relative values to be assigned to the military advantage gained and the injury to non-combatants and or the damage to civilian objects?
- b) What do you include or exclude in totaling your sums?
- c) What is the standard of measurement in time or space? and
- d) To what extent is a military commander obligated to expose his own forces to danger in order to limit civilian casualties or damage to civilian objects?

50. The answers to these questions are not simple. It may be necessary to resolve them on a case by case basis, and the answers may differ depending on the background and values of the decision maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to noncombatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases. It is suggested that the determination of relative values must be that of the "reasonable military commander". Although there will be room for argument in close cases, there will be many cases where reasonable military commanders will agree that the injury to noncombatants or the damage to civilian objects was clearly disproportionate to the military advantage gained.

51. Much of the material submitted to the OTP consisted of reports that civilians had been killed, often inviting the conclusion to be drawn that crimes had therefore been committed. Collateral casualties to civilians and collateral damage to civilian objects can occur for a variety of reasons. Despite an obligation to avoid locating military objectives within or near densely populated areas, to remove civilians from the vicinity of military objectives, and to protect their civilians from the dangers of military operations, very little prevention may be feasible in many cases. Today's technological society has given rise to many dual use facilities and resources. City planners rarely pay heed to the possibility of future warfare. Military objectives are often located in densely populated areas and fighting occasionally occurs in such areas. Civilians present within or near military objectives must, however, be taken into account in the proportionality equation even if a party to the conflict has failed to exercise its obligation to remove them.

52. In the *Kupreskic* Judgment (Case No: IT-95-16-T 14 Jan 2000) the Trial Chamber addressed the issue of proportionality as follows:

"526. As an example of the way in which the Martens clause may be utilised, regard might be had to considerations such as the cumulative effect of attacks on military objectives causing incidental damage to civilians. In other words, it may happen that single attacks on military objectives causing incidental damage to civilians, although they may raise doubts as to their lawfulness, nevertheless do not appear on their face to fall foul *per se* of the loose prescriptions of Articles 57 and 58 (or of the corresponding customary rules). However, in case of repeated attacks, all or most of them falling within the grey area between indisputable legality and unlawfulness, it might be warranted to conclude that the cumulative effect of such acts entails that they may not be in keeping with international law. Indeed, this pattern of military conduct may turn out to jeopardise excessively the lives and assets of civilians, contrary to the demands of humanity."

This formulation in *Kupreskic* can be regarded as a progressive statement of the applicable

law with regard to the obligation to protect civilians. Its practical import, however, is somewhat ambiguous and its application far from clear. It is the committee's view that where individual (and legitimate) attacks on military objectives are concerned, the mere *cumulation* of such instances, all of which are deemed to have been lawful, cannot *ipso facto* be said to amount to a crime. The committee understands the above formulation, instead, to refer to an *overall* assessment of the totality of civilian victims as against the goals of the military campaign.

V Casualty Figures

53. In its report, *Civilian Deaths in the NATO Air Campaign*, Human Rights Watch documented some 500 civilian deaths in 90 separate incidents. It concluded: "on the basis available on these ninety incidents that as few as 488 and as many as 527 Yugoslav civilians were killed as a result of NATO bombing. Between 62 and 66 percent of the total registered civilian deaths occurred in just twelve incidents. These twelve incidents accounted for 303 to 352 civilian deaths. These were the only incidents among the ninety documented in which ten or more civilian deaths were confirmed." Ten of these twelve incidents were included among the incidents which were reviewed with considerable care by the committee (see para. 9 above) and our estimate was that between 273 and 317 civilians were killed in these ten incidents. Human Rights Watch also found the FRY Ministry of Foreign Affairs publication *NATO Crimes in Yugoslavia* to be largely credible on the basis of its own filed research and correlation with other sources. A review of this publication indicates it provides an estimated total of approximately 495 civilians killed and 820 civilians wounded in specific documented instances. For the purposes of this report, the committee operates on the basis of the number of persons allegedly killed as found in both publications. It appears that a figure similar to both publications would be in the range of 500 civilians killed.

VI General Assessment of the Bombing Campaign

54. During the bombing campaign, NATO aircraft flew 38,400 sorties, including 10,484 strike sorties. During these sorties, 23, 614 air munitions were released (figures from NATO). As indicated in the preceding paragraph, it appears that approximately 500 civilians were killed during the campaign. These figures do not indicate that NATO may have conducted a campaign aimed at causing substantial civilian casualties either directly or incidentally.

55. The choice of targets by NATO (see paras. 38 and 39 above) includes some loosely defined categories such as military-industrial infrastructure and government ministries and some potential problem categories such as media and refineries. All targets must meet the criteria for military objectives (see para. 28-30 above). If they do not do so, they are unlawful. A general label is insufficient. The targeted components of the military-industrial infrastructure and of government ministries must make an effective contribution to military action and their total or partial destruction must offer a definite military advantage in the circumstances ruling at the time. Refineries are certainly traditional military objectives but tradition is not enough and due regard must be paid to environmental damage if they are attacked (see paras. 14-25 above). The media as such is not a traditional target category. To the extent particular media components are part of the C3 (command, control and communications) network they are military objectives. If media components are not part of the C3 network then they may become military objectives depending upon their use. As a bottom line, civilians, civilian objects and civilian morale as such are not legitimate military objectives. The media does have an effect on civilian morale. If that effect is merely to foster support for the war effort, the media is not a legitimate military objective. If the media is used to incite crimes, as in Rwanda, it can become a legitimate military objective. If the media is the nerve system that keeps a war-monger in power and thus perpetuates the war effort, it may fall within the definition of a legitimate military objective. As a general statement, in the particular incidents reviewed by the committee, it is the view of the committee that NATO was attempting to attack objects it perceived to be legitimate military objectives.

56. The committee agrees there is nothing inherently unlawful about flying above the height which can be reached by enemy air defences. However, NATO air commanders have a duty to

take practicable measures to distinguish military objectives from civilians or civilian objectives. The 15,000 feet minimum altitude adopted for part of the campaign may have meant the target could not be verified with the naked eye. However, it appears that with the use of modern technology, the obligation to distinguish was effectively carried out in the vast majority of cases during the bombing campaign.

B. Specific Incidents

57. In the course of its review, the committee did not come across any incident which, in its opinion, required investigation by the OTP. The five specific incidents discussed below are those which, in the opinion of the committee, were the most problematic. The facts cited in the discussion of each specific incident are those indicated in the information within the possession of the OTP at the time of its review.

i. The Attack on a Civilian Passenger Train at the Grdelica Gorge on 12/4/99

58. On 12 April 1999, a NATO aircraft launched two laser guided bombs at the Leskovac railway bridge over the Grdelica gorge and Juzna Morava river, in eastern Serbia. A 5-carriage passenger train, travelling from Belgrade to Ristovac on the Macedonian border, was crossing the bridge at the time, and was struck by both missiles. The various reports made of this incident concur that the incident occurred at about 11.40 a.m. At least ten people were killed in this incident and at least 15 individuals were injured. The designated target was the railway bridge, which was claimed to be part of a re-supply route being used for Serb forces in Kosovo. After launching the first bomb, the person controlling the weapon, at the last instant before impact, sighted movement on the bridge. The controller was unable to dump the bomb at that stage and it hit the train, the impact of the bomb cutting the second of the passenger coaches in half. Realising the bridge was still intact, the controller picked a second aim point on the bridge at the opposite end from where the train had come and launched the second bomb. In the meantime the train had slid forward as a result of the original impact and parts of the train were also hit by the second bomb.

59. It does not appear that the train was targeted deliberately. US Deputy Defense Secretary John Hamre stated that "one of our electro-optically guided bombs homed in on a railroad bridge just when a passenger train raced to the aim point. We never wanted to destroy that train or kill its occupants. We did want to destroy the bridge and we regret this accident." The substantive part of the explanation, both for the failure to detect the approach of the passenger train and for firing a second missile once it had been hit by the first, was given by General Wesley Clark, NATO's Supreme Allied Commander for Europe and is here reprinted in full:

"[T]his was a case where a pilot was assigned to strike a railroad bridge that is part of the integrated communications supply network in Serbia. He launched his missile from his aircraft that was many miles away, he was not able to put his eyes on the bridge, it was a remotely directed attack. And as he stared intently at the desired target point on the bridge, and I talked to the team at Aviano who was directly engaged in this operation, as the pilot stared intently at the desired aim point on the bridge and worked it, and worked it and worked it, and all of a sudden at the very last instant with less than a second to go he caught a flash of movement that came into the screen and it was the train coming in.

Unfortunately he couldn't dump the bomb at that point, it was locked, it was going into the target and it was an unfortunate incident which he, and the crew, and all of us very much regret. We certainly don't want to do collateral damage.

The mission was to take out the bridge. He realised when it had happened that he had not hit the bridge, but what he had hit was the train. He had another aim point on the bridge, it was a relatively long bridge and he believed he still had to accomplish his mission, the pilot circled back around. He put his aim point on the other end of the bridge from where the train had come, by the time the bomb got

close to the bridge it was covered with smoke and clouds and at the last minute again in an uncanny accident, the train had slid forward from the original impact and parts of the train had moved across the bridge, and so that by striking the other end of the bridge he actually caused additional damage to the train." (Press Conference, NATO HQ, Brussels, 13 April).

General Clark then showed the cockpit video of the plane which fired on the bridge:

"The pilot in the aircraft is looking at about a 5-inch screen, he is seeing about this much and in here you can see this is the railroad bridge which is a much better view than he actually had, you can see the tracks running this way.

Look very intently at the aim point, concentrate right there and you can see how, if you were focused right on your job as a pilot, suddenly that train appeared. It was really unfortunate.

Here, he came back around to try to strike a different point on the bridge because he was trying to do a job to take the bridge down. Look at this aim point – you can see smoke and other obscuration there – he couldn't tell what this was exactly.

Focus intently right at the centre of the cross. He is bringing these two crosses together and suddenly he recognises at the very last instant that the train that was struck here has moved on across the bridge and so the engine apparently was struck by the second bomb." (Press Conference, NATO HQ, Brussels, 13 April).

60. Some doubt has since been cast on this version of events by a comprehensive technical report submitted by a German national, Mr Ekkehard Wenz, which queries the actual speed at which the events took place in relation to that suggested by the video footage of the incident released by NATO. The effect of this report is to suggest that the reaction time available to the person controlling the bombs was in fact considerably greater than that alleged by NATO. Mr. Wenz also suggests the aircraft involved was an F15E Strike Eagle with a crew of two and with the weapons being controlled by a Weapons Systems Officer (WSO) not the pilot.

61. The committee has reviewed both the material provided by NATO and the report of Mr. Wenz with considerable care. It is the opinion of the committee that it is irrelevant whether the person controlling the bomb was the pilot or the WSO. Either person would have been travelling in a high speed aircraft and likely performing several tasks simultaneously, including endeavouring to keep the aircraft in the air and safe from surrounding threats in a combat environment. If the committee accepts Mr. Wenz's estimate of the reaction time available, the person controlling the bombs still had a very short period of time, less than 7 or 8 seconds in all probability, to react. Although Mr Wenz is of the view that the WSO intentionally targeted the train, the committee's review of the frames used in the report indicates another interpretation is equally available. The cross hairs remain fixed on the bridge throughout, and it is clear from this footage that the train can be seen moving toward the bridge only as the bomb is in flight: it is only in the course of the bomb's trajectory that the image of the train becomes visible. At a point where the bomb is within a few seconds of impact, a very slight change to the bomb aiming point can be observed, in that it drops a couple of feet. This sequence regarding the bomb sights indicates that it is unlikely that the WSO was targeting the train, but instead suggests that the target was a point on the span of the bridge before the train appeared.

62. It is the opinion of the committee that the bridge was a legitimate military objective. The passenger train was not deliberately targeted. The person controlling the bombs, pilot or WSO, targeted the bridge and, over a very short period of time, failed to recognize the arrival of the train while the first bomb was in flight. The train was on the bridge when the bridge was targeted a second time and the bridge length has been estimated at 50 meters (Wenz

study para 6 g above at p.25). It is the opinion of the committee that the information in relation to the attack with the first bomb does not provide a sufficient basis to initiate an investigation. The committee has divided views concerning the attack with the second bomb in relation to whether there was an element of recklessness in the conduct of the pilot or WSO. Despite this, the committee is in agreement that, based on the criteria for initiating an investigation (see para. 5 above), this incident should not be investigated. In relation to whether there is information warranting consideration of command responsibility, the committee is of the view that there is no information from which to conclude that an investigation is necessary into the criminal responsibility of persons higher in the chain of command. Based on the information available to it, it is the opinion of the committee that the attack on the train at Grdelica Gorge should not be investigated by the OTP.

(ii) The Attack on the Djakovica Convoy on 14/4/99

63. The precise facts concerning this incident are difficult to determine. In particular, there is some confusion about the number of aircraft involved, the number of bombs dropped, and whether one or two convoys were attacked. The FRY Ministry of Foreign Affairs Report (*White Book*) describes the incident as follows:

"On April 14, 1999 [...] on the Djakovica-Prizren road, near the villages of Madanaj and Meja, a convoy of Albanian refugees was targeted three times. Mostly women, children and old people were in the convoy, returning to their homes in cars, on tractors and carts. The first assault on the column of over 1000 people took place while they were moving through Meja village. Twelve persons were killed on that occasion. The people from the convoy scattered around and tried to find shelter in the nearby houses. But NATO warplanes launched missiles on those houses as well, killing another 7 persons in the process. The attack continued along the road between [the] villages [of] Meja and Bistrazin. One tractor with trailer was completely destroyed. Twenty people out of several of them on the tractor were killed. In the repeated attack on the refugee vehicles, one more person was killed." (Voi I, p.1)

Total casualty figures seem to converge around 70-75 killed with approximately 100 injured. The FRY publication *NATO War Crimes in Yugoslavia* states 73 were killed and 36 were wounded.

64. NATO initially denied, but later acknowledged, responsibility for this attack. Assuming the facts most appropriate to a successful prosecution, NATO aircraft flying at 15000 feet or higher to avoid Yugoslav air defences attacked two vehicle convoys, both of which contained civilian vehicles. On 15 April, NATO confirmed that the aircraft had been flying at an altitude of 15,000 feet (approximately 5 km) and that, in this attack, the pilots had viewed the target with the naked eye rather than remotely. The aim of the attack was to destroy Serb military forces, in the area of Djakovica, who had been seen by NATO aircraft setting fire to civilian houses. At a Press Conference of 15 April 1999, NATO claimed that this was an area where the Yugoslav Special Police Forces, the MUP, were conducting ethnic cleansing operations over the preceding days. The road between Prizren and Djakovica served as an important resupply and reinforcement route for the Yugoslav Army and the Special Police.

