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"COLLATERAL DAMAGE" OR UNLAWFUL KILLINGS?
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1. Introduction

From 24 March to 10 June 1999 the North Atlantic Treaty Organization (NATO) conducted an air campaign against the Federal Republic of Yugoslavia (FRY), codenamed Operation Allied Force. NATO aircraft conducted over 38,000 combat sorties, including 10,484 strike sorties, against targets in the provinces of Kosovo and Vojvodina, Serbia proper and the Republic of Montenegro.[1] Yugoslav media have stated that thousands of civilians were killed in NATO air raids. However, the civilian death tolls given in detailed FRY government accounts range from 400 to 600.[2] NATO has not released official estimates of civilians or FRY combatants killed. No NATO forces were killed in hostile action during the air campaign.

NATO is an alliance of 19 nations from Europe and north America, founded in 1949 with the aim of providing a mutual commitment to collective defence in the event of one or more of these nations coming under attack by another party. NATO took military action against the FRY following a breakdown in negotiations between several of its member states and the FRY over the situation in Kosovo, where FRY forces were engaged in an armed conflict with the Kosovo Liberation Army (KLA) characterized by gross human rights abuses, and the future status of the province. NATO stated several aims for its military intervention, including ending the human rights violations perpetrated by FRY forces against ethnic Albanian civilians; ensuring the withdrawal of

[1] Lord Robertson, Secretary General of NATO, *Kosovo One Year On: Achievement and Challenge*, March 2000.

[2] Official FRY sources are inconsistent on the number of civilian deaths. The FRY Ministry of Foreign Affairs has claimed in its "Provisional Assessment", issued 1 July 1999, that "several thousands" were killed, but specifically mentions about 600 civilian deaths. But the same Ministry of Foreign Affairs' more detailed account of the damage inflicted in the campaign, *NATO Crimes in Yugoslavia (The White Book)*, listed around 400 civilians killed in over 40 incidents of bombings. It seems clear from the text of *The White Book* that it does not represent a complete list of all civilians killed in the NATO bombing. Human Rights Watch, which visited the sites of many of the bombings, estimates that about 500 civilians were killed in approximately 90 incidents.

all FRY forces from Kosovo and their replacement with an international force; and ensuring the return of Kosovar refugees and internally displaced to their homes.

NATO has claimed that its air campaign against the FRY was the "most precise and lowest-collateral damage air campaign in history."[3] However, Amnesty International has serious concerns about the extent to which NATO forces participating in Operation Allied Force adhered to the rules of international humanitarian law on the conduct of hostilities, specifically those laid down to protect civilians and civilian objects. On the basis of available evidence, including NATO's own statements and accounts of specific incidents, Amnesty International believes that -- whatever their intentions -- NATO forces did commit serious violations of the laws of war leading in a number of cases to the unlawful killings of civilians.

In one instance, the 23 April 1999 attack on the headquarters of Serbian state Television and Radio (RTS), NATO launched a direct attack on a civilian object, killing 16 civilians. In other attacks, including the 12 April bombing of Grdelica railroad bridge, which killed 12 civilians, and the missile attack on Varvarin bridge on 30 May, which killed 11 civilians, NATO forces failed to suspend their attack after it was evident that they had struck civilians. In other attacks, including those which resulted in the highest number of civilian casualties (the attacks on displaced ethnic Albanians near Djakovica on 14 April, and in Koriša on 13 May, whose combined death toll exceeded 120) NATO failed to take necessary precautions to minimize civilian casualties. A detailed examination of these and other attacks is included in this report.

Concern about the rising level of civilian casualties grew over the course of Operation Allied Force. On 23 April 1999, for example, the International Committee of the Red Cross (ICRC) said:

> "During the first week or so of airstrikes, the number of civilian casualties did in fact appear to be low. As the air campaign intensified, however ... both a corresponding rise in the number of Serbian civilian victims and increased damage to civilian objects have been observed.... Major incidents involving

[3]Joint Statement on the Kosovo After Action Review, Secretary of Defense William S. Cohen and General Henry H. Shelton, Chairman of the Joint Chiefs of Staff, before the United States Senate Armed Services Committee, 14 October 1999.

civilians have been the destruction of a passenger train on a bridge and the attack on civilian vehicles in Kosovo. Both resulted in deaths and injuries."[4]

On 4 May, Mary Robinson, United Nations High Commissioner for Human Rights, was quoted as saying:

> "If civilian casualties can be avoided, they obviously must be and it is down to judgments that must be made...If it is not possible to ascertain whether civilian buses are on bridges, should those bridges be blown? These are very important questions because people are not collateral damage, they are people who are killed, injured, whose lives are destroyed, and we are very concerned that [sic] the way that civilians are so much in the forefront of modern warfare, of modern conflicts."[5]

Over the course of Operation Allied Force, Amnesty International wrote repeatedly to NATO's Secretary General Javier Solana in connection with specific attacks, raising concerns as to whether NATO was taking sufficient precautions in selecting targets, in choosing the timing of attacks, in the manner in which these attacks were being executed, and whether civilians were being given advance warning when possible. Amnesty International expressed concern that several of the attacks that had resulted in civilian deaths may have indicated that NATO was not taking all precautions necessary to protect civilians because priority was being given to ensuring pilots' safety.

In its replies to Amnesty International's inquiries, NATO gave general assurances that every possible effort to avoid civilian casualties was made but did not provide AI with substantive answers to questions on specific incidents, or any indication of whether investigations were being conducted. Amnesty International did not receive relevant details of the Rules of Engagement from NATO, despite having repeatedly requested them in order to allow an independent assessment of whether they complied with international humanitarian law.

[4] "The Balkan conflict and respect for International Humanitarian Law", Statement by the International Committee of the Red Cross, 23 April 2000. (www.icrc.org/eng)

[5] "NATO Warned on War Crimes," by Steve Boggan, *The Independent*, 5 May 1999.