65. A reconstruction of what is known about the attack reveals that in the hours immediately prior to the attack, at around 1030, NATO forces claimed to have seen a progression of burning villages, and that a series of fires could be seen progressing to the south east. They formed the view that MUP and VJ forces were thus methodically working from the north to the south through villages, setting them ablaze and forcing all the Kosovar Albanians out of those villages. At around 1030, the pilot spotted a three-vehicle convoy near to the freshest burning house, and saw uniformly shaped dark green vehicles which appeared to be troop carrying vehicles. He thus formed the view that the convoy comprised VJ and MUP forces working their way down towards Djakovica and that they were preparing to set the next house on fire. In response, an F-16 bombed the convoy's lead vehicle at approximately 1110; the pilot relayed a threat update and the coordinates of the attack and departed the area to refuel. A second F-16 aircraft appears to have arrived on the scene around 1135, and visually

assessed the target area as containing large vehicles which were located near a complex of buildings. A single GBU-12 bomb was dropped at 1148. Contemporaneously, a third aircraft identified a large convoy on a major road south east out of Djakovica and sought to identify the target. The target was verified as a VJ convoy at 1216 and an unspecified number of bombs were dropped at 1219. In the next 15 or so minutes (exact time unspecified), the same aircraft appears to have destroyed one further vehicle in the convoy. Simultaneously, two Jaguar aircraft each dropped 1 GBU-12 bomb each, but both missed their targets. Between 1235 and 1245, the first F-16 aircraft appears to have dropped three further bombs, at least one of which appears to have missed its target.

66. It is claimed by one source (report on file with the OTP) that the Yugoslav TV broadcast of the attack on the Djakovica convoy on 15 April 1999 recorded a conversation between one F-16 pilot involved in the attack and the AWACs. This conversation is alleged to establish both that the attack on the convoy was deliberate and that a UK Harrier pilot had advised the F-16 pilot that the convoy was comprised solely of tractors and civilians. The F-16 pilot was then allegedly told that the convoy was nevertheless a legitimate military target and was instructed to fire on it. This same report also suggests that the convoy was attacked with cluster bombs, indicated by bomb remnants and craters left at the site. However, these claims – both with regard to the foreknowledge of the pilot as to the civilian nature of the convoy and of the weapons used – are not confirmed by any other source.

67. NATO itself claimed that although the cockpit video showed the vehicles to look like tractors, when viewed with the naked eye from the attack altitude they appeared to be military vehicles. They alleged that several characteristics indicated it to be a military convoy including movement, size, shape, colour, spacing and high speed prior to the attack. There had also been reports of Serb forces using civilian vehicles. An analysis of the Serb TV footage of the attack on Djakovica by the OTP indicates that at approximately 1240, some point during the attack, doubt was conveyed that Serb convoys do not usually travel in convoys of that size. However, the on-scene analysis of the convoy appeared to convey the impression that the convoy comprised a mix of military and civilian vehicles. At around 1300, an order appears to have been issued, suspending attacks until the target could be verified.

68. NATO has consistently claimed that it believed the Djakovica convoy to be escorted by Serb military vehicles at the time of the attack. Human Rights Watch has commented on the incident as follows:

"General Clark stated in September that NATO consistently observed Yugoslav military vehicles moving on roads "intermixed with civilian convoys." After the Djakovica-Decane incident, General Clark says, "we got to be very, very cautious about striking objects moving on the roads. Another NATO officer, Col. Ed Boyle, says: "Because we were so concerned with collateral damage, the CFAC [Combined Forces Air Component Commander] at the time, General [Michael] Short, put out the guidance that if military vehicles were intermingled with civilian vehicles, they were not to be attacked, due to the collateral damage." When this directive was actually issued remains an important question. Nevertheless, the change in NATO rules of engagement indicates that the alliance recognized that it had taken insufficient precautions in mounting this attack, in not identifying civilians present, and in assuming that the intended targets were legitimate military objectives rather than in positively identifying them."

69. It is the opinion of the committee that civilians were not deliberately attacked in this incident. 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. In this case, most of the attacking aircraft were F16s with a crew of one person to fly the aircraft and identify the target. As soon as the crews of the attacking aircraft became aware of the presence of civilians, the attack ceased.

70. While this incident is one where it appears the aircrews could have benefitted from lower altitude scrutiny of the target at an early stage, the committee is of the opinion that neither

the aircrew nor their commanders displayed the degree of recklessness in failing to take precautionary measures which would sustain criminal charges. The committee also notes that the attack was suspended as soon as the presence of civilians in the convoy was suspected. Based on the information assessed, the committee recommends that the OTP not commence an investigation related to the Djakovica Convoy bombing.

iii) The Bombing of the RTS (Serbian TV and Radio Station) in Belgrade on 23/4/99

71. On 23 April 1999, at 0220, NATO intentionally bombed the central studio of the RTS (state-owned) broadcasting corporation at 1 Aberdareva Street in the centre of Belgrade. The missiles hit the entrance area, which caved in at the place where the Aberdareva Street building was connected to the Takovska Street building. While there is some doubt over exact casualty figures, between 10 and 17 people are estimated to have been killed.

72. The bombing of the TV studio was part of a planned attack aimed at disrupting and degrading the C3 (Command, Control and Communications) network. In co-ordinated attacks, on the same night, radio relay buildings and towers were hit along with electrical power transformer stations. At a press conference on 27 April 1999, NATO officials justified this attack in terms of the dual military and civilian use to which the FRY communication system was routinely put, describing this as a

"very hardened and redundant command and control communications system [which ...] uses commercial telephone, [...] military cable, [...] fibre optic cable, [...] high frequency radio communication, [...] microwave communication and everything can be interconnected. There are literally dozens, more than 100 radio relay sites around the country, and [...] everything is wired in through dual use. Most of the commercial system serves the military and the military system can be put to use for the commercial system [...]."

Accordingly, NATO stressed the dual-use to which such communications systems were put, describing civilian television as "heavily dependent on the military command and control system and military traffic is also routed through the civilian system" (press conference of 27 April, *ibid*).

73. At an earlier press conference on 23 April 1999, NATO officials reported that the TV building also housed a large multi-purpose communications satellite antenna dish, and that "radio relay control buildings and towers were targeted in the ongoing campaign to degrade the FRY's command, control and communications network". In a communication of 17 April 1999 to Amnesty International, NATO claimed that the RTS facilities were being used "as radio relay stations and transmitters to support the activities of the FRY military and special police forces, and therefore they represent legitimate military targets" (Amnesty International Report, *NATO/Federal Republic of Yugoslavia: Violations of the Laws of War by NATO during Operation Allied Force*, June 2000, p. 42).

74. Of the electrical power transformer stations targeted, one transformer station supplied power to the air defence co-ordination network while the other supplied power to the northern-sector operations centre. Both these facilities were key control elements in the FRY integrated air-defence system. In this regard, NATO indicated that

"we are not targeting the Serb people as we repeatedly have stated nor do we target President Milosevic personally, we are attacking the control system that is used to manipulate the military and security forces."

More controversially, however, the bombing was also justified on the basis of the propaganda purpose to which it was employed:

"[We need to] directly strike at the very central nerve system of Milosovic's regime. This of course are those assets which are used to plan and direct and to create the political environment of tolerance in Yugoslavia in which these

brutalities can not only be accepted but even condoned. [...] Strikes against TV transmitters and broadcast facilities are part of our campaign to dismantle the FRY propaganda machinery which is a vital part of President Milosevic's control mechanism."

In a similar statement, British Prime Minister Tony Blair was reported as saying in *The Times* that the media "is the apparatus that keeps him [Milosević] in power and we are entirely justified as NATO allies in damaging and taking on those targets" (24 April, 1999). In a statement of 8 April 1999, NATO also indicated that the TV studios would be targeted unless they broadcast 6 hours per day of Western media reports: "If President Milosevic would provide equal time for Western news broadcasts in its programmes without censorship 3 hours a day between noon and 1800 and 3 hours a day between 1800 and midnight, then his TV could be an acceptable instrument of public information."

75. NATO intentionally bombed the Radio and TV station and the persons killed or injured were civilians. The questions are: was the station a legitimate military objective and; if it was, were the civilian casualties disproportionate to the military advantage gained by the attack? For the station to be a military objective within the definition in Article 52 of Protocol I: a) its nature, purpose or use must make an effective contribution to military action and b) its total or partial destruction must offer a definite military advantage in the circumstances ruling at the time. The 1956 ICRC list of military objectives, drafted before the Additional Protocols, included the installations of broadcasting and television stations of fundamental military importance as military objectives (para. 39 above). The list prepared by Major General Rogers included broadcasting and television stations if they meet the military objective criteria (para. 38 above). As indicated in paras. 72 and 73 above, the attack appears to have been justified by NATO as part of a more general attack aimed at disrupting the FRY Command, Control and Communications network, the nerve centre and apparatus that keeps Milosević in power, and also as an attempt to dismantle the FRY propaganda machinery. Insofar as the attack actually was aimed at disrupting the communications network, it was legally acceptable.

76. If, however, the attack was made because equal time was not provided for Western news broadcasts, that is, because the station was part of the propaganda machinery, the legal basis was more debatable. Disrupting government propaganda may help to undermine the morale of the population and the armed forces, but justifying an attack on a civilian facility on such grounds alone may not meet the "effective contribution to military action" and "definite military advantage" criteria required by the Additional Protocols (see paras. 35-36, above). The ICRC Commentary on the Additional Protocols interprets the expression "definite military advantage anticipated" to exclude "an attack which only offers potential or indeterminate advantages" and interprets the expression "concrete and direct" as intended to show that the advantage concerned should be substantial and relatively close rather than hardly perceptible and likely to appear only in the long term (ICRC Commentary on the Additional Protocols of 8 June 1977, para. 2209). While stopping such propaganda may serve to demoralize the Yugoslav population and undermine the government's political support, it is unlikely that either of these purposes would offer the "concrete and direct" military advantage necessary to make them a legitimate military objective. NATO believed that Yugoslav broadcast facilities were "used entirely to incite hatred and propaganda" and alleged that the Yugoslav government had put all private TV and radio stations in Serbia under military control (NATO press conferences of 28 and 30 April 1999). However, it was not claimed that they were being used to incite violence akin to *Radio Milles Collines* during the Rwandan genocide, which might have justified their destruction (see para. 47 above). At worst, the Yugoslav government was using the broadcasting networks to issue propaganda supportive of its war effort: a circumstance which does not, in and of itself, amount to a war crime (see in this regard the judgment of the International Military Tribunal in Nuremberg in 1946 in the case of Hans Fritzsche, who served as a senior official in the Propaganda ministry alleged to have incited and encouraged the commission of crimes. The IMT held that although Fritzsche clearly made strong statements of a propagandistic nature, it was nevertheless not prepared to find that they were intended to incite the commission of atrocities, but rather, were aimed at arousing popular sentiment in support of Hitler and the German war effort (*American Journal of International Law*, vol. 41 (1947) 328)). The

committee finds that if the attack on the RTS was justified by reference to its propaganda purpose alone, its legality might well be questioned by some experts in the field of international humanitarian law. It appears, however, that NATO's targeting of the RTS building for propaganda purposes was an incidental (albeit complementary) aim of its primary goal of disabling the Serbian military command and control system and to destroy the nerve system and apparatus that keeps Milosević in power. In a press conference of 9 April 1999, NATO declared that TV transmitters were not targeted directly but that "in Yugoslavia military radio relay stations are often combined with TV transmitters [so] we attack the military target. If there is damage to the TV transmitters, it is a secondary effect but it is not [our] primary intention to do that." A NATO spokesperson, Jamie Shea, also wrote to the Brussels-based International Federation of Journalists on 12 April claiming that Operation Allied Force "target[ed] military targets only and television and radio towers are only struck if they [were] integrated into military facilities ... There is no policy to strike television and radio transmitters as such" (cited in Amnesty International Report, *ibid*, June 2000).

77. Assuming the station was a legitimate objective, the civilian casualties were unfortunately high but do not appear to be clearly disproportionate.

Although NATO alleged that it made "every possible effort to avoid civilian casualties and collateral damage" (Amnesty International Report, *ibid*, June 2000, p. 42), some doubts have been expressed as to the specificity of the warning given to civilians by NATO of its intended strike, and whether the notice would have constituted "effective warning ... of attacks which may affect the civilian population, unless circumstances do not permit" as required by Article 57(2) of Additional Protocol I.

Evidence on this point is somewhat contradictory. On the one hand, NATO officials in Brussels are alleged to have told Amnesty International that they did not give a specific warning as it would have endangered the pilots (Amnesty International Report, *ibid*, June 2000, at p. 47, see also para. 49 above re: proportionality and the extent to which a military commander is obligated to expose his own forces to danger in order to limit civilian casualties or damage). On this view, it is possible that casualties among civilians working at the RTS may have been heightened because of NATO's apparent failure to provide clear advance warning of the attack, as required by Article 57(2).

On the other hand, foreign media representatives were apparently forewarned of the attack (Amnesty International Report, *ibid*). As Western journalists were reportedly warned by their employers to stay away from the television station before the attack, it would also appear that some Yugoslav officials may have expected that the building was about to be struck. Consequently, UK Prime Minister Tony Blair blamed Yugoslav officials for not evacuating the building, claiming that "[t]hey could have moved those people out of the building. They knew it was a target and they didn't ... [I]t was probably for ... very clear propaganda reasons." (*ibid*, citing *Moral combat - NATO at war*, broadcast on BBC2 on 12 March 2000). Although knowledge on the part of Yugoslav officials of the impending attack would not divest NATO of its obligation to forewarn civilians under Article 57(2), it may nevertheless imply that the Yugoslav authorities may be partially responsible for the civilian casualties resulting from the attack and may suggest that the advance notice given by NATO may have in fact been sufficient under the circumstances.

78. Assuming the RTS building to be a legitimate military target, it appeared that NATO realised that attacking the RTS building would only interrupt broadcasting for a brief period. Indeed, broadcasting allegedly recommenced within hours of the strike, thus raising the issue of the importance of the military advantage gained by the attack *vis-à-vis* the civilian casualties incurred. The FRY command and control network was alleged by NATO to comprise a complex web and that could thus not be disabled in one strike. As noted by General Wesley Clark, NATO "knew when we struck that there would be alternate means of getting the Serb Television. There's no single switch to turn off everything but we thought it was a good move to strike it and the political leadership agreed with us" (*ibid*, citing "Moral combat, NATO at War," broadcast on BBC2 on 12 March 2000). At a press conference on 27 April 1999, another NATO spokesperson similarly described the dual-use Yugoslav command and control

network as "incapable of being dealt with in "a single knock-out blow (*ibid*)." The proportionality or otherwise of an attack should not necessarily focus exclusively on a specific incident. (See in this regard para. 52, above, referring to the need for an overall assessment of the totality of civilian victims as against the goals of the military campaign). With regard to these goals, the strategic target of these attacks was the Yugoslav command and control network. The attack on the RTS building must therefore be seen as forming part of an integrated attack against numerous objects, including transmission towers and control buildings of the Yugoslav radio relay network which were "essential to Milosevic's ability to direct and control the repressive activities of his army and special police forces in Kosovo" (NATO press release, 1 May 1999) and which comprised "a key element in the Yugoslav air-defence network" (*ibid*, 1 May 1999). Attacks were also aimed at electricity grids that fed the command and control structures of the Yugoslav Army (*ibid*, 3 May 1999). Other strategic targets included additional command and control assets such as the radio and TV relay sites at Novi Pazar, Kosovaka and Krusevac (*ibid*) and command posts (*ibid*, 30 April). Of the electrical power transformer stations targeted, one transformer station supplied power to the air-defence coordination network while the other supplied power to the northern sector operations centre. Both these facilities were key control elements in the FRY integrated air-defence system (*ibid*, 23 April 1999). The radio relay and TV transmitting station near Novi Sad was also an important link in the air defence command and control communications network. Not only were these targets central to the Federal Republic of Yugoslavia's governing apparatus, but formed, from a military point of view, an integral part of the strategic communications network which enabled both the military and national command authorities to direct the repression and atrocities taking place in Kosovo (*ibid*, 21 April 1999).

79. On the basis of the above analysis and on the information currently available to it, the committee recommends that the OTP not commence an investigation related to the bombing of the Serbian TV and Radio Station.

iv. The Attack on the Chinese Embassy on 7/5/99

80. On 7/5/99, at 2350, NATO aircraft fired several missiles which hit the Chinese Embassy in Belgrade, killing 3 Chinese citizens, injuring an estimated 15 others, and causing extensive damage to the embassy building and other buildings in the immediate surrounds. At the moment of the attack, fifty people were reported to have been in the embassy buildings. By the admission of US Government sources, the Chinese Embassy compound was mistakenly hit. The bombing occurred because at no stage in the process was it realised that the bombs were aimed at the Chinese Embassy. The Embassy had been wrongly identified as the Yugoslav Federal Directorate for Supply and Procurement (Yugoimport FDSP) at 2 Umetnosti Boulevard in New Belgrade. The FDSP was deemed by the CIA to be a legitimate target due to its role in military procurement: it was selected for its role in support of the Yugoslav military effort.

81. Under Secretary of State Thomas Pickering offered the following explanation for what occurred:

"The bombing resulted from three basic failures. First, the technique used to locate the intended target – the headquarters of the Yugoslav Federal Directorate for Supply and Procurement (FDSP) – was severely flawed. Second, none of the military or intelligence databases used to verify target information contained the correct location of the Chinese Embassy. Third, nowhere in the target review process was either of the first two mistakes detected. No one who might have known that the targeted building was not the FDSP headquarters – but was in fact the Chinese Embassy – was ever consulted."

According to US Government sources, the street address of the intended target, the FDSP headquarters was known as Bulevar Umetnosti 2 in New Belgrade. During a mid-April "work-up" of the target to prepare a mission folder for the B-2 bomber crew, three maps were used in an attempt to physically locate this address within the neighborhood: two local commercial maps from 1989 and 1996, and one US government (National Imagery and Mapping Agency

or NIMA) map produced in 1997. None of these maps had any reference to the FDSP building and none accurately identified the current location of the Chinese Embassy.

82. The root of the failures in target location appears to stem from the land navigation techniques employed by an intelligence officer in an effort to pinpoint the location of the FDSP building at Bulevar Umetnosti 2. The officer used techniques known as "intersection" and "resection" which, while appropriate to locate distant or inaccessible points or objects, are inappropriate for use in aerial targeting as they provide only an approximate location. Using this process, the individual mistakenly determined that the building which we now know to be the Chinese Embassy was the FDSP headquarters. This method of identification was not questioned or reviewed and hence this flaw in the address location process went undetected by all the others who evaluated the FDSP headquarters as a military target. It also appears that very late in the process, an intelligence officer serendipitously came to suspect that the target had been wrongly identified and sought to raise the concern that the building had been mislocated. However, throughout a series of missed opportunities, the problem of identification was not brought to the attention of the senior managers who may have been able to intervene in time to prevent the strike.

83. Finally, reviewing elements in, *inter alia*, the Joint Staff did not uncover either the inaccurate location of the FDSP headquarters or the correct location of the Chinese Embassy. The data base reviews were limited to validating the target data sheet geographic coordinates and the information put into the data base by the NIMA analyst. Such a circular process did not serve to uncover the original error and highlighted the system's susceptibility to a single point of data base failure. The critical linchpin for both the error in identification of the building and the failure of the review mechanisms was thus the inadequacy of the supporting data bases and the mistaken assumption the information they contained would necessarily be accurate.

84. The building hit was clearly a civilian object and not a legitimate military objective. NATO, and subsequently various organs of the US Government, including the CIA, issued a formal apology, accepted full responsibility for the incident and asserted that the intended target, the Federal Directorate for Supply and Procurement, would have been a legitimate military objective. The USA has formally apologized to the Chinese Government and agreed to pay \$28 million in compensation to the Chinese Government and \$4.5 million to the families of those killed or injured. The CIA has also dismissed one intelligence officer and reprimanded six senior managers. The US Government also claims to have taken corrective actions in order to assign individual responsibility and to prevent mistakes such as this from occurring in the future.

85. It is the opinion of the committee that the aircrew involved in the attack should not be assigned any responsibility for the fact they were given the wrong target and that it is inappropriate to attempt to assign criminal responsibility for the incident to senior leaders because they were provided with wrong information by officials of another agency. Based on the information available to it, the committee is of the opinion that the OTP should not undertake an investigation concerning the bombing of the Chinese Embassy.

v. The Attack on Korisa Village on 13/5/99

86. On 14 May 1999, NATO aircraft dropped 10 bombs on the village of Korisa, on the highway between Prizren and Pristina. Much confusion seems to exist about this incident, and factual accounts do not seem to easily tally with each other. As many as 87 civilians, mainly refugees, were killed in this attack and approximately 60 appear to have been wounded. The primary target in this attack was asserted by NATO to be a Serbian military camp and Command Post which were located near the village of Korisa. It appears that the refugees were near the attacked object. However, unlike previous cases where NATO subsequently claimed that an error had occurred in its targeting or its military intelligence sources, NATO spokespersons continued to affirm the legitimacy of this particular attack. They maintained that this was a legitimate military target and that NATO intelligence had identified a military camp and Command Post near to the village of Korisa.

87. According to NATO officials, immediately prior to the attack, the target was identified as having military revetments. The pilot was able to see silhouettes of vehicles on the ground as the attack took place at 2330, when two laser guided bombs were dropped. Ten minutes later, another two laser guided bombs and six gravity bombs were dropped. In a press conference on 15 May, NATO stated that the attack went ahead because the target was confirmed by prior intelligence as being valid and the pilot identified vehicles present. There were never any doubts, from NATO spokespersons, as to the validity of this target.

88. Information about NATO's position on the bombardment of Koriša was released at the press conference on the following day, 15 May. At this conference, General Jertz twice affirmed that the target was, in NATO's opinion, legitimate since military facilities were present at the site:

"As already has been mentioned, it was a legitimate military target. NATO reconnaissance and intelligence orders identified just outside Koriša a military camp and command post, including an armoured personnel carrier and 10 pieces of artillery. Follow-up intelligence confirmed this information as being a valid military target. Immediately prior to the attack at 23.30-11.30 pm - local time Thursday night an airborne forward air controller identified the target, so the identification and attack system of his aircraft, having positively identified the target as what looked like dug-in military reveted positions, he dropped two laser guided bombs. Approximately 10 minutes later, the third aircraft engaged the target with gravity bombs, with six gravity bombs. A total of 10 bombs were dropped on the target."

When questioned about the presence of civilians on the ground, General Jertz indicated:

"What I can say so far is when the pilot attacked the target he had to visually identify it through the attack systems which are in the aircraft, and you know it was by night, so he did see silhouettes of vehicles on the ground and as it was by prior intelligence a valid target, he did do the attack [...] it was a legitimate target. Since late April we knew there were command posts, military pieces in that area and they have been continuously used. *So for the pilot flying the attack, it was a legitimate target.* But when he is in the target area for attacking, it is his responsibility to make sure that all the cues he sees are the ones which he needs to really attack. And at night he saw the silhouettes of vehicles and that is why he was allowed to attack. Of course, and we have to be very fair, we are talking at night. If there is anybody sleeping somewhere in a house, you would not be able to see it from the perspective of a pilot. But once again, don't misinterpret it. It was a military target which had been used since the beginning of conflict over there and we have all sources used to identify this target in order to make sure that this target was still a valid target when it was attacked." (Emphasis added).

The NATO position thus appears to be that it bombed a legitimate military target, that it knew nothing of the presence of civilians and that none were observed immediately prior to the attack. Indeed, NATO stated that they believed this area to have been completely cleared of civilians. There is some information indicating that displaced Kosovar civilians were forcibly concentrated within a military camp in the village of Koriša as human shields and that Yugoslav military forces may thus be at least partially responsible for the deaths there.

89. The available information concerning this incident is in conflict. The attack occurred in the middle of the night at about 2330. The stated object of the attack was a legitimate military objective. According to NATO, all practicable precautions were taken and it was determined civilians were not present. It appears that a relatively large number of civilians were killed. It also appears these civilians were either returning refugees or persons gathered as human shields by FRY authorities or both. The committee is of the view that the credible information available is not sufficient to tend to show that a crime within the jurisdiction of

the Tribunal has been committed by the aircrew or by superiors in the NATO chain of command. Based on the information available to it, the committee is of the opinion that OTP should not undertake an investigation concerning the bombing at Koriša.

V Recommendations

90. The committee has conducted its review relying essentially upon public documents, including statements made by NATO and NATO countries at press conferences and public documents produced by the FRY. It has tended to assume that the NATO and NATO countries' press statements are generally reliable and that explanations have been honestly given. The committee must note, however, that when the OTP requested NATO to answer specific questions about specific incidents, the NATO reply was couched in general terms and failed to address the specific incidents. The committee has not spoken to those involved in directing or carrying out the bombing campaign. The committee has also assigned substantial weight to the factual assertions made by Human Rights Watch as its investigators did spend a limited amount of time on the ground in the FRY. Further, the committee has noted that Human Rights Watch found the two volume compilation of the FRY Ministry of Foreign Affairs entitled *NATO Crimes in Yugoslavia* generally reliable and the committee has tended to rely on the casualty figures for specific incidents in this compilation. If one accepts the figures in this compilation of approximately 495 civilians killed and 820 civilians wounded in documented instances, there is simply no evidence of the necessary crime base for charges of genocide or crimes against humanity. Further, in the particular incidents reviewed by the committee with particular care (see paras. 9, and 48-76) the committee has not assessed any particular incidents as justifying the commencement of an investigation by the OTP. NATO has admitted that mistakes did occur during the bombing campaign; errors of judgment may also have occurred. Selection of certain objectives for attack may be subject to legal debate. On the basis of the information reviewed, however, the committee is of the opinion that neither an in-depth investigation related to the bombing campaign as a whole nor investigations related to specific incidents are justified. In all cases, either the law is not sufficiently clear or investigations are unlikely to result in the acquisition of sufficient evidence to substantiate charges against high level accused or against lower accused for particularly heinous offences.

91. On the basis of information available, the committee recommends that no investigation be commenced by the OTP in relation to the NATO bombing campaign or incidents occurring during the campaign.

**Final Report to the Prosecutor by the Committee Established to Review the NATO
Bombing Campaign Against the Federal Republic of Yugoslavia**

Table of Contents

I Background and Mandate

II Review Criteria

III Work Program

IV Assessment

A. General Issues

- i. Damage to the Environment
- ii. Use of Depleted Uranium Projectiles
- iii. Use of Cluster Bombs
- iv. Legal Issues Related to Target Selection
 - a. Overview of Applicable Law
 - b. Linkage Between Law Concerning Recourse to Force and Law Concerning How Force May Be Used
 - c. The Military Objective
 - d. The Principle of Proportionality
- v. Casualty Figures
- vi. General Assessment of the Bombing Campaign

B. Specific Incidents

- i. The Attack on a Civilian Passenger Train at the Grdelica Gorge on 12/4/99
- ii. The Attack on the Djakovica Convoy on 14/4/99
- iii. The Attack on the RTS (Serbian Radio and TV Station) in Belgrade on 23/4/99
- iv. The Attack on the Chinese Embassy on 7/5/99
- v. The Attack on Korisa Village on 13/5/99

V. Recommendations

I Background and Mandate

1. The North Atlantic Treaty Organization (NATO) conducted a bombing campaign against the Federal Republic of Yugoslavia (FRY) from 24 March 1999 to 9 June 1999. During and since that period, the Prosecutor has received numerous requests that she investigate allegations that senior political and military figures from NATO countries committed serious violations of international humanitarian law during the campaign, and that she prepares indictments pursuant to Article 18(1) & (4) of the Statute.
2. Criticism of the NATO bombing campaign has included allegations of varying weight: a) that, as the resort to force was illegal, all NATO actions were illegal, and b) that the NATO forces deliberately attacked civilian infrastructure targets (and that such attacks were unlawful), deliberately or recklessly attacked the civilian population, and deliberately or recklessly caused excessive civilian casualties in disregard of the rule of proportionality by trying to fight a "zero casualty" war for their own side. Allegations concerning the "zero casualty" war involve suggestions that, for example, NATO aircraft operated at heights which enabled them to avoid attack by Yugoslav defences

and, consequently, made it impossible for them to properly distinguish between military or civilian objects on the ground. Certain allegations went so far as to accuse NATO of crimes against humanity and genocide.

3. Article 18 of the Tribunal's Statute provides:

"The Prosecutor shall initiate investigations *ex officio* or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed".

On 14 May 99 the then Prosecutor established a committee to assess the allegations and material accompanying them, and advise the Prosecutor and Deputy Prosecutor whether or not there is a sufficient basis to proceed with an investigation into some or all the allegations or into other incidents related to the NATO bombing.

4. In the course of its work, the committee has not addressed in detail the issue of the fundamental legality of the use of force by NATO members against the FRY as, if such activity was unlawful, it could constitute a crime against peace and the ICTY has no jurisdiction over this offence. (See, however, paras 30 – 34 below). It is noted that the legitimacy of the recourse to force by NATO is a subject before the International Court of Justice in a case brought by the FRY against various NATO countries.

II Review Criteria

5. In the course of its review, the committee has applied the same criteria to NATO activities that the Office of the Prosecutor (OTP) has applied to the activities of other actors in the territory of the former Yugoslavia. The committee paid particular heed to the following questions:
- a. Are the prohibitions alleged sufficiently well-established as violations of international humanitarian law to form the basis of a prosecution, and does the application of the law to the particular facts reasonably suggest that a violation of these prohibitions may have occurred? and
 - b. upon the reasoned evaluation of the information by the committee, is the information credible and does it tend to show that crimes within the jurisdiction of the Tribunal may have been committed by individuals during the NATO bombing campaign ?

This latter question reflects the earlier approach in relation to Article 18(1) of the Statute taken by the Prosecutor when asserting her right to investigate allegations of crimes committed by Serb forces in Kosovo (*Request by the Prosecutor, Pursuant to Rule 7 bis*) (B) *that the President Notify the Security Council That the Federal Republic of Yugoslavia Has Failed to Comply With Its Obligations Under Article 29, dated 1 February 1999*). The threshold test expressed therein by the Prosecutor was that of "credible evidence tending to show that crimes within the jurisdiction of the Tribunal may have been committed in Kosovo". That test was advanced to explain in what situation the Prosecutor would consider, for jurisdiction purposes, that she had a legal entitlement to investigate. (As a corollary, any investigation failing to meet that test could be said to be arbitrary and capricious, and to fall outside the Prosecutor's mandate). Thus formulated, the test represents a negative cut-off point for investigations. The Prosecutor may, in her discretion require that a higher threshold be met before making a positive decision that there is sufficient basis to proceed under Article 18(1). (In fact, in relation to the situation on the ground in Kosovo, the Prosecutor was in possession of a considerable body of evidence pointing to the commission of widespread atrocities by Serb forces.) In practice, before deciding to open an investigation in any case, the Prosecutor will also take into account a number of other factors concerning the prospects for obtaining evidence sufficient to prove that the crime has been committed by an individual who merits prosecution in the international forum.