This report relies to a large extent on NATO's own public statements and reports (and those of member governments) of how it conducted the air campaign, including its accounts of particular incidents and general explanations of operational practices. The organization met with a delegation of NATO officials at the alliance's headquarters in Brussels on 14 February 2000 to discuss its concerns about the bombing campaign. The NATO delegation was headed by Dr Edgar Buckley, Assistant Secretary General for Defence Planning and Operations, and included NATO spokesperson Dr Jamie Shea; Mr Pieter Feith, Director, Crisis Management and Operations Directorate; Mr Baldwin De Vidts, NATO's Legal Adviser; and Lieutenant General O.L. Kandborg, Director, International Military Staff. Amnesty International's delegation included two members of the staff of the International Secretariat, accompanied by Professor Dr Horst Fischer, Academic Director of the Institute for International Law of Peace and Armed Conflict, Ruhr-Universität Bochum Germany and Professor of International Humanitarian Law at Leiden University, Netherlands; and Dr Lieutenant Colonel (ret.) Pekka Visuri, visiting researcher at the Finnish Institute of International Affairs and Adjunct Professor at the National Defence College in Helsinki.

Background: Human Rights Violations in Kosovo

Over the past 10 years, Amnesty International has extensively documented and campaigned to put an end to human rights violations perpetrated by the FRY authorities against ethnic Albanians in Kosovo. (See: *Kosovo: a decade of unheeded warnings*, volume one, AI Index: EUR 70/39/99, April 1999). During this time, ethnic Albanians living in Kosovo were the victims of unlawful killings, torture and ill-treatment. Many political prisoners, including prisoners of conscience, were convicted by courts in proceedings which failed to meet international standards of fairness.

In 1998 there was an increase in human rights violations perpetrated by FRY security forces and paramilitaries in Kosovo (See*: Kosovo: a decade of unheeded warnings*, volume two, AI Index: EUR 70/40/99, April 1999). Armed conflict erupted between members of the KLA, which had formed to fight for an independent Kosovo, and FRY forces, Serb police and paramilitary groups operating in the region. The vast majority of victims in Kosovo during the period of the armed conflict were ethnic Albanian civilians. However, Serbs also suffered human rights abuses, such as abductions, beatings and executions, at the hands of armed ethnic Albanian groups some of whom represented themselves as the KLA.

In February and March 1999, the international community exerted intense diplomatic pressure on the FRY authorities, accompanied by threats of military action. The failure of efforts to broker an agreement between the FRY and representatives of Kosovo's ethnic Albanians in a series of meetings at Rambouillet, in France, led to the eruption of an international armed conflict. In March, NATO commenced a bombing campaign against FRY forces, Serb police and paramilitaries with the declared aim of preventing a human rights catastrophe in Kosovo. However, human rights abuses by FRY forces, Serb police and paramilitary groups increased and hundreds of thousands of ethnic Albanians and members of minority communities fled Kosovo into the neighbouring states of Albania and Macedonia or were displaced inside Kosovo. (See: *Former Yugoslav Republic of Macedonia: The protection of Kosovo Albanian refugees*, AI Index: EUR 65/03/99, May 1999*; Federal Republic of Yugoslavia (Kosovo): Smrekovnica Prison--a regime of torture and ill-treatment leaves hundreds unaccounted for,* AI Index: EUR 70/107/99, October 1999*)*.

In June 1999, NATO ceased its bombing campaign after concluding a Military Technical Agreement with the FRY authorities. Under this agreement all FRY forces, Serb police and paramilitary groups left Kosovo and a NATO-led military force named Kosovo Force (KFOR) took control of Kosovo. The United Nations Interim Administration in Kosovo (UNMIK) was also established to administer the territory. Amnesty International has continued monitoring and campaigning against human rights abuses in Kosovo under the administration of UNMIK (See: *Federal Republic of Yugoslavia (Kosovo): Amnesty International's recommendations to UNMIK on the judicial system*, AI Index: EUR 70/06/00, February 2000, and *Federal Republic of Yugoslavia (Kosovo): Setting the standard? UNMIK and KFOR's response to the violence in Mitrovica*, AI Index: EUR 70/13/00.)

Amnesty International takes no position on the political issues surrounding the status of Kosovo. The organization does not judge whether recourse to force by anyone is justified or not and therefore takes no position on the legal or moral basis for NATO's military intervention against the FRY. Amnesty International focuses strictly on the conduct of such intervention in light of the rules of international humanitarian law.

2. The Laws of War and the Protection of Civilians

Not all civilian deaths in wartime are unlawful. In the euphemistic terms of military spokespersons, "collateral damage"[6], including civilian casualties, is to be expected in war. But there are clear rules that set limits on the conduct of hostilities and in particular outlaw the use of certain means or methods of warfare. These rules are designed to protect -- to the maximum extent possible -- civilian lives and objects. The rules include a prohibition on any direct attacks against civilians or civilian objects, including reprisals directed at them. But they also include prohibitions on attacks which do not attempt to distinguish between military targets and civilians or civilian objects and attacks which, although aimed at a legitimate military target, have a disproportionate impact on civilians or civilian objects. Finally, the rules make clear the narrow circumstances in which civilians or civilian objects lose their protection -- for example, when a civilian object is used for military purposes.

The fullest statement of the rules governing the conduct of hostilities in international armed conflict is in Protocol I Additional to the Geneva Conventions of 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I). This Protocol, which was adopted in 1977, has been ratified by over 150 states.[7] Three of NATO's 19 members are not parties to Protocol I: France (Amnesty International understand that it intends to ratify it in the near future); the United States (although key provisions of Protocol I are reflected in its military code); and Turkey. The fundamental provisions of this Protocol, including all the rules on the conduct of hostilities cited in this report, are considered part of customary international law and are therefore binding on all states.

2.1 The prohibition of direct attacks against civilians and of indiscriminate attacks

One of the cornerstones of international humanitarian law is the principle that all possible measures must be taken to distinguish between civilian persons and objects, and military objectives. Article 48 of Protocol I sets out the "basic rule" regarding the protection of civilians (often referred to as the principle of distinction):

[6] "Broadly defined, collateral damage is unintentional damage or incidental damage affecting facilities, equipment or personnel occurring as a result of military actions directed against targeted enemy forces or facilities. Such damage can occur to friendly, neutral, and even enemy forces." (US Air Force Pamphlet 14-210, February 1998). It is not a term used in international humanitarian law.

[7] According to the International Committee of the Red Cross (ICRC), the organization primarily responsible for monitoring compliance with international humanitarian law, there are 156 States Parties to Protocol I as of January 2000. (See: http://www.icrc.org/eng)

> "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

Regarding objects, Article 52 (2) defines military objectives as "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." Article 51(2) of Protocol I spells out unambiguously that "the civilian population as such, as well as individual civilians, shall not be the object of attack."

In addition to prohibiting direct attacks on civilians, international law also prohibits indiscriminate attacks. In the language of Article 51(4) of Protocol I, indiscriminate attacks are those "of a nature to strike military objectives and civilians or civilian objects without distinction." They include:

> "(a) those which are not directed at a specific military objective;
> (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
> (c) those which employ a method or means of combat which cannot be limited as required by this Protocol".

Article 51 (5) includes two other types of attack which are considered as indiscriminate:

> "(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
> (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."

Indiscriminate attacks occur when armed forces disregard the principle of distinction and attack a military target without regard to the likely consequences for civilians. They might use weapons which are not capable of hitting a military target with precision -- either by their nature

or as a result of the circumstances in which they are employed. Or their tactics or method of attack might show a disregard for civilian lives.

2.2 Precautionary measures

Although international humanitarian law is not necessarily violated whenever civilians are killed or injured, the laws of war require that military forces make all feasible efforts to avoid inflicting civilian casualties. Under Protocol I, "In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects." (Article 57). Where it is unclear whether a target is used for military purposes, "it shall be presumed not to be so used" (Article 52(3)).

Article 57 (2) specifies precautionary measures required:

"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 Article 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 cancelled 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;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

2.3 Human shields

In the aftermath of several NATO attacks that resulted in civilian casualties, NATO suggested that civilians were being used as human shields by the Yugoslav military.[8] Protocol I prohibits the use of such tactics. Article 51(7) provides:

> "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."

Further, Article 58 obliges parties to a conflict to take all necessary precautions to protect civilians under their control against the dangers resulting from military operations, including by removing civilians from the vicinity of military objectives and avoiding locating military objectives within or near densely populated areas.

However, Article 51(8) makes clear that even if one side is shielding itself behind civilians, such a violation of international law "shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57."

Furthermore, Article 50(3) of Protocol I provides:

> "The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

2.4 Legal responsibility for violations of international humanitarian law

State responsibility

Article 85 of Protocol I defines certain "grave breaches" of the Protocol. These are war crimes and include -- when they are committed wilfully and cause death or serious injury -- "making the civilian population or individual civilians the object of attack" and "launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects" which would be excessive in relation to the concrete and direct military advantage anticipated. Other war crimes, for example those listed under

[8] For example, after NATO's bombing of Koriša , Pentagon spokesperson Ken Bacon said: "It may be that as many as half, or certainly a third of the people who may have been killed in NATO attacks, were put there specifically by Miloševi*f* as human shields." US Department of Defence (USDoD) News Briefing, 17 May 1999.

Article 8,2,b of the 1998 Rome Statute of the International Criminal Court, include " [I]ntentionally directing attacks against civilian objects".

Article 86 requires that "Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the [1949 Geneva] Conventions or of this Protocol which result from a failure to act when under a duty to do so." Under Article 88, "Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of grave breaches".

Article 91 makes clear that each party to the conflict "shall be responsible for all acts committed by persons forming part of its armed forces". Accordingly, a "Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation."

Individual criminal responsibility

Individuals, whether civilians or military, regardless of rank, can be held criminally responsible for serious violations of international humanitarian law. Commanders can be held responsible for the acts of their subordinates if they knew or had reason to know that their subordinates were committing or were about to commit a breach and they were in a position to prevent or suppress such breaches and failed to do so. In the words of Article 86(2) of Protocol I:

> "The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

Article 87 specifies the duty of commanders "with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol." The principle of command responsibility is reflected also in the Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court, as well as in the Draft Code of Crimes against the Peace and Security of Mankind (Draft Code of Crimes) adopted by the International Law Commission in 1996.

Superior orders cannot be invoked as a defence for violations of international humanitarian law although they may be taken into account in mitigation of punishment. This principle has been recognized since the Nuremberg trials which followed World War II and is now part of customary international law. It is reflected in the Statutes of the ICTY and the International Criminal Court, and the Draft Code of Crimes.

Responsibility of NATO Alliance Members

Operation Allied Force was fought by a coalition of NATO member states in the name of the alliance as a whole. The initial decision to resort to force was made collectively, as were subsequent decisions about escalating the air campaign. At no point during the air campaign did any alliance member publicly repudiate any of the attacks carried out by NATO forces. Therefore each NATO member may incur responsibility for the military actions carried out under the NATO aegis.

Jurisdiction over serious violations of international humanitarian law

In line with the common provisions of the 1949 Geneva Conventions, each state party undertakes "to enact legislation necessary to provide effective penal sanctions" for persons involved in grave breaches. In addition, the principle of universal jurisdiction applies to such war crimes. Therefore, each state party:

> "shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."

The Geneva Conventions allow a party, if it prefers, to hand such persons over for trial to another state party, and require that, "in all circumstances, the accused persons shall benefit by safeguards of proper trial and defence". The Conventions do not exclude the surrendering of such persons to an international criminal court. The provisions relating to grave breaches of the Conventions apply also to grave breaches of Protocol I.

In addition to being obliged to exercise universal jurisdiction for grave breaches, states are permitted to exercise universal jurisdiction for other war crimes. If, following an investigation, there is sufficient admissible evidence and the suspect is within their jurisdiction, states should prosecute, in a fair trial, or extradite the suspect to another state willing and able to hold a fair trial.

With regard to Operation Allied Force, in addition to the jurisdiction of the national courts of any state, there is the concurrent jurisdiction of ICTY. According to ICTY's Statute, the Tribunal

has jurisdiction over grave breaches of the Geneva Conventions (Article 2) and other violations of the laws and customs of war (Article 3) committed since 1991 in any part of the former Federal Republic of Yugoslavia (Article 1) by any person regardless of that person's nationality. As repeatedly confirmed, ICTY has full jurisdiction over any possible violations of international humanitarian law committed during Operation Allied Force by NATO and any other party.