III Work Program

6. The committee has reviewed:

- a. documents sent to the OTP by persons or groups wishing the OTP to commence investigations of leading persons from NATO countries,
- b. public documents made available by NATO, the US Department of Defense and the British Ministry of Defence,
- c. documents filed by the FRY before the ICJ, a large number of other FRY documents, and also the two volume compilation of the FRY Ministry of Foreign Affairs entitled *NATO Crimes in Yugoslavia (White Book)*,
- d. various documents submitted by Human Rights Watch including a letter sent to the Secretary General of NATO during the bombing campaign, a paper on *NATO's Use of Cluster Munitions*, and a report on *Civilian Deaths in the NATO Air Campaign*,
- e. a UNEP study: *The Kosovo Conflict: Consequence for the Environment and Human Settlements*,
- f. documents submitted by a Russian Parliamentary Commission,
- g. two studies by a German national, Mr. Ekkehard Wenz, one concerning the bombing of a train at the Gredelica Gorge and the other concerning the bombing of the Djakovica Refugee Convoy,
- h. various newspaper reports and legal articles as they have come to the attention of committee members,
- i. the response to a letter containing a number of questions sent to NATO by the OTP, and
- j. an Amnesty International Report entitled "*Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force.*

7. It should be noted that the committee did not travel to the FRY and it did not solicit information from the FRY through official channels as no such channels existed during the period when the review was conducted. Most of the material reviewed by the committee was in the public domain. The committee has relied exclusively on documents. The FRY submitted to the Prosecutor a substantial amount of material concerning particular incidents. In attempting to assess what happened on the ground, the committee relied upon the Human Rights Watch Report entitled *Civilian Deaths in the NATO Air Campaign* and upon the documented accounts in the FRY Ministry of Foreign Affairs volumes entitled *NATO Crimes in Yugoslavia*. The committee also relied heavily on NATO press statements and on the studies done by Mr. Ekkehard Wenz. The information available was adequate for making a preliminary assessment of incidents in which civilians were killed or injured. Information related to attacks on objects where civilians were not killed or injured was difficult to obtain and very little usable information was obtained.
8. To assist in the preparation of an Interim Report, a member of the Military Analysis Team reviewed the documents available in the OTP at the time, that is, all those referred to in paragraph 6 above except the FRY volumes entitled *NATO Crimes in Yugoslavia*, the HRW report on *Civilian Deaths in the NATO Air Campaign*, the studies by Mr. Wenz, NATO's response to the letter sent by the OTP to NATO, and the Amnesty International Report. The analyst prepared: a) a list of key incidents, b) a list of civilian residential targets, c) a list of civilian facility targets, d) a list of cultural property targets, e) a list of power facility targets, f) a list of targets the destruction of which might significantly affect the environment, and g) a list of communications targets. Very little information was available concerning the targets in lists (b) through (g).
9. The committee reviewed the above lists and requested the preparation of a file containing all available information on certain particular incidents, and on certain target categories. (It should be noted that the use of the terms "target" or "attack" in this report does not mean that in every case the site in question was deliberately

struck by NATO. The terms are convenient shorthand for incidents in which it is alleged that particular locations were damaged in the course of the bombing campaign).

The key incidents and target categories were:

- a. the attack on a civilian passenger train at the Grdelica Gorge - 12/4/99 - 10 or more civilians killed, 15 or more injured,
- b. the attack on the Djakovica Convoy - 14/4/99 - 70-75 civilians killed, 100 or more injured,
- c. the attack on Surdulica, - 27/4/99 - 11 civilians killed, 100 or more injured,
- d. the attack on Cuprija - 8/4/99 - 1 civilian killed, 5 injured,
- e. the attack on the Cigota Medical Institute - 8/4/99 - 3 civilians killed,
- f. the attack on Hotels Baciste and Putnik - 13/4/99 - 1 civilian killed,
- g. the attacks on the Pancevo Petrochemical Complex and Fertilizer Company - 15/4/99 and 18/4/99 - no reported civilian casualties,
- h. the attack on the Nis Tobacco Factory - 18/4/99 - no reported civilian casualties,
- i. the attack on the Djakovica Refugee Camp - 21/4/99 - 5 civilians killed, 16-19 injured,
- j. the attack on a bus at Lu'ane - 1/5/99 39 civilians killed,
- k. the attack on a bus at Pec - 3/5/99 - 17 civilians killed, 44 injured,
- l. the attack at Korisa village - 13/5/99 - 48-87 civilians killed,
- m. the attack on the Belgrade TV and Radio Station - 23/4/99 - 16 civilians killed,
- n. the attack on the Chinese Embassy in Belgrade - 7/5/99 - 3 civilians killed, 15 injured,
- o. attack on Nis City Centre and Hospital - 7/5/99 - 13 civilians killed, 60 injured,
- p. attack on Istok Prison - 21/5/99 - at least 19 civilians killed,
- q. attack on Belgrade Hospital - 20/5/99 - 3 civilians killed, several injured,
- r. attack on Surdulica Sanatorium - 30/5/99 - 23 killed, many injured,
- s. attack on journalists convoy Prizren-Brezovica Road - 31/5/99 - 1 civilian killed - 3 injured
- t. attack on Belgrade Heating Plant - 4/4/99, - 1 killed,
- u. attacks on Trade and Industry Targets.

10. On 23 July 1999, each committee member was provided with a binder including all available material. The committee members reviewed material in the binders.

11. In addition to reviewing factual information, the committee has also gathered legal materials and reviewed relevant legal issues, including the legality of the use of depleted uranium projectiles, the legality of the use of cluster munitions, whether or not the bombing campaign had an unlawfully adverse impact on the environment, and legal issues related to target selection.

12. The committee prepared an interim report on the basis of its analysis of the legal and factual material available and this was presented to the Prosecutor on 6 December 1999. At the direction of the Prosecutor, the committee then further updated the incident list and prepared a list of general questions and questions related to specific incidents. A letter enclosing the questionnaire and incident list was sent to NATO on 8 February 2000. A general reply was received on 10 May 2000.

13. It has not been possible for the committee to look at the NATO bombing campaign on a bomb by bomb basis and that was not its task. The committee has, however, reviewed public information concerning several incidents, including all the more well known incidents, with considerable care. It has also endeavored to examine, and has posed questions to NATO, concerning all other incidents in which it appears three or more civilians were killed.

In conducting its review, the committee has focused primarily on incidents in which civilian deaths were alleged and/or confirmed. The committee reviewed certain key incidents in depth for its interim report. These key incidents included 10 incidents in which 10 or more civilians were killed. The review by Human Rights Watch revealed 12 incidents in which 10 or more civilians were killed, all of the incidents identified by the committee plus two additional incidents: a) the attack on the Aleksinak "Deligrad" military barracks on 5/5/99 in which 10 civilians were killed and 30 wounded (a bomb aimed at the barracks fell short), and b) the attack on a military barracks in Novi Pazar on 31/5/99 in which 11 civilians were killed and 23 wounded (5 out of 6 munitions hit the target but one went astray). The committee's review of incidents in which it is alleged fewer than three civilians were killed has been hampered by a lack of reliable information.

IV Assessment

A. General Issues

i. Damage to the Environment

14. The NATO bombing campaign did cause some damage to the environment. For instance, attacks on industrial facilities such as chemical plants and oil installations were reported to have caused the release of pollutants, although the exact extent of this is presently unknown. The basic legal provisions applicable to protection of the environment in armed conflict are Article 35(3) of Additional Protocol I, which states that '[i]t is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment' and Article 55 which states:

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

2. Attacks against the natural environment by way of reprisals are prohibited

15. Neither the USA nor France has ratified Additional Protocol I. Article 55 may, nevertheless, reflect current customary law (see however the 1996 Advisory Opinion on the *Legality of Nuclear Weapons*, where the International Court of Justice appeared to suggest that it does not (*ICJ Rep.* (1996), 242, para. 31)). In any case, Articles 35(3) and 55 have a very high threshold of application. Their conditions for application are extremely stringent and their scope and contents imprecise. For instance, it is generally assumed that Articles 35 (3) and 55 only cover very significant damage. The adjectives 'widespread, long-term, and severe' used in Additional Protocol I are joined by the word 'and', meaning that it is a triple, cumulative standard that needs to be fulfilled.

Consequently, it would appear extremely difficult to develop a *prima facie* case upon the basis of these provisions, even assuming they were applicable. For instance, it is thought that the notion of 'long-term' damage in Additional Protocol I would need to be measured in years rather than months, and that as such, ordinary battlefield damage of the kind caused to France in World War I would not be covered.

The great difficulty of assessing whether environmental damage exceeded the threshold of Additional Protocol I has also led to criticism by ecologists. This may partly explain the disagreement as to whether any of the damage caused by the oil spills and fires in the 1990/91 Gulf War technically crossed the threshold of Additional Protocol I.

It is the committee's view that similar difficulties would exist in applying Additional Protocol I to the present facts, even if reliable environmental assessments were to give rise to legitimate concern concerning the impact of the NATO bombing campaign. Accordingly, these effects are best considered from the underlying principles of the law of armed conflict such

as necessity and proportionality.

16. The conclusions of the Balkan Task Force (BTF) established by UNEP to look into the Kosovo situation are:

"Our findings indicate that the Kosovo conflict has not caused an environmental catastrophe affecting the Balkans region as a whole.

Nevertheless, pollution detected at some sites is serious and poses a threat to human health.

BTF was able to identify environmental 'hot spots', namely in Pancevo, Kragujevac, Novi Sad and Bor, where immediate action and also further monitoring and analyses will be necessary. At all of these sites, environmental contamination due to the consequences of the Kosovo conflict was identified.

Part of the contamination identified at some sites clearly pre-dates the Kosovo conflict, and there is evidence of long-term deficiencies in the treatment and storage of hazardous waste.

The problems identified require immediate attention, irrespective of their cause, if further damage to human health and the environment is to be avoided."

17. The OTP has been hampered in its assessment of the extent of environmental damage in Kosovo by a lack of alternative and corroborated sources regarding the extent of environmental contamination caused by the NATO bombing campaign. Moreover, it is quite possible that, as this campaign occurred only a year ago, the UNEP study may not be a reliable indicator of the long term environmental consequences of the NATO bombing, as accurate assessments regarding the long-term effects of this contamination may not yet be practicable.

It is the opinion of the committee, on the basis of information currently in its possession, that the environmental damage caused during the NATO bombing campaign does not reach the Additional Protocol I threshold. In addition, the UNEP Report also suggests that much of the environmental contamination which is discernible cannot unambiguously be attributed to the NATO bombing.

18. The alleged environmental effects of the NATO bombing campaign flow in many cases from NATO's striking of legitimate military targets compatible with Article 52 of Additional Protocol I such as stores of fuel, industries of fundamental importance for the conduct of war and for the manufacture of supplies and material of a military character, factories or plant and manufacturing centres of fundamental importance for the conduct of war. Even when targeting admittedly legitimate military objectives, there is a need to avoid excessive long-term damage to the economic infrastructure and natural environment with a consequential adverse effect on the civilian population. Indeed, military objectives should not be targeted if the attack is likely to cause collateral environmental damage which would be excessive in relation to the direct military advantage which the attack is expected to produce (A.P.V. Rogers, "Zero Casualty Warfare," *IRRC*, March 2000, Vol. 82, pp. 177-8).

19. It is difficult to assess the relative values to be assigned to the military advantage gained and harm to the natural environment, and the application of the principle of proportionality is more easily stated than applied in practice. In applying this principle, it is necessary to assess the importance of the target in relation to the incidental damage expected: if the target is sufficiently important, a greater degree of risk to the environment may be justified.

20. The adverse effect of the coalition air campaign in the Gulf war upon the civilian infrastructure prompted concern on the part of some experts regarding the notion of "military objective." This has prompted some experts to argue that where the presumptive

effect of hostilities upon the civilian infrastructure (and consequently the civilian population) is grave, the military advantage conferred by the destruction of the military objective would need to be decisive (see below, paras. 40-41). Similar considerations would, in the committee's view, be warranted where the grave threat to the civilian infrastructure emanated instead from excessive environmental harm resulting from the hostilities. The critical question is what kind of environmental damage can be considered to be excessive. Unfortunately, the customary rule of proportionality does not include any concrete guidelines to this effect.

21. The military worth of the target would need to be considered in relation to the circumstances prevailing at the time. If there is a choice of weapons or methods of attack available, a commander should select those which are most likely to avoid, or at least minimize, incidental damage. In doing so, however, he is entitled to take account of factors such as stocks of different weapons and likely future demands, the timeliness of attack and risks to his own forces (A.P.V. Rogers, *ibid*, at p. 178). Operational reality is recognized in the Statute of the International Criminal Court, an authoritative indicator of evolving customary international law on this point, where Article 8(b)(iv) makes the infliction of incidental environmental damage an offence only if the attack is launched intentionally in the knowledge that it will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated. The use of the word 'clearly' ensures that criminal responsibility would be entailed only in cases where the excessiveness of the incidental damage was obvious.

22. Taken together, this suggests that in order to satisfy the requirement of proportionality, attacks against military targets which are known or can reasonably be assumed to cause grave environmental harm may need to confer a very substantial military advantage in order to be considered legitimate. At a minimum, actions resulting in massive environmental destruction, especially where they do not serve a clear and important military purpose, would be questionable. The targeting by NATO of Serbian petro-chemical industries may well have served a clear and important military purpose.

23. The above considerations also suggest that the requisite *mens rea* on the part of a commander would be actual or constructive knowledge as to the grave environmental effects of a military attack; a standard which would be difficult to establish for the purposes of prosecution and which may provide an insufficient basis to prosecute military commanders inflicting environmental harm in the (mistaken) belief that such conduct was warranted by military necessity. (In the *Hostages* case before the Nuremberg Military Tribunals, for instance, the German General Rendulic was acquitted of the charge of wanton devastation on the grounds that although Rendulic may have erred in believing that there was military necessity for the widespread environmental destruction entailed by his use of a 'scorched earth' policy in the Norwegian province of Finnmark, he was not guilty of a criminal act (11 *Trials of War Criminals*, (1950), 1296)). In addition, the notion of 'excessive' environmental destruction is imprecise and the actual environmental impact, both present and long term, of the NATO bombing campaign is at present unknown and difficult to measure.

24. In order to fully evaluate such matters, it would be necessary to know the extent of the knowledge possessed by NATO as to the nature of Serbian military-industrial targets (and thus, the likelihood of environmental damage flowing from their destruction), the extent to which NATO could reasonably have anticipated such environmental damage (for instance, could NATO have reasonably expected that toxic chemicals of the sort allegedly released into the environment by the bombing campaign would be stored alongside that military target?) and whether NATO could reasonably have resorted to other (and less environmentally damaging) methods for achieving its military objective of disabling the Serbian military-industrial infrastructure.