With regard to the substantive scope of ICTY's jurisdiction, the Appeals Chamber in *Prosecutor v. Tadif* recalled the intervention of the United States at the UN Security Council debate on this issue in 1993, pointing out that this declaration was not contested:

> "... it is understood that the 'laws and customs of war' referred to in Article 3 include all obligations under humanitarian law agreements in force in the territory of the former Yugoslavia at the time the acts were committed, including common article 3 of the 1949 Geneva Conventions, and the 1977 Additional Protocols to these Conventions".[9]

3. Operation Allied Force and the Protection of Civilians

3.1 Approach to the laws of war and their interpretation

During Operation Allied Force NATO never made clear exactly which standards of international humanitarian law were being applied by its forces or how it maintained a coherent interpretation of these rules during the campaign. The alliance's members do not share the same treaty obligations. The United States, for example, whose aircraft flew nearly 80 per cent of NATO strike-attack sorties during the campaign[10], has not ratified Protocol I, neither have France or Turkey. NATO spokesperson Jamie Shea repeated throughout the campaign that alliance forces were respecting the laws of war to an unprecedented extent. But in public statements during the campaign no explicit reference was made to Protocol I which is by far the most comprehensive codification of the law on the conduct of hostilities. At a NATO background briefing on 18 May 1999, the Spokesperson Jamie Shea elaborated on the alliance's adherence to the laws of war:

> "The principle of discrimination is one of the most fundamental components of the law of armed conflict. This principle was reflected as early as the 1899 Hague

[9] *Prosecutor v. Tadif*, Judgment, Case No. IT-94-1-AR72 (Appeals Chamber 2, October 1995), Para. 88.

[10] Military Readiness Subcommittee of House Armed Services Committee, Hearing on the Readiness Impact of Operations in Kosovo, 25 October 1999.

> Convention requirement that combatants wear a fixed, distinctive emblem recognisable at a distance and carry their arms openly. Customary international law requires that combatants shall 'at all times distinguish between the civilian population and combatants and shall direct their operations only against military objectives.' There is absolutely no question that is exactly what NATO is doing; it is distinguishing between civilian and military objectives and in fact I would argue just as a scholar of the laws of war that you cannot find another armed conflict in the history of modern warfare where there has been more discipline and care taken to comply with the laws of war and to make that distinction than in the targeting exercise of the NATO Alliance."

NATO officials met by Amnesty International in Brussels insisted that NATO members would respect Protocol I. At the same time, they stated that NATO is not a party to conventions of international humanitarian law. Baldwin de Vidts, NATO's Legal Adviser, emphasized that it is the individual member states who have legal obligations. States' own legal officials must ensure their participating forces' compliance with international law. In other words, NATO does not have a mechanism to enforce compliance of a common set of standards, or to ensure a common interpretation of such standards. These remain prerogatives of each state member, leading to inconsistencies in the application of the rules.

The fact that NATO is an alliance need not preclude it from ensuring in practice that, when acting under the NATO aegis, its forces are bound by the highest standards of international humanitarian law, including Protocol I, beyond the individual states' treaty obligations and existing domestic laws. The accession to Protocol I by all NATO members would also give the clearest signal that NATO is indeed bound by the highest international standards.

3.2 Target selection

With regard to target selection and assignment, NATO officials at the Brussels meeting explained to Amnesty International that under the system that was in use in Operation Allied Force, NATO members were given a bombing assignment by NATO staff but could refuse it on the grounds, for example, that in their view the target was illegitimate or that the attack would otherwise violate international law and possibly their national law. If a target were refused because the assigned country had deemed it unlawful, NATO officials said that they would not reassign the target to another member. However, it is unclear to what extent this actually happened in practice. In at least one instance, the attack on the headquarters of Serbian state television and radio (RTS), it appears that the attack was carried out despite disagreement among NATO members as to its lawfulness.

Lieutenant General Michael Short (US Air Force), Commander of Allied Air Forces, Southern Europe, reflected -- from an operational perspective -- on the legal dilemmas of waging coalition warfare.

> "We need to understand going in the limitations that our coalition partners will place upon themselves and upon us. There are nations that will not attack targets that my nation will attack. There are nations that do not share with us a definition of what is a valid military target, and we need to know that up front...You and I need to know that all aircraft based in the United Kingdom are subject to rulings by the United Kingdom government about whether we are about to strike a valid target or not."[11]

At its meeting with Amnesty International, NATO officials said that, in some cases, not all NATO members (even those participating in an attack in a support capacity) would be informed about what the target or the means and method of attack may be. This means that a member state may be incurring legal responsibility for an attack the details of which it did not know.

French officials, including the Foreign Minister Hubert Védrine, have alleged that the US military were supplementing the airstrikes conducted under the NATO umbrella with attacks of their own. "All the countries in the Atlantic Alliance acted as part of NATO with full discussion about what to target. But the USA was also carrying out a separate American operation," the Foreign Minister told a BBC documentary about Operation Allied Force. "They deployed national forces with a national decision-making mechanism commanded from the US. And the European allies did not know about these actions." NATO has denied this allegation.[12]

3.3 Rules of Engagement

On several occasions during the air campaign, Amnesty International wrote to NATO's Secretary General to express concern that specific attacks may have breached international law and to seek clarification of the Rules of Engagement adopted by NATO.

In response to specific questions by Amnesty International, NATO stated repeatedly in general terms that it was committed to international humanitarian law and was making "every possible effort to avoid collateral damage during the air operation against the Federal Republic of Yugoslavia".

[11]Remarks by Lieutenant General Michael C. Short at the Air Force Association's Air Warfare Symposium, 25 February 2000.

[12]"Moral Combat - NATO at War", broadcast on BBC2 on 12 March 2000. On the same televison program General Wesley Clark, NATO's Supreme Allied Commander, Europe (SACEUR), denied the French allegation of a separate American operation: "That's incorrect ... I commanded all assets."

The letters from NATO stated that its pilots operated under "strict Rules of Engagement", but did not disclose any details of the rules or the principles underlying them. They did not answer specific questions Amnesty International raised about specific incidents, making it difficult to form a view as to whether the Rules of Engagement themselves complied with international humanitarian norms.

At the Brussels meeting with Amnesty International, NATO officials shed some light on aspects of the Rules of Engagement and what changes were made to them in the course of the war. Amnesty International learned that each member state was entitled to choose what aspects of NATO-proposed Rules of Engagement it would adopt. Amnesty International was also told about changes in the altitude requirements for NATO pilots (see below). However, a comprehensive assessment of the Operation's compliance with the laws of war would require NATO to make available more information on its Rules of Engagement.

3.4 Precautionary measures

NATO spokesperson Jamie Shea claimed that "there has never been an air campaign in history that has been discriminating against the military but in favour of civilians as this one even if we haven't been able to achieve -- nobody can, nobody ever will -- 100 per cent perfection."[13] This point was underscored repeatedly in NATO press briefings. General Walter Jertz told journalists that NATO was conducting "the most accurate bombing campaign in history."[14]

Few would dispute NATO's assertion that it is impossible to achieve "100 per cent perfection" in fighting a war. However, in some incidents it appears that NATO did not take all precautions necessary to protect civilians primarily because priority was given to ensuring pilots' safety. As R. A. Mason, a retired Royal Air Force (RAF) Vice Marshall, said: "It [the conduct of the war] gave the impression to the world at large that an unfortunate minimum of civilian casualties was an unavoidable and acceptable feature of a war waged for humanitarian causes, but the loss of professional military aircrew was not."[15] Force preservation is a crucial concern for the military. But can this consideration take precedence over legal obligations to protect civilians?

Concern about whether NATO took necessary precautions to protect civilians has arisen with regard to the choice of certain methods of attack such as the practice of high-altitude bombing and a consistent failure to give effective warning to civilians.

[13] Press Conference, Jamie Shea and Major General Walter Jertz, Brussels, 3 May 1999

[14] Press Conference, Jamie Shea and Major General Walter Jertz, Brussels, 27 May 1999

[15] James A. Kitfield, "Another Look at the Air War that Was", *Air Force Magazine*, October 1999.

According to NATO, initially aircraft were restricted to flying above 15,000 feet to protect their aircraft and pilots from the FRY air defences. This ceiling was relaxed during the second half of the air campaign, with some planes flying as low as 6,000 feet. Officials have conceded that high-altitude bombing reduced the overall effectiveness of the air campaign, but have denied that it resulted in increased civilian casualties. They said that many attacks were aborted if a target could not be positively identified so as to spare civilians.

In Brussels, NATO officials told Amnesty International that an aircrew flying at 15,000 feet would be able only to identify whether the objective was the intended one according to the planning preparations, but would be unable to tell whether, for example, civilians had moved within its vicinity. The 15,000-feet rule thus effectively made it impossible for NATO aircrew to respect the obligation to suspend an attack once circumstances had changed on the ground rendering the objective no longer legitimate. They told Amnesty International that following the bombing of civilians in a convoy at Djakovica, the Rules of Engagement were amended to require visual confirmation that there were no civilians in the target area.

In an interview for a BBC television documentary General Michael Short spoke about what happened at Djakovica on 14 April 1999 and explained the impact the height requirement was having on pilots' ability to distinguish between military objectives and civilians or civilian objects:

> "They came back to me and said, 'We need to let the forward air controllers go down to 5,000 feet. We need to let the strikers go down as low as 8,000 feet and in a diving delivery, to ensure that they verify their target, and then right back up again to 15,000 feet. We think that will get it done. We acknowledge that that increases the risk significantly, but none of us want to hit a tractor full of refugees again. We can't stand that'."[16]

Unfortunately this additional precaution, as well as changes reportedly instituted after the 7 May attack on Niš (when the US reportedly stopped using cluster bombs) and the 30 May attack on Varvarin Bridge (when NATO decided to avoid attacking certain objectives, such as bridges, when many civilians were likely to be in the vicinity), were not sufficient to stop further civilian deaths. The changes that NATO says were made were basic precautions that should have been incorporated from the start of the campaign in order to ensure that NATO's Rules of Engagement did not allow for breaches of the laws of war.

[16] "Moral Combat - NATO at War", broadcast on BBC2 on12 March 2000.

One way to balance the risks to civilians with those to the attackers is illustrated by A.P.V. Rogers, former Director of the UK Army Legal Services:

> "If the target is sufficiently important, higher commanders may be prepared to accept a greater degree of risk to the aircraft crew to ensure that the target is properly identified and accurately attacked. No-risk warfare is unheard of. Risks may be taken, for example, to rescue pilots who have been shot down or in deploying forces on reconnaissance or target identification missions in enemy-held territory.
>
> However, if the target is assessed as not being worth that risk and a minimum operational altitude is set for their protection, the aircrew involved in the operation will have to make their own assessment of the risks involved in verifying and attacking the assigned target. If their assessment is that (a) the risk to them of getting close enough to the target to identify it properly is too high, (b) that there is a real danger of incidental death, injury or damage to civilians or civilian objects because of lack of verification of the target, and (c) they or friendly forces are not in immediate danger if the attack is not carried out, there is no need for them to put themselves at risk to verify the target. Quite simply, the attack should not be carried out."[17]

NATO forces are also under a legal obligation to warn civilians of imminent attacks whenever possible. According to Additional Protocol I: "Effective warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit." (Article 57, 2(c)). Yet NATO officials told Amnesty International in Brussels that as a general policy they chose not to issue warnings, for fear that this might endanger the crew of attacking aircraft. Given all the other measures taken in order to avoid NATO casualties (including high-altitude bombing), one might question whether sparing civilians was given sufficient weight in the decision not to give warnings. Nor does the consideration of pilot safety explain why there was no warning to civilians when Cruise missiles were used in attacks.

[17] "Zero-casualty warfare", A.P.V. Rogers, *International Review of the Red Cross* No. 837, 31March 2000.

3.5 The use of specific weapons

Civilian casualties have also been caused by the decision to use certain types of weapons. For example, the use of cluster bombs near civilian concentrations, as was done in the bombing of Niš on 7 May (see below), appears to be an example of failure to take proper precautions in choice of weapons.