25. It is therefore the opinion of the committee, based on information currently available to it, that the OTP should not commence an investigation into the collateral environmental damage caused by the NATO bombing campaign.

ii. Use of Depleted Uranium Projectiles

26. There is evidence of use of depleted uranium (DU) projectiles by NATO aircraft during the bombing campaign. There is no specific treaty ban on the use of DU projectiles. There is a developing scientific debate and concern expressed regarding the impact of the use of such projectiles and it is possible that, in future, there will be a consensus view in international legal circles that use of such projectiles violate general principles of the law applicable to use of weapons in armed conflict. No such consensus exists at present. Indeed, even in the case of nuclear warheads and other weapons of mass-destruction – those which are universally acknowledged to have the most deleterious environmental consequences – it is difficult to argue that the prohibition of their use is in all cases absolute. (*Legality of Nuclear Weapons*, ICJ Rep. (1996), 242). In view of the uncertain state of development of the legal standards governing this area, it should be emphasised that the use of depleted uranium or other potentially hazardous substance by any adversary to conflicts within the former Yugoslavia since 1991 has not formed the basis of any charge laid by the Prosecutor. It is acknowledged that the underlying principles of the law of armed conflict such as proportionality are applicable also in this context; however, it is the committee's view that analysis undertaken above (paras. 14-25) with regard to environmental damage would apply, *mutatis mutandis*, to the use of depleted uranium projectiles by NATO. It is therefore the opinion of the committee, based on information available at present, that the OTP should not commence an investigation into use of depleted uranium projectiles by NATO.

iii. Use of Cluster Bombs

27. Cluster bombs were used by NATO forces during the bombing campaign. There is no specific treaty provision which prohibits or restricts the use of cluster bombs although, of course, cluster bombs must be used in compliance with the general principles applicable to the use of all weapons. Human Rights Watch has condemned the use of cluster bombs alleging that the high "dud" or failure rate of the submunitions (bomblets) contained inside cluster bombs converts these submunitions into antipersonnel landmines which, it asserts, are now prohibited under customary international law. Whether antipersonnel landmines are prohibited under current customary law is debatable, although there is a strong trend in that direction. There is, however, no general legal consensus that cluster bombs are, in legal terms, equivalent to antipersonnel landmines. It should be noted that the use of cluster bombs was an issue of sorts in the *Martić* Rule 61 Hearing Decision of Trial Chamber I on 8 March 1996. In that decision the Chamber stated there was no formal provision forbidding the use of cluster bombs as such (para. 18 of judgment) but it regarded the use of the Orkan rocket with a cluster bomb warhead in that particular case as evidence of the intent of the accused to deliberately attack the civilian population because the rocket was inaccurate, it landed in an area with no military objectives nearby, it was used as an antipersonnel weapon launched against the city of Zagreb and the accused indicated he intended to attack the city as such (paras. 23-31 of judgment). The Chamber concluded that "the use of the Orkan rocket in this case was not designed to hit military targets but to terrorise the civilians of Zagreb" (para. 31 of judgment). There is no indication cluster bombs were used in such a fashion by NATO. It is the opinion of the committee, based on information presently available, that the OTP should not commence an investigation into use of cluster bombs as such by NATO.

iv. Legal Issues Related to Target Selection

a. Overview of Applicable Law

28. In brief, in combat military commanders are required: a) to direct their operations against military objectives, and b) when directing their operations against military objectives, to ensure that the losses to the civilian population and the damage to civilian property are not disproportionate to the concrete and direct military advantage anticipated. Attacks which are not directed against military objectives (particularly attacks directed

against the civilian population) and attacks which cause disproportionate civilian casualties or civilian property damage may constitute the *actus reus* for the offence of unlawful attack under Article 3 of the ICTY Statute. The *mens rea* for the offence is intention or recklessness, not simple negligence. In determining whether or not the *mens rea* requirement has been met, it should be borne in mind that commanders deciding on an attack have duties:

- a) to do everything practicable to verify that the objectives to be attacked are military objectives,
- b) to take all practicable precautions in the choice of methods and means of warfare with a view to avoiding or, in any event to minimizing incidental civilian casualties or civilian property damage, and
- c) to refrain from launching attacks which may be expected to cause disproportionate civilian casualties or civilian property damage.

29. One of the principles underlying international humanitarian law is the principle of distinction, which obligates military commanders to distinguish between military objectives and civilian persons or objects. The practical application of this principle is effectively encapsulated in Article 57 of Additional Protocol which, in part, obligates those who plan or decide upon an attack to "do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects". The obligation to do everything feasible is high but not absolute. A military commander must set up an effective intelligence gathering system to collect and evaluate information concerning potential targets. The commander must also direct his forces to use available technical means to properly identify targets during operations. Both the commander and the aircrew actually engaged in operations must have some range of discretion to determine which available resources shall be used and how they shall be used. Further, a determination that inadequate efforts have been made to distinguish between military objectives and civilians or civilian objects should not necessarily focus exclusively on a specific incident. If precautionary measures have worked adequately in a very high percentage of cases then the fact they have not worked well in a small number of cases does not necessarily mean they are generally inadequate.

b) Linkage Between Law Concerning Recourse to Force and Law Concerning How Force May Be Used

30. Allegations have been made that, as NATO's resort to force was not authorized by the Security Council or in self-defence, that the resort to force was illegal and, consequently, all forceful measures taken by NATO were unlawful. These allegations justify a brief discussion of the *jus ad bellum*. In brief, the *jus ad bellum* regulates when states may use force and is, for the most part, enshrined in the UN Charter. In general, states may use force in self defence (individual or collective) and for very few other purposes. In particular, the legitimacy of the presumed basis for the NATO bombing campaign, humanitarian intervention without prior Security Council authorization, is hotly debated. That being said, as noted in paragraph 4 above, the crime related to an unlawful decision to use force is the crime against peace or aggression. While a person convicted of a crime against peace may, potentially, be held criminally responsible for all of the activities causing death, injury or destruction during a conflict, the ICTY does not have jurisdiction over crimes against peace.

31. The *jus in bello* regulates how states may use force. The ICTY has jurisdiction over serious violations of international humanitarian law as specified in Articles 2-5 of the Statute. These are *jus in bello* offences.

32. The precise linkage between *jus ad bellum* and *jus in bello* is not completely resolved. There were suggestions by the prosecution before the International Military Tribunal at Nuremberg and in some other post World War II war crimes cases that all of the killing and destruction caused by German forces were war crimes because the Germans were conducting an aggressive war. The courts were unreceptive to these arguments. Similarly, in the 1950's there was a debate concerning whether UN authorized forces were required to

comply with the *jus in bello* as they represented the good side in a battle between good and evil. This debate died out as the participants realized that a certain crude reciprocity was essential if the law was to have any positive impact. An argument that the "bad" side had to comply with the law while the "good" side could violate it at will would be most unlikely to reduce human suffering in conflict.

33. More recently, a refined approach to the linkage issue has been advocated by certain law of war scholars. Using their approach, assuming that the only lawful basis for recourse to force is self defence, each use of force during a conflict must be measured by whether or not it complies with the *jus in bello* and by whether or not it complies with the necessity and proportionality requirements of self defence. The difficulty with this approach is that it does not adequately address what should be done when it is unclear who is acting in self defence and it does not clarify the obligations of the "bad" side.

34. As a matter of practice, which we consider to be in accord with the most widely accepted and reputable legal opinion, we in the OTP have deliberately refrained from assessing *jus ad bellum* issues in our work and focused exclusively on whether or not individuals have committed serious violations of international humanitarian law as assessed within the confines of the *jus in bello*.

c. The military objective

35. The most widely accepted definition of "military objective" is that in Article 52 of Additional Protocol I which states in part:

In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

36. Where objects are concerned, the definition has two elements: (a) their nature, location, purpose or use must make an effective contribution to military action, and (b) their total or partial destruction, capture or neutralization must offer a definite military advantage in the circumstances ruling at the time. Although this definition does not refer to persons, in general, members of the armed forces are considered combatants, who have the right to participate directly in hostilities, and as a corollary, may also be attacked.

37. The definition is supposed to provide a means whereby informed objective observers (and decision makers in a conflict) can determine whether or not a particular object constitutes a military objective. It accomplishes this purpose in simple cases. Everyone will agree that a munitions factory is a military objective and an unoccupied church is a civilian object. When the definition is applied to dual-use objects which have some civilian uses and some actual or potential military use (communications systems, transportation systems, petrochemical complexes, manufacturing plants of some types), opinions may differ. The application of the definition to particular objects may also differ depending on the scope and objectives of the conflict. Further, the scope and objectives of the conflict may change during the conflict.

38. Using the Protocol I definition and his own review of state practice, Major General A.P.V. Rogers, a former Director of British Army Legal Services has advanced a tentative list of military objectives:

military personnel and persons who take part in the fighting without being members of the armed forces, military facilities, military equipment, including military vehicles, weapons, munitions and stores of fuel, military works, including defensive works and fortifications, military depots and establishments, including War and Supply Ministries, works producing or developing military supplies and

other supplies of military value, including metallurgical, engineering and chemical industries supporting the war effort; areas of land of military significance such as hills, defiles and bridgeheads; railways, ports, airfields, bridges, main roads as well as tunnels and canals; oil and other power installations; communications installations, including broadcasting and television stations and telephone and telegraph stations used for military communications. (Rogers, *Law on the Battlefield* (1996) 37)

The list was not intended to be exhaustive. It remains a requirement that both elements of the definition must be met before a target can be properly considered an appropriate military objective.

39. In 1956, the International Committee of the Red Cross (ICRC) drew up the following proposed list of categories of military objectives:

I. The objectives belonging to the following categories are those considered to be of generally recognized military importance:

(1) Armed forces, including auxiliary or complementary organisations, and persons who, though not belonging to the above-mentioned formations, nevertheless take part in the fighting.

(2) Positions, installations or constructions occupied by the forces indicated in sub-paragraph 1 above, as well as combat objectives (that is to say, those objectives which are directly contested in battle between land or sea forces including airborne forces).

(3) Installations, constructions and other works of a military nature, such as barracks, fortifications, War Ministries (e.g. Ministries of Army, Navy, Air Force, National Defence, Supply) and other organs for the direction and administration of military operations.

(4) Stores of army or military supplies, such as munition dumps, stores of equipment or fuel, vehicles parks.

(5) Airfields, rocket launching ramps and naval base installations.

(6) Those of the lines and means of communications (railway lines, roads, bridges, tunnels and canals) which are of fundamental military importance.

(7) The installations of broadcasting and television stations; telephone and telegraph exchanges of fundamental military importance.

(8) Industries of fundamental importance for the conduct of the war:

(a) Industries for the manufacture of armaments such as weapons, munitions, rockets, armoured vehicles, military aircraft, fighting ships, including the manufacture of accessories and all other war material;

(b) industries for the manufacture of supplies and material of a military character, such as transport and communications material, equipment of the armed forces;

(c) factories or plant constituting other production and manufacturing centres of fundamental importance for the conduct of war, such as the metallurgical, engineering and chemical industries, whose nature or purpose is essentially military;

(d) storage and transport installations whose basic function it is to serve the industries referred to in (a)-(c);

(e) 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.

(9) Installations constituting experimental, research centres for experiments on and the development of weapons and war material.

II. The following however, are excepted from the foregoing list:

(1) Persons, constructions, installations or transports which are protected under the Geneva Conventions I, II, III, of August 12, 1949;

(2) Non-combatants in the armed forces who obviously take no active or direct part in hostilities.

III. The above list will be reviewed at intervals of not more than ten years by a group of Experts composed of persons with a sound grasp of military strategy and of others concerned with the protection of the civilian population.

(Y. Sandoz, C. Swiniarski, B. Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987) at 632-633.

40. The Protocol I definition of military objective has been criticized by W. Hays Parks, the Special Assistant for Law of War Matters to the U.S. Army Judge Advocate General as being focused too narrowly on definite military advantage and paying too little heed to war sustaining capability, including economic targets such as export industries. (W. Hays Parks, "Air War and the Law of War," 32 *A.F.L. Rev.* 1, 135-45 (1990)). On the other hand, some critics of Coalition conduct in the Gulf War have suggested that the Coalition air campaign, directed admittedly against legitimate military objectives within the scope of the Protocol I definition, caused excessive long-term damage to the Iraqi economic infrastructure with a consequential adverse effect on the civilian population. (Middle East Watch, *Needless Deaths in the Gulf War: Civilian Casualties during the Air Campaign and Violations of the Laws of War* (1991); Judith G. Gardam, "Proportionality and Force in International Law," 87 *Am. J. Int'l L.* 391, 404-10 (1993)).

41. This criticism has not gone unexplored. Françoise Hampson, a British scholar, has suggested a possible refinement of the definition:

In order to determine whether there is a real subject of concern here, it would be necessary to establish exactly what the effect has been of the damage to the civilian infrastructure brought about by the hostilities. If that points to a need further to refine the law, it is submitted that what is needed is a qualification to the definition of military objectives. Either it should require the likely cumulative effect on the civilian population of attacks against such targets to be taken into account, or the same result might be achieved by requiring that the destruction of the object offer a definite military advantage in the context of the war aim. Françoise Hampson, "Means and Methods of Warfare in the Conflict in the Gulf," in P. Rowe, ed., *The Gulf War 1990-91 in International and English Law* 89 (1983) 100.

42. Although the Protocol I definition of military objective is not beyond criticism, it provides the contemporary standard which must be used when attempting to determine the lawfulness of particular attacks. That being said, it must be noted once again neither the USA nor France is a party to Additional Protocol I. The definition is, however, generally accepted as part of customary law.

43. To put the NATO campaign in context, it is instructive to look briefly at the approach to the military objective concept in history of air warfare. The Protocol I standard was not applicable during World War II. The bomber offensives conducted during that war were conducted with technological means which rendered attacks on targets occupying small areas almost impossible. In general, depending upon the period in the conflict, bomber attacks could be relied upon, at best, to strike within 5 miles, 2 miles or 1 mile of the designated target. The mission for the US/UK Combined Bomber Offensive from the UK was:

"To conduct a joint United States-British air offensive to accomplish the progressive destruction and dislocation of the German military, industrial and economic system, and the undermining of the morale of the German people to a point where their capacity for armed resistance is fatally weakened. This is construed as meaning so weakened as to permit initiation of final combined operations on the Continent."

(A. Verrier, *The Bomber Offensive* (1968) 330).

The principal specific objectives of the offensive were designated as:

"Submarine construction yards and bases.
German aircraft industry.
Ball bearings.
Oil.
Synthetic rubber and tires.
Military transport vehicles."
(A. Verrier, *ibid*, at 330).

Notwithstanding the designation of specific targets and the attempt, at least by US Army Air Force commanders on occasion, to conduct a precision bombing campaign, for the most part World War II bombing campaigns were aimed at area targets and intended, directly or indirectly, to affect the morale of the enemy civilian population. It is difficult to describe the fire bombing of Hamburg, Dresden and Tokyo as anything other than attacks intended to kill, terrorize or demoralize civilians. Whether or not these attacks could be justified legally in the total war context of the time, they would be unlawful if they were required to comply with Protocol I.