On the question of cluster munitions, deputy NATO spokesperson Peter Daniel said,

> "Cluster bombs are valid munitions which are very effective against forces on the ground. Sometimes cluster munitions are not effective and so we use other munitions. ..[W]e take every precaution to avoid unintended damage when we use cluster munitions at all. In fact, ... we prefer precision guided munitions any time we can use them. This is in keeping with our aim to avoid collateral damage as much as possible."[18]

Cluster weapons are not banned under international law, but they do present a high risk of violating the prohibition of indiscriminate attack. In addition, cluster weapons present a humanitarian issue due to their high dud rate (NATO officials acknowledged to AI that the rate is approximately five per cent). This means that unexploded sub-munitions are a continued threat to anyone who comes into contact with them. According to some press accounts, thousands of unexploded canisters are still, one year after the conflict, left on the ground in Kosovo alone. Many of these bomblets are embedded beneath the surface of the soil and are not easily detected. Between June 1999 and mid-March 2000, 54 people reportedly had been killed in Kosovo by unexploded cluster bomblets and landmines.[19]

Another munition used by NATO which appears to pose a long-term threat to civilians and the environment is depleted uranium (DU) ordnance. NATO officials told Amnesty International in Brussels that NATO aircraft, in particular A-10 Warthog ground-attack aircraft, fired 31,000 DU rounds during the campaign. Some studies suggest that DU dust, which remains in the vicinity of targets struck by DU ordnance, poses a significant health risk if inhaled or ingested.[20]

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[18] NATO press conference, 15 May 1999.

[19] "Death Lurks in the Fields" by Jonathan Steele, *The Guardian*, 14 March 2000.

[20] See, for example, *Depleted Uranium, a Post-War Disaster for Environment and Health*, Laka Foundation, May 1999. For news reports on the use of DU in Kosovo see, "The Trail of a Bullet" by Scott Peterson, *The Christian Science Monitor*, 5 October 1999 and "Exposed: The Deadly Legacy of NATO Strikes in Kosovo" by Robert Fisk, *The Independent*, 4 October 1999.

The use of depleted uranium munitions is not prohibited by international law and Amnesty International does not oppose their use *per se*. However, pending conclusive studies on the long-term health and environmental effects of the deployment of this weapon, Amnesty International is concerned about the possible health risks of an indiscriminate nature which DU munitions may in fact pose. Article 35 (3) of Additional Protocol I prohibits "methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment." Also, Article 35 (2) prohibits the use of "weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering." Furthermore, according to Article 36, "In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party."

3.6 Intelligence and the principle of distinction

The ability to discriminate successfully between military objectives and civilians or civilian objects is crucial in complying with the requirements of international humanitarian law. Accurate intelligence is critical if civilian casualties are to be minimized, especially in the case of a campaign fought from the air at high altitudes and using long-range weapons.

Unfortunately, NATO appears to have focussed on the planning phase, almost as if it assumed that circumstances would not change or that a change in circumstances (for example, civilians coming near the target) need not be taken into account. In some instances, mistakes were made even in the planning phase. When the means of attack preclude confirmation by the attacking force that the intended target is indeed a military objective, reliance on faulty or old intelligence can have lethal consequences. Two such examples which resulted in civilian deaths are examined in some detail below: the 13 May bombing of displaced Kosovar Albanians in Koriša (Korishë) and the 8 May attack on the Chinese Embassy in Belgrade.

A particularly striking NATO intelligence failure occurred on 21 May when NATO aircraft bombed an army barracks Ko×are (Koshare) in western Kosovo, close to the Albanian border, killing and wounding a number of KLA fighters (the KLA reported that seven had been killed and 25 injured.) The KLA had captured the barracks from the Yugoslav Army a few weeks before the NATO attack.

In the NATO press conference on 22 May, NATO spokesperson Jamie Shea stated the following with regard to this incident:

> "It was until very recently in the hands of the Yugoslav army but it appears that it was then subsequently taken over by the UÇK [KLA]. So I am now aware, I have seen reports, but I can't confirm any number of casualties. But let me be clear, if we had known in a very dynamic situation, particularly where the UÇK is extremely active in that part, that it had been captured by the UÇK then it would have been taken off the target list."

However, the KLA had a very active presence in the Koxare area at this time, and had captured the barracks several weeks before. This fact had been reported in the international press[21], and a number of reporters and television crew had visited the building under KLA escort. In addition, it appears that NATO had already been informed of the position on the ground. A journalist who had recently visited Koxare wrote:

> "For more than a month beforehand, regular reports on who controlled which bits of this mountain were fed to NATO on a satellite fax link from the rebels based at Koxare.
>
> It also appears that international officers with a nearby observation point of the Organisation for Security and Cooperation in Europe (OSCE) sent the same reports. NATO acted on these reports, bombing Serb units just outside the rebel enclave to help the KLA push its units further into Kosovo. NATO yesterday refused to comment on how one part of the organisation could have had this knowledge and not passed it to another part, something they said would be 'tightened up' following the Chinese embassy bombing[...] Visiting Koxare two days before, I was told by KLA officers that they frequently sent NATO targeting information on Serb units opposing them."[22]

Although the Koxare barracks clearly was not a civilian object, the fact that NATO had not removed it from the target list following its capture by the KLA, despite published reports about its new status, casts doubt on the alliance's ability to properly identify targets, discriminate between military objectives and civilians and civilian objects and take account of any changes in the status of a targeted military objective.

[21] See "A Fighting Chance", by Massimo Calabre and James L. Graff, *Time* Magazine, 17 May 1999.

[22] "NATO appears to blunder along with eyes closed", Chris Stephen, *The Irish Times*, 24 May 1999.

After the end of the bombing campaign, as the FRY forces withdrew from Kosovo and NATO forces entered, questions were immediately raised about the accuracy of NATO intelligence even in relation to the military objectives it said it had successfully attacked. International reporters who visited Kosovo during and after the bombings have suggested that NATO significantly over-estimated the extent of the damage it had inflicted on the FRY military. In Djakovica, for example, many of the damaged military vehicles left at an army base were found to have been discarded old wrecks: "NATO's warplanes had not destroyed Yugoslavia's front-line fighting vehicles, but rather a junkyard," reported Steven Lee Myers of *The New York Times* on 28 June1999.