44. Technology, law, and the public consensus of what was acceptable, at least in demonstrably limited conflicts, had evolved by the time of the 1990-91 Gulf Conflict. Technological developments, such as precision guided munitions, and the rapid acquisition of control of the aerospace by coalition air forces significantly enhanced the precision with which targets could be attacked.

Target sets used during the Gulf Conflict were:

"Leadership; Command, Control, and Communications; Strategic Air Defenses; Airfields; Nuclear, Biological, and Chemical Research and Production; Naval Forces and Port Facilities; Military Storage and Production; Railroads and Bridges, Electrical Power; and Oil Refining and Distribution Facilities. Schwarzkopf added the Republican Guard as a category and Scuds soon emerged as a separate target set. After the beginning of Desert Storm, two more categories appeared: fixed surface-to-air missile sites in the KTO and breaching sites for the ground offensive."

(W. Murray, *Air War in the Persian Gulf* (1995) 32)

45. In the words of the Cohen, Shelton Joint Statement on Kosovo given to the US Senate:

"At the outset of the air campaign, NATO set specific strategic objectives for its use of force in Kosovo that later served as the basis for its stated conditions to

Milosevic for stopping the bombing. These objectives were to:

- Demonstrate the seriousness of NATO's opposition to Belgrade's aggression in the Balkans;
- Deter Milosevic from continuing and escalating his attacks on helpless civilians and create conditions to reverse his ethnic cleansing; and
- Damage Serbia's capacity to wage war against Kosovo in the future or spread the war to neighbors by diminishing or degrading its ability to wage military operations...

Phases of the Campaign. Operation Allied Force was originally planned to be prosecuted in five phases under NATO's operational plan, the development of which began in the summer of 1998. Phase 0 was the deployment of air assets into the European theater. Phase 1 would establish air superiority over Kosovo and degrade command and control over the whole of the FRY. Phase 2 would attack military targets in Kosovo and those FRY forces south of 44 degrees north latitude, which were providing reinforcement to Serbian forces into Kosovo. This was to allow targeting of forces not only in Kosovo, but also in the FRY south of Belgrade. Phase 3 would expand air operations against a wide range of high-value military and security force targets throughout the FRY. Phase 4 would redeploy forces as required. A limited air response relying predominantly on cruise missiles to strike selected targets throughout the Phase 1. Within a few days of the start of NATO's campaign, alliance aircraft were striking both strategic and tactical targets throughout Serbia, as well as working to suppress and disrupt the FRY's integrated air defence system.

At the NATO Summit in Washington on April 23, 1999, alliance leaders decided to further intensify the air campaign by expanding the target set to include military-industrial infrastructure, media, and other strategic targets"

46. The NATO Internet Report *Kosovo One Year On* (<http://www.nato.int/kosovo/repo> 2000, 21 Mar 00) described the targets as:

"The air campaign set out to weaken Serb military capabilities, both strategically and tactically. Strikes on tactical targets, such as artillery and field headquarters, had a more immediate effect in disrupting the ethnic cleansing of Kosovo. Strikes against strategic targets, such as government ministries and refineries, had long term and broader impact on the Serb military machine.

The bulk of NATO's effort against tactical targets was aimed at military facilities, fielded forces, heavy weapons, and military vehicles and formations in Kosovo and southern Serbia...

Strategic targets included Serb air defences, command and control facilities, Yugoslav military (VJ) and police (MUP) forces headquarters, and supply routes".

47. Most of the targets referred to in the quotations above are clearly military objectives. The precise scope of "military-industrial infrastructure, media and other strategic targets" as referred to in the US statement and "government ministries and refineries" as referred to in the NATO statement is unclear. Whether the media constitutes a legitimate target group is a debatable issue. If the media is used to incite crimes, as in Rwanda, then it is a legitimate target. If it is merely disseminating propaganda to generate support for the war effort, it is not a legitimate target.

d) The Principle of Proportionality

48. The main problem with the principle of proportionality is not whether or not it exists but what it means and how it is to be applied. It is relatively simple to state that there must be an acceptable relation between the legitimate destructive effect and undesirable collateral effects. For example, bombing a refugee camp is obviously prohibited if its only military significance is that people in the camp are knitting socks for soldiers. Conversely, an air strike on an ammunition dump should not be prohibited merely because a farmer is plowing a field in the area. Unfortunately, most applications of the principle of proportionality are not quite so clear cut. It is much easier to formulate the principle of proportionality in general terms than it is to apply it to a particular set of circumstances because the comparison is often between unlike quantities and values. One cannot easily assess the value of innocent human lives as opposed to capturing a particular military objective.

49. The questions which remain unresolved once one decides to apply the principle of proportionality include the following:

- a) What are the relative values to be assigned to the military advantage gained and the injury to non-combatants and or the damage to civilian objects?
- b) What do you include or exclude in totaling your sums?
- c) What is the standard of measurement in time or space? and
- d) To what extent is a military commander obligated to expose his own forces to danger in order to limit civilian casualties or damage to civilian objects?

50. The answers to these questions are not simple. It may be necessary to resolve them on a case by case basis, and the answers may differ depending on the background and values of the decision maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to noncombatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases. It is suggested that the determination of relative values must be that of the "reasonable military commander". Although there will be room for argument in close cases, there will be many cases where reasonable military commanders will agree that the injury to noncombatants or the damage to civilian objects was clearly disproportionate to the military advantage gained.

51. Much of the material submitted to the OTP consisted of reports that civilians had been killed, often inviting the conclusion to be drawn that crimes had therefore been committed. Collateral casualties to civilians and collateral damage to civilian objects can occur for a variety of reasons. Despite an obligation to avoid locating military objectives within or near densely populated areas, to remove civilians from the vicinity of military objectives, and to protect their civilians from the dangers of military operations, very little prevention may be feasible in many cases. Today's technological society has given rise to many dual use facilities and resources. City planners rarely pay heed to the possibility of future warfare. Military objectives are often located in densely populated areas and fighting occasionally occurs in such areas. Civilians present within or near military objectives must, however, be taken into account in the proportionality equation even if a party to the conflict has failed to exercise its obligation to remove them.

52. In the *Kupreskic* Judgment (Case No: IT-95-16-T 14 Jan 2000) the Trial Chamber addressed the issue of proportionality as follows:

"526. As an example of the way in which the Martens clause may be utilised, regard might be had to considerations such as the cumulative effect of attacks on military objectives causing incidental damage to civilians. In other words, it may happen that single attacks on military objectives causing incidental damage

to civilians, although they may raise doubts as to their lawfulness, nevertheless do not appear on their face to fall foul *per se* of the loose prescriptions of Articles 57 and 58 (or of the corresponding customary rules). However, in case of repeated attacks, all or most of them falling within the grey area between indisputable legality and unlawfulness, it might be warranted to conclude that the cumulative effect of such acts entails that they may not be in keeping with international law. Indeed, this pattern of military conduct may turn out to jeopardise excessively the lives and assets of civilians, contrary to the demands of humanity."

This formulation in *Kupreskic* can be regarded as a progressive statement of the applicable law with regard to the obligation to protect civilians. Its practical import, however, is somewhat ambiguous and its application far from clear. It is the committee's view that where individual (and legitimate) attacks on military objectives are concerned, the mere *cumulation* of such instances, all of which are deemed to have been lawful, cannot *ipso facto* be said to amount to a crime. The committee understands the above formulation, instead, to refer to an *overall* assessment of the totality of civilian victims as against the goals of the military campaign.

V Casualty Figures

53. In its report, *Civilian Deaths in the NATO Air Campaign*, Human Rights Watch documented some 500 civilian deaths in 90 separate incidents. It concluded: "on the basis available on these ninety incidents that as few as 488 and as many as 527 Yugoslav civilians were killed as a result of NATO bombing. Between 62 and 66 percent of the total registered civilian deaths occurred in just twelve incidents. These twelve incidents accounted for 303 to 352 civilian deaths. These were the only incidents among the ninety documented in which ten or more civilian deaths were confirmed." Ten of these twelve incidents were included among the incidents which were reviewed with considerable care by the committee (see para. 9 above) and our estimate was that between 273 and 317 civilians were killed in these ten incidents. Human Rights Watch also found the FRY Ministry of Foreign Affairs publication *NATO Crimes in Yugoslavia* to be largely credible on the basis of its own filed research and correlation with other sources. A review of this publication indicates it provides an estimated total of approximately 495 civilians killed and 820 civilians wounded in specific documented instances. For the purposes of this report, the committee operates on the basis of the number of persons allegedly killed as found in both publications. It appears that a figure similar to both publications would be in the range of 500 civilians killed.

VI General Assessment of the Bombing Campaign

54. During the bombing campaign, NATO aircraft flew 38,400 sorties, including 10,484 strike sorties. During these sorties, 23, 614 air munitions were released (figures from NATO). As indicated in the preceding paragraph, it appears that approximately 500 civilians were killed during the campaign. These figures do not indicate that NATO may have conducted a campaign aimed at causing substantial civilian casualties either directly or incidentally.

55. The choice of targets by NATO (see paras. 38 and 39 above) includes some loosely defined categories such as military-industrial infrastructure and government ministries and some potential problem categories such as media and refineries. All targets must meet the criteria for military objectives (see para. 28-30 above). If they do not do so, they are unlawful. A general label is insufficient. The targeted components of the military-industrial infrastructure and of government ministries must make an effective contribution to military action and their total or partial destruction must offer a definite military advantage in the circumstances ruling at the time. Refineries are certainly traditional military objectives but tradition is not enough and due regard must be paid to environmental damage if they are attacked (see paras. 14-25 above). The media as such is not a traditional target category. To the extent particular media components are part of the C3 (command, control and communications) network they are military objectives. If media components are not part of the C3 network then they may become military objectives depending upon their use. As a

bottom line, civilians, civilian objects and civilian morale as such are not legitimate military objectives. The media does have an effect on civilian morale. If that effect is merely to foster support for the war effort, the media is not a legitimate military objective. If the media is used to incite crimes, as in Rwanda, it can become a legitimate military objective. If the media is the nerve system that keeps a war-monger in power and thus perpetuates the war effort, it may fall within the definition of a legitimate military objective. As a general statement, in the particular incidents reviewed by the committee, it is the view of the committee that NATO was attempting to attack objects it perceived to be legitimate military objectives.

56. The committee agrees there is nothing inherently unlawful about flying above the height which can be reached by enemy air defences. However, NATO air commanders have a duty to take practicable measures to distinguish military objectives from civilians or civilian objectives. The 15,000 feet minimum altitude adopted for part of the campaign may have meant the target could not be verified with the naked eye. However, it appears that with the use of modern technology, the obligation to distinguish was effectively carried out in the vast majority of cases during the bombing campaign.

B. Specific Incidents

57. In the course of its review, the committee did not come across any incident which, in its opinion, required investigation by the OTP. The five specific incidents discussed below are those which, in the opinion of the committee, were the most problematic. The facts cited in the discussion of each specific incident are those indicated in the information within the possession of the OTP at the time of its review.

i. The Attack on a Civilian Passenger Train at the Grdelica Gorge on 12/4/99

58. On 12 April 1999, a NATO aircraft launched two laser guided bombs at the Leskovac railway bridge over the Grdelica gorge and Juzna Morava river, in eastern Serbia. A 5-carriage passenger train, travelling from Belgrade to Ristovac on the Macedonian border, was crossing the bridge at the time, and was struck by both missiles. The various reports made of this incident concur that the incident occurred at about 11.40 a.m. At least ten people were killed in this incident and at least 15 individuals were injured. The designated target was the railway bridge, which was claimed to be part of a re-supply route being used for Serb forces in Kosovo. After launching the first bomb, the person controlling the weapon, at the last instant before impact, sighted movement on the bridge. The controller was unable to dump the bomb at that stage and it hit the train, the impact of the bomb cutting the second of the passenger coaches in half. Realising the bridge was still intact, the controller picked a second aim point on the bridge at the opposite end from where the train had come and launched the second bomb. In the meantime the train had slid forward as a result of the original impact and parts of the train were also hit by the second bomb.

59. It does not appear that the train was targeted deliberately. US Deputy Defense Secretary John Hamre stated that "one of our electro-optically guided bombs homed in on a railroad bridge just when a passenger train raced to the aim point. We never wanted to destroy that train or kill its occupants. We did want to destroy the bridge and we regret this accident." The substantive part of the explanation, both for the failure to detect the approach of the passenger train and for firing a second missile once it had been hit by the first, was given by General Wesley Clark, NATO's Supreme Allied Commander for Europe and is here reprinted in full:

"[T]his was a case where a pilot was assigned to strike a railroad bridge that is part of the integrated communications supply network in Serbia. He launched his missile from his aircraft that was many miles away, he was not able to put his eyes on the bridge, it was a remotely directed attack. And as he stared intently at the desired target point on the bridge, and I talked to the team at Aviano who was directly engaged in this operation, as the pilot stared intently at the desired aim point on the bridge and worked it, and worked it and worked it, and all of a

sudden at the very last instant with less than a second to go he caught a flash of movement that came into the screen and it was the train coming in.

Unfortunately he couldn't dump the bomb at that point, it was locked, it was going into the target and it was an unfortunate incident which he, and the crew, and all of us very much regret. We certainly don't want to do collateral damage.

The mission was to take out the bridge. He realised when it had happened that he had not hit the bridge, but what he had hit was the train. He had another aim point on the bridge, it was a relatively long bridge and he believed he still had to accomplish his mission, the pilot circled back around. He put his aim point on the other end of the bridge from where the train had come, by the time the bomb got close to the bridge it was covered with smoke and clouds and at the last minute again in an uncanny accident, the train had slid forward from the original impact and parts of the train had moved across the bridge, and so that by striking the other end of the bridge he actually caused additional damage to the train." (Press Conference, NATO HQ, Brussels, 13 April).

General Clark then showed the cockpit video of the plane which fired on the bridge:

"The pilot in the aircraft is looking at about a 5-inch screen, he is seeing about this much and in here you can see this is the railroad bridge which is a much better view than he actually had, you can see the tracks running this way.

Look very intently at the aim point, concentrate right there and you can see how, if you were focused right on your job as a pilot, suddenly that train appeared. It was really unfortunate.

Here, he came back around to try to strike a different point on the bridge because he was trying to do a job to take the bridge down. Look at this aim point - you can see smoke and other obscuration there - he couldn't tell what this was exactly.

Focus intently right at the centre of the cross. He is bringing these two crosses together and suddenly he recognises at the very last instant that the train that was struck here has moved on across the bridge and so the engine apparently was struck by the second bomb." (Press Conference, NATO HQ, Brussels, 13 April).

60. Some doubt has since been cast on this version of events by a comprehensive technical report submitted by a German national, Mr Ekkehard Wenz, which queries the actual speed at which the events took place in relation to that suggested by the video footage of the incident released by NATO. The effect of this report is to suggest that the reaction time available to the person controlling the bombs was in fact considerably greater than that alleged by NATO. Mr. Wenz also suggests the aircraft involved was an F15E Strike Eagle with a crew of two and with the weapons being controlled by a Weapons Systems Officer (WSO) not the pilot.

61. The committee has reviewed both the material provided by NATO and the report of Mr. Wenz with considerable care. It is the opinion of the committee that it is irrelevant whether the person controlling the bomb was the pilot or the WSO. Either person would have been travelling in a high speed aircraft and likely performing several tasks simultaneously, including endeavouring to keep the aircraft in the air and safe from surrounding threats in a combat environment. If the committee accepts Mr. Wenz's estimate of the reaction time available, the person controlling the bombs still had a very short period of time, less than 7 or 8 seconds in all probability, to react. Although Mr Wenz is of the view that the WSO intentionally targeted the train, the committee's review of the frames used in the report indicates another interpretation is equally available. The cross hairs remain fixed on the

bridge throughout, and it is clear from this footage that the train can be seen moving toward the bridge only as the bomb is in flight: it is only in the course of the bomb's trajectory that the image of the train becomes visible. At a point where the bomb is within a few seconds of impact, a very slight change to the bomb aiming point can be observed, in that it drops a couple of feet. This sequence regarding the bomb sights indicates that it is unlikely that the WSO was targeting the train, but instead suggests that the target was a point on the span of the bridge before the train appeared.

62. It is the opinion of the committee that the bridge was a legitimate military objective. The passenger train was not deliberately targeted. The person controlling the bombs, pilot or WSO, targeted the bridge and, over a very short period of time, failed to recognize the arrival of the train while the first bomb was in flight. The train was on the bridge when the bridge was targeted a second time and the bridge length has been estimated at 50 meters (Wenz study para 6 g above at p.25). It is the opinion of the committee that the information in relation to the attack with the first bomb does not provide a sufficient basis to initiate an investigation. The committee has divided views concerning the attack with the second bomb in relation to whether there was an element of recklessness in the conduct of the pilot or WSO. Despite this, the committee is in agreement that, based on the criteria for initiating an investigation (see para. 5 above), this incident should not be investigated. In relation to whether there is information warranting consideration of command responsibility, the committee is of the view that there is no information from which to conclude that an investigation is necessary into the criminal responsibility of persons higher in the chain of command. Based on the information available to it, it is the opinion of the committee that the attack on the train at Grdelica Gorge should not be investigated by the OTP.

(ii) The Attack on the Djakovica Convoy on 14/4/99

63. The precise facts concerning this incident are difficult to determine. In particular, there is some confusion about the number of aircraft involved, the number of bombs dropped, and whether one or two convoys were attacked. The FRY Ministry of Foreign Affairs Report (*White Book*) describes the incident as follows:

"On April 14, 1999 [...] on the Djakovica-Prizren road, near the villages of Madanaj and Meja, a convoy of Albanian refugees was targeted three times. Mostly women, children and old people were in the convoy, returning to their homes in cars, on tractors and carts. The first assault on the column of over 1000 people took place while they were moving through Meja village. Twelve persons were killed on that occasion. The people from the convoy scattered around and tried to find shelter in the nearby houses. But NATO warplanes launched missiles on those houses as well, killing another 7 persons in the process. The attack continued along the road between [the] villages [of] Meja and Bistrazin. One tractor with trailer was completely destroyed. Twenty people out of several of them on the tractor were killed. In the repeated attack on the refugee vehicles, one more person was killed." (Vol 1, p.1)

Total casualty figures seem to converge around 70-75 killed with approximately 100 injured. The FRY publication *NATO War Crimes in Yugoslavia* states 73 were killed and 36 were wounded.

64. NATO initially denied, but later acknowledged, responsibility for this attack. Assuming the facts most appropriate to a successful prosecution, NATO aircraft flying at 15000 feet or higher to avoid Yugoslav air defences attacked two vehicle convoys, both of which contained civilian vehicles. On 15 April, NATO confirmed that the aircraft had been flying at an altitude of 15,000 feet (approximately 5 km) and that, in this attack, the pilots had viewed the target with the naked eye rather than remotely. The aim of the attack was to destroy Serb military forces, in the area of Djakovica, who had been seen by NATO aircraft setting fire to civilian houses. At a Press Conference of 15 April 1999, NATO claimed that this was an area where the Yugoslav Special Police Forces, the MUP, were conducting ethnic cleansing operations over the preceding days. The road between Prizren and Djakovica served as an important

resupply and reinforcement route for the Yugoslav Army and the Special Police.

65. A reconstruction of what is known about the attack reveals that in the hours immediately prior to the attack, at around 1030, NATO forces claimed to have seen a progression of burning villages, and that a series of fires could be seen progressing to the south east. They formed the view that MUP and VJ forces were thus methodically working from the north to the south through villages, setting them ablaze and forcing all the Kosovar Albanians out of those villages. At around 1030, the pilot spotted a three-vehicle convoy near to the freshest burning house, and saw uniformly shaped dark green vehicles which appeared to be troop carrying vehicles. He thus formed the view that the convoy comprised VJ and MUP forces working their way down towards Djakovica and that they were preparing to set the next house on fire. In response, an F-16 bombed the convoy's lead vehicle at approximately 1110; the pilot relayed a threat update and the coordinates of the attack and departed the area to refuel. A second F-16 aircraft appears to have arrived on the scene around 1135, and visually assessed the target area as containing large vehicles which were located near a complex of buildings. A single GBU-12 bomb was dropped at 1148. Contemporaneously, a third aircraft identified a large convoy on a major road south east out of Djakovica and sought to identify the target. The target was verified as a VJ convoy at 1216 and an unspecified number of bombs were dropped at 1219. In the next 15 or so minutes (exact time unspecified), the same aircraft appears to have destroyed one further vehicle in the convoy. Simultaneously, two Jaguar aircraft each dropped 1 GBU-12 bomb each, but both missed their targets. Between 1235 and 1245, the first F-16 aircraft appears to have dropped three further bombs, at least one of which appears to have missed its target.

66. It is claimed by one source (report on file with the OTP) that the Yugoslav TV broadcast of the attack on the Djakovica convoy on 15 April 1999 recorded a conversation between one F-16 pilot involved in the attack and the AWACs. This conversation is alleged to establish both that the attack on the convoy was deliberate and that a UK Harrier pilot had advised the F-16 pilot that the convoy was comprised solely of tractors and civilians. The F-16 pilot was then allegedly told that the convoy was nevertheless a legitimate military target and was instructed to fire on it. This same report also suggests that the convoy was attacked with cluster bombs, indicated by bomb remnants and craters left at the site. However, these claims – both with regard to the foreknowledge of the pilot as to the civilian nature of the convoy and of the weapons used – are not confirmed by any other source.

67. NATO itself claimed that although the cockpit video showed the vehicles to look like tractors, when viewed with the naked eye from the attack altitude they appeared to be military vehicles. They alleged that several characteristics indicated it to be a military convoy including movement, size, shape, colour, spacing and high speed prior to the attack. There had also been reports of Serb forces using civilian vehicles. An analysis of the Serb TV footage of the attack on Djakovica by the OTP indicates that at approximately 1240, some point during the attack, doubt was conveyed that Serb convoys do not usually travel in convoys of that size. However, the on-scene analysis of the convoy appeared to convey the impression that the convoy comprised a mix of military and civilian vehicles. At around 1300, an order appears to have been issued, suspending attacks until the target could be verified.

68. NATO has consistently claimed that it believed the Djakovica convoy to be escorted by Serb military vehicles at the time of the attack. Human Rights Watch has commented on the incident as follows:

"General Clark stated in September that NATO consistently observed Yugoslav military vehicles moving on roads "intermixed with civilian convoys." After the Djakovica-Decane incident, General Clark says, "we got to be very, very cautious about striking objects moving on the roads. Another NATO officer, Col. Ed Boyle, says: "Because we were so concerned with collateral damage, the CFAC [Combined Forces Air Component Commander] at the time, General [Michael] Short, put out the guidance that if military vehicles were intermingled with civilian vehicles, they were not to be attacked, due to the collateral damage." When this directive was actually issued remains an important question.

Nevertheless, the change in NATO rules of engagement indicates that the alliance recognized that it had taken insufficient precautions in mounting this attack, in not identifying civilians present, and in assuming that the intended targets were legitimate military objectives rather than in positively identifying them."

69. It is the opinion of the committee that civilians were not deliberately attacked in this incident. 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. In this case, most of the attacking aircraft were F16s with a crew of one person to fly the aircraft and identify the target. As soon as the crews of the attacking aircraft became aware of the presence of civilians, the attack ceased.

70. While this incident is one where it appears the aircrews could have benefitted from lower altitude scrutiny of the target at an early stage, the committee is of the opinion that neither the aircrew nor their commanders displayed the degree of recklessness in failing to take precautionary measures which would sustain criminal charges. The committee also notes that the attack was suspended as soon as the presence of civilians in the convoy was suspected. Based on the information assessed, the committee recommends that the OTP not commence an investigation related to the Djakovica Convoy bombing.

iii) The Bombing of the RTS (Serbian TV and Radio Station) in Belgrade on 23/4/99

71. On 23 April 1999, at 0220, NATO intentionally bombed the central studio of the RTS (state-owned) broadcasting corporation at 1 Aberdareva Street in the centre of Belgrade. The missiles hit the entrance area, which caved in at the place where the Aberdareva Street building was connected to the Takovska Street building. While there is some doubt over exact casualty figures, between 10 and 17 people are estimated to have been killed.

72. The bombing of the TV studio was part of a planned attack aimed at disrupting and degrading the C3 (Command, Control and Communications) network. In co-ordinated attacks, on the same night, radio relay buildings and towers were hit along with electrical power transformer stations. At a press conference on 27 April 1999, NATO officials justified this attack in terms of the dual military and civilian use to which the FRY communication system was routinely put, describing this as a

"very hardened and redundant command and control communications system [which ...] uses commercial telephone, [...] military cable, [...] fibre optic cable, [...] high frequency radio communication, [...] microwave communication and everything can be interconnected. There are literally dozens, more than 100 radio relay sites around the country, and [...] everything is wired in through dual use. Most of the commercial system serves the military and the military system can be put to use for the commercial system [...]."

Accordingly, NATO stressed the dual-use to which such communications systems were put, describing civilian television as "heavily dependent on the military command and control system and military traffic is also routed through the civilian system" (press conference of 27 April, *ibid*).

73. At an earlier press conference on 23 April 1999, NATO officials reported that the TV building also housed a large multi-purpose communications satellite antenna dish, and that "radio relay control buildings and towers were targeted in the ongoing campaign to degrade the FRY's command, control and communications network". In a communication of 17 April 1999 to Amnesty International, NATO claimed that the RTS facilities were being used "as radio relay stations and transmitters to support the activities of the FRY military and special police forces, and therefore they represent legitimate military targets" (Amnesty International Report, *NATO/Federal Republic of Yugoslavia: Violations of the Laws of War by NATO during Operation Allied Force*, June 2000, p. 42).

74. Of the electrical power transformer stations targeted, one transformer station supplied power to the air defence co-ordination network while the other supplied power to the northern-sector operations centre. Both these facilities were key control elements in the FRY integrated air-defence system. In this regard, NATO indicated that

"we are not targeting the Serb people as we repeatedly have stated nor do we target President Milosevic personally, we are attacking the control system that is used to manipulate the military and security forces."

More controversially, however, the bombing was also justified on the basis of the propaganda purpose to which it was employed:

"[We need to] directly strike at the very central nerve system of Milosovic's regime. This of course are those assets which are used to plan and direct and to create the political environment of tolerance in Yugoslavia in which these brutalities can not only be accepted but even condoned. [...] Strikes against TV transmitters and broadcast facilities are part of our campaign to dismantle the FRY propaganda machinery which is a vital part of President Milosevic's control mechanism."

In a similar statement, British Prime Minister Tony Blair was reported as saying in *The Times* that the media "is the apparatus that keeps him [Milosević] in power and we are entirely justified as NATO allies in damaging and taking on those targets" (24 April, 1999). In a statement of 8 April 1999, NATO also indicated that the TV studios would be targeted unless they broadcast 6 hours per day of Western media reports: "If President Milosevic would provide equal time for Western news broadcasts in its programmes without censorship 3 hours a day between noon and 1800 and 3 hours a day between 1800 and midnight, then his TV could be an acceptable instrument of public information."

75. NATO intentionally bombed the Radio and TV station and the persons killed or injured were civilians. The questions are: was the station a legitimate military objective and; if it was, were the civilian casualties disproportionate to the military advantage gained by the attack? For the station to be a military objective within the definition in Article 52 of Protocol I: a) its nature, purpose or use must make an effective contribution to military action and b) its total or partial destruction must offer a definite military advantage in the circumstances ruling at the time. The 1956 ICRC list of military objectives, drafted before the Additional Protocols, included the installations of broadcasting and television stations of fundamental military importance as military objectives (para. 39 above). The list prepared by Major General Rogers included broadcasting and television stations if they meet the military objective criteria (para. 38 above). As indicated in paras. 72 and 73 above, the attack appears to have been justified by NATO as part of a more general attack aimed at disrupting the FRY Command, Control and Communications network, the nerve centre and apparatus that keeps Milosević in power, and also as an attempt to dismantle the FRY propaganda machinery. Insofar as the attack actually was aimed at disrupting the communications network, it was legally acceptable.

76. If, however, the attack was made because equal time was not provided for Western news broadcasts, that is, because the station was part of the propaganda machinery, the legal basis was more debatable. Disrupting government propaganda may help to undermine the morale of the population and the armed forces, but justifying an attack on a civilian facility on such grounds alone may not meet the "effective contribution to military action" and "definite military advantage" criteria required by the Additional Protocols (see paras. 35-36, above). The ICRC Commentary on the Additional Protocols interprets the expression "definite military advantage anticipated" to exclude "an attack which only offers potential or indeterminate advantages" and interprets the expression "concrete and direct" as intended to show that the advantage concerned should be substantial and relatively close rather than hardly perceptible and likely to appear only in the long term (ICRC Commentary on the Additional Protocols of 8 June 1977, para. 2209). While stopping such propaganda may serve

to demoralize the Yugoslav population and undermine the government's political support, it is unlikely that either of these purposes would offer the "concrete and direct" military advantage necessary to make them a legitimate military objective. NATO believed that Yugoslav broadcast facilities were "used entirely to incite hatred and propaganda" and alleged that the Yugoslav government had put all private TV and radio stations in Serbia under military control (NATO press conferences of 28 and 30 April 1999). However, it was not claimed that they were being used to incite violence akin to *Radio Milles Collines* during the Rwandan genocide, which might have justified their destruction (see para. 47 above). At worst, the Yugoslav government was using the broadcasting networks to issue propaganda supportive of its war effort: a circumstance which does not, in and of itself, amount to a war crime (see in this regard the judgment of the International Military Tribunal in Nuremberg in 1946 in the case of Hans Fritzsche, who served as a senior official in the Propaganda ministry alleged to have incited and encouraged the commission of crimes. The IMT held that although Fritzsche clearly made strong statements of a propagandistic nature, it was nevertheless not prepared to find that they were intended to incite the commission of atrocities, but rather, were aimed at arousing popular sentiment in support of Hitler and the German war effort (*American Journal of International Law*, vol. 41 (1947) 328)). The committee finds that if the attack on the RTS was justified by reference to its propaganda purpose alone, its legality might well be questioned by some experts in the field of international humanitarian law. It appears, however, that NATO's targeting of the RTS building for propaganda purposes was an incidental (albeit complementary) aim of its primary goal of disabling the Serbian military command and control system and to destroy the nerve system and apparatus that keeps Milosević in power. In a press conference of 9 April 1999, NATO declared that TV transmitters were not targeted directly but that "in Yugoslavia military radio relay stations are often combined with TV transmitters [so] we attack the military target. If there is damage to the TV transmitters, it is a secondary effect but it is not [our] primary intention to do that." A NATO spokesperson, Jamie Shea, also wrote to the Brussels-based International Federation of Journalists on 12 April claiming that Operation Allied Force "target[ed] military targets only and television and radio towers are only struck if they [were] integrated into military facilities ... There is no policy to strike television and radio transmitters as such" (cited in Amnesty International Report, *ibid*, June 2000).