Journalists also reported that NATO had hit a lot of dummy targets across Kosovo. Richard Norton-Taylor wrote in *The Guardian* (London) on 30 June that far from having destroyed the 300 FRY tanks it had originally claimed, NATO was now not contradicting the FRY government assertion that only 13 tanks had been destroyed: "NATO soldiers found huge numbers of dummy tanks made of wood, as well as fake bridges and false roads made of black plastic. Despite repeated attacks on Priština's airfield, MIG21s were unscathed, hidden in underground hangars."

After the withdrawal from Kosovo of FRY forces, NATO maintained that it had destroyed 110 tanks, 210 armoured fighting vehicles, 449 pieces of artillery and mortar equipment. NATO has subsequently concluded that it destroyed 93 Serb tanks (only 26 of this total were physically located and documented by NATO's Kosovo strike assessment team), 153 armoured personnel carriers, 339 military vehicles and 389 artillery and mortar pieces. [23]

Press accounts, however, suggested that far less military hardware and weaponry had been destroyed than even NATO's reduced claims. Robert Fisk of *The Independent* reported that NATO officers were "astonished that thousands of Yugoslav tanks, missile launchers, artillery batteries, personnel carriers and trucks have been withdrawn from the province with barely a scratch on them."[24]

The US magazine *Newsweek* reported, in its 15May 2000 issue, that Pentagon officials had suppressed a US Air Force (USAF) damage report that found that the number of Serb targets verifiably destroyed was a fraction of those claimed by NATO. The USAF investigators who

[23]Press Conference on the Kosovo Strike Assessment, General Wesley K. Clark, Supreme Allied Commander, Europe (SACEUR) and Brigadier General John Corley, Chief, Kosovo Mission Effectiveness Assessment Team, 16 September 1999.

[24] Robert Fisk, "Serb army 'unscathed by NATO'", *The Independent*, London, 21 June 1999.

reportedly spent weeks in Kosovo are said to have found that NATO aircraft had destroyed 14 tanks, 18 armoured personnel carriers, and 20 artillery pieces.

The picture that has emerged in the aftermath of the air campaign thus raises questions about the accuracy of NATO intelligence and the extent to which NATO bombing in fact achieved its stated aim of degrading the FRY military capacity. It reinforces the questions that Amnesty International had already put to NATO -- in the context of civilian casualties -- about its selection and vetting of targets. For it now appears that despite its rhetoric, NATO was, in some instances, not able to assess whether it was attacking genuine military targets or not, and that some of its own assessments of battle damage were erroneous. In such a context, the risk of indiscriminate attack against civilians becomes all the greater, and the need for more effective safeguards to be instituted in any future campaign becomes all the more important.

3.7 NATO and the media: rhetoric vs reality

During the air campaign, at daily press briefings at NATO headquarters in Brussels, NATO continued to stress that it made every possible effort to avoid civilian casualties, that it concentrated only on legitimate military objectives and used high-precision weaponry to ensure accuracy. Numerous air strikes had been aborted and planes had returned to base, NATO said, on the basis of pilots' assessments that civilians were at risk. Yet despite the safeguards against civilian casualties that NATO said were in place, incidents continued to be reported in which large numbers of civilians were killed.

In some cases, NATO admitted that it had made mistakes, but always said that it had not intentionally targeted civilians. It attributed some mistakes to faulty intelligence; others it blamed variously on bad weather and poor visibility, faulty weapons which had missed their targets, mistakes by pilots in deciding whether vehicles were military or civilian in nature, and the use of human shields by the FRY authorities to create civilian casualties when facilities were bombed. NATO's admissions of "mistakes" were almost always presented in the context of the gross human rights violations committed by FRY forces in Kosovo, which had precipitated the NATO campaign in the first place.

NATO spokesperson Jamie Shea insists that NATO's policy was to be as open as possible with the press. "We didn't try to evade responsibility. We owned up pretty quickly to our mistakes," he told Amnesty International in Brussels. But in many instances, no clear answers about troubling incidents were forthcoming.

The French magazine *le Nouvel Observateur* reported that an unnamed NATO General explained that NATO had a policy of deliberately withholding relevant information. "For dealing with unfortunate mistakes, we employed a fairly effective tactic," the General reportedly said. "Most often we knew the precise causes and consequences of these errors. But in order to quiet public opinion we would say that we were conducting an inquiry, that there were several possible explanations. We would only reveal the truth two weeks later, when it no longer interested anyone. Public opinion needs to be worked on, as well."[25]

In addition, NATO attempted to present its "mistakes" as being very few in number, given the overall scale of what it projected as an otherwise highly successful, well-targeted campaign to significantly weaken FRY military capacity. At the US Department of Defence (USDoD) briefing of 2 June 1999, US Major General Chuck Wald said: "Of all the bombs we've dropped, 99.6 percent have actually hit the target out of the 20,000 bombs." This statement was criticized by military analysts such as Anthony Cordesman, of the Center for Strategic and International Studies in Washington, DC. He pointed out that General Wald's figures take into account only a handful of incidents involving politically-sensitive "collateral damage" such as the bombing of the Chinese Embassy in Belgrade.[26] NATO has since referred to Human Rights Watch's estimate of 90 incidents in which civilians were killed. That figure too only represents a fraction of the number of attacks that went astray but did not end up killing civilians.

It has been reported that only about one-third of the weapons used in the air campaign were precision-guided munitions.[27] NATO officials in Brussels told Amnesty International that about 70 per cent of the precision-guided weapons used by its forces struck the desired point of impact.

3.8 Investigation and redress for victims

Amnesty International wrote to NATO during Operation Allied Force and asked that it investigate several attacks detailed in this report. The organization received no information from NATO about investigations. When asked during the February 2000 meeting whether NATO ever conducted investigations, officials in Brussels told Amnesty International that internal investigations of several attacks had been pursued. However, they added that they did not consider it "useful" to disclose their

[25]Rien ne s'est passé comme prévu", Vincent Jauvert, *le Nouvel Observateur* (Nº 1808), 1 July 1999.

[26]Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile War in Kosovo*, the Center for Strategic and International Studies, Washington, DC, September 1999.