77. Assuming the station was a legitimate objective, the civilian casualties were unfortunately high but do not appear to be clearly disproportionate.

Although NATO alleged that it made "every possible effort to avoid civilian casualties and collateral damage" (Amnesty International Report, *ibid*, June 2000, p. 42), some doubts have been expressed as to the specificity of the warning given to civilians by NATO of its intended strike, and whether the notice would have constituted "effective warning ... of attacks which may affect the civilian population, unless circumstances do not permit" as required by Article 57(2) of Additional Protocol I.

Evidence on this point is somewhat contradictory. On the one hand, NATO officials in Brussels are alleged to have told Amnesty International that they did not give a specific warning as it would have endangered the pilots (Amnesty International Report, *ibid*, June 2000, at p. 47; see also para. 49 above re: proportionality and the extent to which a military commander is obligated to expose his own forces to danger in order to limit civilian casualties or damage). On this view, it is possible that casualties among civilians working at the RTS may have been heightened because of NATO's apparent failure to provide clear advance warning of the attack, as required by Article 57(2).

On the other hand, foreign media representatives were apparently forewarned of the attack (Amnesty International Report, *ibid*). As Western journalists were reportedly warned by their employers to stay away from the television station before the attack, it would also appear that some Yugoslav officials may have expected that the building was about to be struck. Consequently, UK Prime Minister Tony Blair blamed Yugoslav officials for not evacuating the building, claiming that "[t]hey could have moved those people out of the building. They knew it was a target and they didn't ... [I]t was probably for ... very clear propaganda

reasons." (*ibid*, citing *Moral combat – NATO at war*, broadcast on BBC2 on 12 March 2000). Although knowledge on the part of Yugoslav officials of the impending attack would not divest NATO of its obligation to forewarn civilians under Article 57(2), it may nevertheless imply that the Yugoslav authorities may be partially responsible for the civilian casualties resulting from the attack and may suggest that the advance notice given by NATO may have in fact been sufficient under the circumstances.

78. Assuming the RTS building to be a legitimate military target, it appeared that NATO realised that attacking the RTS building would only interrupt broadcasting for a brief period. Indeed, broadcasting allegedly recommenced within hours of the strike, thus raising the issue of the importance of the military advantage gained by the attack *vis-à-vis* the civilian casualties incurred. The FRY command and control network was alleged by NATO to comprise a complex web and that could thus not be disabled in one strike. As noted by General Wesley Clark, NATO "knew when we struck that there would be alternate means of getting the Serb Television. There's no single switch to turn off everything but we thought it was a good move to strike it and the political leadership agreed with us" (*ibid*, citing "Moral combat, NATO at War," broadcast on BBC2 on 12 March 2000). At a press conference on 27 April 1999, another NATO spokesperson similarly described the dual-use Yugoslav command and control network as "incapable of being dealt with in "a single knock-out blow (*ibid*). The proportionality or otherwise of an attack should not necessarily focus exclusively on a specific incident. (See in this regard para. 52, above, referring to the need for an overall assessment of the totality of civilian victims as against the goals of the military campaign). With regard to these goals, the strategic target of these attacks was the Yugoslav command and control network. The attack on the RTS building must therefore be seen as forming part of an integrated attack against numerous objects, including transmission towers and control buildings of the Yugoslav radio relay network which were "essential to Milosevic's ability to direct and control the repressive activities of his army and special police forces in Kosovo" (NATO press release, 1 May 1999) and which comprised "a key element in the Yugoslav air-defence network" (*ibid*, 1 May 1999). Attacks were also aimed at electricity grids that fed the command and control structures of the Yugoslav Army (*ibid*, 3 May 1999). Other strategic targets included additional command and control assets such as the radio and TV relay sites at Novi Pazar, Kosovaka and Krusevac (*ibid*) and command posts (*ibid*, 30 April). Of the electrical power transformer stations targeted, one transformer station supplied power to the air-defence coordination network while the other supplied power to the northern sector operations centre. Both these facilities were key control elements in the FRY integrated air-defence system (*ibid*, 23 April 1999). The radio relay and TV transmitting station near Novi Sad was also an important link in the air defence command and control communications network. Not only were these targets central to the Federal Republic of Yugoslavia's governing apparatus, but formed, from a military point of view, an integral part of the strategic communications network which enabled both the military and national command authorities to direct the repression and atrocities taking place in Kosovo (*ibid*, 21 April 1999).

79. On the basis of the above analysis and on the information currently available to it, the committee recommends that the OTP not commence an investigation related to the bombing of the Serbian TV and Radio Station.

iv. The Attack on the Chinese Embassy on 7/5/99

80. On 7/5/99, at 2350, NATO aircraft fired several missiles which hit the Chinese Embassy in Belgrade, killing 3 Chinese citizens, injuring an estimated 15 others, and causing extensive damage to the embassy building and other buildings in the immediate surrounds. At the moment of the attack, fifty people were reported to have been in the embassy buildings. By the admission of US Government sources, the Chinese Embassy compound was mistakenly hit. The bombing occurred because at no stage in the process was it realised that the bombs were aimed at the Chinese Embassy. The Embassy had been wrongly identified as the Yugoslav Federal Directorate for Supply and Procurement (Yugoimport FDSP) at 2 Umetnostni Boulevard in New Belgrade. The FDSP was deemed by the CIA to be a legitimate target due to its role in military procurement: it was selected for its role in support of the

Yugoslav military effort.

81. Under Secretary of State Thomas Pickering offered the following explanation for what occurred:

"The bombing resulted from three basic failures. First, the technique used to locate the intended target – the headquarters of the Yugoslav Federal Directorate for Supply and Procurement (FDSP) – was severely flawed. Second, none of the military or intelligence databases used to verify target information contained the correct location of the Chinese Embassy. Third, nowhere in the target review process was either of the first two mistakes detected. No one who might have known that the targeted building was not the FDSP headquarters – but was in fact the Chinese Embassy – was ever consulted."

According to US Government sources, the street address of the intended target, the FDSP headquarters was known as Bulevar Umetnosti 2 in New Belgrade. During a mid-April "work-up" of the target to prepare a mission folder for the B-2 bomber crew, three maps were used in an attempt to physically locate this address within the neighborhood: two local commercial maps from 1989 and 1996, and one US government (National Imagery and Mapping Agency or NIMA) map produced in 1997. None of these maps had any reference to the FDSP building and none accurately identified the current location of the Chinese Embassy.

82. The root of the failures in target location appears to stem from the land navigation techniques employed by an intelligence officer in an effort to pinpoint the location of the FDSP building at Bulevar Umetnosti 2. The officer used techniques known as "intersection" and "resection" which, while appropriate to locate distant or inaccessible points or objects, are inappropriate for use in aerial targeting as they provide only an approximate location. Using this process, the individual mistakenly determined that the building which we now know to be the Chinese Embassy was the FDSP headquarters. This method of identification was not questioned or reviewed and hence this flaw in the address location process went undetected by all the others who evaluated the FDSP headquarters as a military target. It also appears that very late in the process, an intelligence officer serendipitously came to suspect that the target had been wrongly identified and sought to raise the concern that the building had been mislocated. However, throughout a series of missed opportunities, the problem of identification was not brought to the attention of the senior managers who may have been able to intervene in time to prevent the strike.

83. Finally, reviewing elements in, *inter alia*, the Joint Staff did not uncover either the inaccurate location of the FDSP headquarters or the correct location of the Chinese Embassy. The data base reviews were limited to validating the target data sheet geographic coordinates and the information put into the data base by the NIMA analyst. Such a circular process did not serve to uncover the original error and highlighted the system's susceptibility to a single point of data base failure. The critical linchpin for both the error in identification of the building and the failure of the review mechanisms was thus the inadequacy of the supporting data bases and the mistaken assumption the information they contained would necessarily be accurate.

84. The building hit was clearly a civilian object and not a legitimate military objective. NATO, and subsequently various organs of the US Government, including the CIA, issued a formal apology, accepted full responsibility for the incident and asserted that the intended target, the Federal Directorate for Supply and Procurement, would have been a legitimate military objective. The USA has formally apologized to the Chinese Government and agreed to pay \$28 million in compensation to the Chinese Government and \$4.5 million to the families of those killed or injured. The CIA has also dismissed one intelligence officer and reprimanded six senior managers. The US Government also claims to have taken corrective actions in order to assign individual responsibility and to prevent mistakes such as this from occurring in the future.

85. It is the opinion of the committee that the aircrew involved in the attack should not be

assigned any responsibility for the fact they were given the wrong target and that it is inappropriate to attempt to assign criminal responsibility for the incident to senior leaders because they were provided with wrong information by officials of another agency. Based on the information available to it, the committee is of the opinion that the OTP should not undertake an investigation concerning the bombing of the Chinese Embassy.

v. The Attack on Korisa Village on 13/5/99

86. On 14 May 1999, NATO aircraft dropped 10 bombs on the village of Korisa, on the highway between Prizren and Pristina. Much confusion seems to exist about this incident, and factual accounts do not seem to easily tally with each other. As many as 87 civilians, mainly refugees, were killed in this attack and approximately 60 appear to have been wounded. The primary target in this attack was asserted by NATO to be a Serbian military camp and Command Post which were located near the village of Korisa. It appears that the refugees were near the attacked object. However, unlike previous cases where NATO subsequently claimed that an error had occurred in its targeting or its military intelligence sources, NATO spokespersons continued to affirm the legitimacy of this particular attack. They maintained that this was a legitimate military target and that NATO Intelligence had identified a military camp and Command Post near to the village of Korisa.

87. According to NATO officials, immediately prior to the attack, the target was identified as having military revetments. The pilot was able to see silhouettes of vehicles on the ground as the attack took place at 2330, when two laser guided bombs were dropped. Ten minutes later, another two laser guided bombs and six gravity bombs were dropped. In a press conference on 15 May, NATO stated that the attack went ahead because the target was confirmed by prior intelligence as being valid and the pilot identified vehicles present. There were never any doubts, from NATO spokespersons, as to the validity of this target.

88. Information about NATO's position on the bombardment of Koriša was released at the press conference on the following day, 15 May. At this conference, General Jertz twice affirmed that the target was, in NATO's opinion, legitimate since military facilities were present at the site:

"As already has been mentioned, it was a legitimate military target. NATO reconnaissance and intelligence orders identified just outside Koriša a military camp and command post, including an armoured personnel carrier and 10 pieces of artillery. Follow-up intelligence confirmed this information as being a valid military target. Immediately prior to the attack at 23.30-11.30 pm – local time Thursday night an airborne forward air controller identified the target, so the identification and attack system of his aircraft, having positively identified the target as what looked like dug-in military revetted positions, he dropped two laser guided bombs. Approximately 10 minutes later, the third aircraft engaged the target with gravity bombs, with six gravity bombs. A total of 10 bombs were dropped on the target."

When questioned about the presence of civilians on the ground, General Jertz indicated:

"What I can say so far is when the pilot attacked the target he had to visually identify it through the attack systems which are in the aircraft, and you know it was by night, so he did see silhouettes of vehicles on the ground and as it was by prior intelligence a valid target, he did do the attack [...] it was a legitimate target. Since late April we knew there were command posts, military pieces in that area and they have been continuously used. *So for the pilot flying the attack, it was a legitimate target.* But when he is in the target area for attacking, it is his responsibility to make sure that all the cues he sees are the ones which he needs to really attack. And at night he saw the silhouettes of vehicles and that is why he was allowed to attack. Of course, and we have to be very fair, we are talking at night. If there is anybody sleeping somewhere in a house, you would not be able to see it from the perspective of a pilot. But once again, don't

misinterpret it. It was a military target which had been used since the beginning of conflict over there and we have all sources used to identify this target in order to make sure that this target was still a valid target when it was attacked." (Emphasis added).

The NATO position thus appears to be that it bombed a legitimate military target, that it knew nothing of the presence of civilians and that none were observed immediately prior to the attack. Indeed, NATO stated that they believed this area to have been completely cleared of civilians. There is some information indicating that displaced Kosovar civilians were forcibly concentrated within a military camp in the village of Koriša as human shields and that Yugoslav military forces may thus be at least partially responsible for the deaths there.

89. The available information concerning this incident is in conflict. The attack occurred in the middle of the night at about 2330. The stated object of the attack was a legitimate military objective. According to NATO, all practicable precautions were taken and it was determined civilians were not present. It appears that a relatively large number of civilians were killed. It also appears these civilians were either returning refugees or persons gathered as human shields by FRY authorities or both. The committee is of the view that the credible information available is not sufficient to tend to show that a crime within the jurisdiction of the Tribunal has been committed by the aircrew or by superiors in the NATO chain of command. Based on the information available to it, the committee is of the opinion that OTP should not undertake an investigation concerning the bombing at Koriša.

V Recommendations

90. The committee has conducted its review relying essentially upon public documents, including statements made by NATO and NATO countries at press conferences and public documents produced by the FRY. It has tended to assume that the NATO and NATO countries' press statements are generally reliable and that explanations have been honestly given. The committee must note, however, that when the OTP requested NATO to answer specific questions about specific incidents, the NATO reply was couched in general terms and failed to address the specific incidents. The committee has not spoken to those involved in directing or carrying out the bombing campaign. The committee has also assigned substantial weight to the factual assertions made by Human Rights Watch as its investigators did spend a limited amount of time on the ground in the FRY. Further, the committee has noted that Human Rights Watch found the two volume compilation of the FRY Ministry of Foreign Affairs entitled *NATO Crimes in Yugoslavia* generally reliable and the committee has tended to rely on the casualty figures for specific incidents in this compilation. If one accepts the figures in this compilation of approximately 495 civilians killed and 820 civilians wounded in documented instances, there is simply no evidence of the necessary crime base for charges of genocide or crimes against humanity. Further, in the particular incidents reviewed by the committee with particular care (see paras. 9, and 48-76) the committee has not assessed any particular incidents as justifying the commencement of an investigation by the OTP. NATO has admitted that mistakes did occur during the bombing campaign; errors of judgment may also have occurred. Selection of certain objectives for attack may be subject to legal debate. On the basis of the information reviewed, however, the committee is of the opinion that neither an in-depth investigation related to the bombing campaign as a whole nor investigations related to specific incidents are justified. In all cases, either the law is not sufficiently clear or investigations are unlikely to result in the acquisition of sufficient evidence to substantiate charges against high level accused or against lower accused for particularly heinous offences.

91. On the basis of information available, the committee recommends that no investigation be commenced by the OTP in relation to the NATO bombing campaign or incidents occurring during the campaign.