[27]Anthony Cordesman, *The Lessons and Non-Lessons of the Air and Missile War in Kosovo*, the Center for Strategic and International Studies, Washington, DC, September 1999.

findings or release details of the forces involved. They added that no criminal or disciplinary measures were taken against those involved in the attacks that were investigated. The US Central Intelligence Agency (CIA) subsequently disclosed, in April 2000, that several CIA officials were disciplined for their role in misidentifying the location of the Chinese Embassy in Belgrade, resulting in the killing of civilians.

NATO has stated that they do not have access to Serbia and therefore have not been able to conduct reviews of civilian casualties caused by the bombings. But this has not impeded other types of reviews of the effects of the bombing such as the US Department of Defence's Kosovo After Action Report. And it does not explain why investigations akin to that conducted into the bombing of the Chinese Embassy in Belgrade were apparently not conducted into other, less politically sensitive instances of civilian deaths caused by NATO attacks.

NATO members are under an obligation to redress any violations of the laws of war that its forces have committed, including by paying compensation to the victims as required by Article 91 of Protocol I. As NATO does not appear to have made a serious effort to investigate possible violations, victims have not received redress. In the case of the Chinese Embassy, the US government paid compensation to the victims and their families, and to the Chinese government for the damage to the embassy building, but without acknowledgement of legal liability. This remains to date the only instance in which any form of compensation has been paid.

4. Conclusions and Recommendations

Amnesty International believes that in the course of Operation Allied Force, civilian deaths could have been significantly reduced if NATO forces had fully adhered to the laws of war.

NATO did not always meet its legal obligations in selecting targets and in choosing means and methods of attack. In one instance, the attack on the headquarters of Serbian state radio and television (RTS), NATO launched a direct attack on a civilian object, killing 16 civilians. Such attack breached article 52 (I) of Protocol I and therefore constitutes a war crime. In other attacks, including the Grdelica railroad bridge, the automobile bridge in Lužane, and Varvarin bridge, NATO forces failed to suspend their attack after it was evident that they had struck civilians, in contravention of Article 57 (2) (b) of Protocol I. In other cases, including the attacks on displaced civilians in Djakovica and Koriša, insufficient precautions were taken to minimize civilian casualties.

Although both NATO and its member states have declared their commitment to the rules of international humanitarian law, France, Turkey and the US are not yet parties to Protocol I and NATO has no mechanism to ensure a common interpretation of such rules that reflects the highest standards

of international humanitarian law. NATO's command structure also appears to contribute to confusion over legal responsibility.

Decision making processes on target selection and assignment indicate that disagreements over the lawfulness of certain attacks did not prevent such attacks from taking place. Also, aspects of the Rules of Engagement, specifically the requirement that NATO aircraft fly above 15,000 feet, made full adherence to international humanitarian law virtually impossible. According to NATO officials, changes were made to the Rules of Engagement, including lifting the 15,000 feet rule, following the 14 April 1999 attack near Djakovica and the 30 May 1999 bombing of Varvarin Bridge. These changes were a recognition that existing precautions did not afford sufficient protection to civilians. But by 30 May hundreds of civilians had been killed in NATO air raids. NATO was under a legal obligation to implement fundamental precautions from the start of the campaign, rather than prioritizing the safety of its aircraft and pilots over protecting civilians, including those civilians on whose behalf it said it was intervening.

The use of certain weapons, particularly cluster bombs, may have contributed to causing unlawful deaths. Similarly, the apparent preeminence given by NATO to intelligence in the planning phase rather than throughout the conduct of an attack, and serious mistakes in intelligence gathering, seem to have led to unlawful deaths.

The confidential nature of any investigation and the reported absence of measures against any NATO personnel cast doubt on NATO's commitment to getting to the bottom of specific incidents in accordance with international law. In one case only, the bombing of the Chinese Embassy in Belgrade, were the results of an investigation disclosed, compensation paid and disciplinary measures taken against those found to be responsible. The impression that these measures were taken in that instance primarily because of political reasons is inescapable.

Waging a coalition war is a complex endeavour and the judgments required of military planners and soldiers engaged in combat are particularly difficult. NATO must draw lessons from Operation Allied Force that go beyond what new weapons their arsenals require and provide guidance on how to maximize the protection of civilians, as required by international humanitarian law. The most powerful military alliance in the world cannot afford but to set the highest standard of protection in this regard. In light of the above, Amnesty International makes the following recommendations:

Ratification and interpretation of international humanitarian law standards

1. NATO should publicly commit itself to abide by the highest standards of international humanitarian law, including the 1977 Protocol I Additional to the Geneva Conventions of 12 August 1949, and to ensure a common interpretation of such standards among its member states which would provide maximum protection for civilians against the effects of conflict.

2. NATO and its member states should institute or maintain effective training programs for their military forces in the practical observance of the highest standards of international humanitarian law, in particular the obligations set out in Protocol I .

3. France, Turkey and the United States should ratify, without reservations, all relevant international humanitarian law treaties, in particular Protocol I. NATO member states already party to such treaties should withdraw any reservations they have made.

Command structure

4. NATO should clarify its chain of command so that there are clear lines of responsibility, known within and outside the organization, for each state and each individual involved in military operations conducted under its aegis.

Rules of Engagement

5. NATO's Rules of Engagement must ensure full compliance with the highest standards of international humanitarian law, in particular the obligations set out in Protocol I. The Rules of Engagement should be common to all member states and made public to the maximum extent possible.

Use of cluster weapons and depleted uranium weapons

6. NATO and its member states should ensure that cluster weapons are not used in the vicinity of civilian concentrations. As a humanitarian matter, NATO member states involved in KFOR should urgently assist the effort to clear unexploded sub-munitions from cluster weapons used in Operation Allied Force.

7. NATO and its member states should also investigate and cooperate fully with independent investigations of the possible long-term health and environmental risks posed by the use of depleted uranium weapons. They should also consider suspending the use of these weapons pending the outcome of such investigations.

Investigation and prosecution of violations of international humanitarian law

8. NATO should establish a body to investigate credible allegations of violations of international humanitarian law in the course of Operation Allied Force, including the cases in this report, as well as

in any future military operation. In performing this task, NATO should consider calling on the services of the International Fact-Finding Commission established under Article 90 of Protocol I and provide it with all necessary assistance. The methods and findings of this investigation should be made public and used to assist any prosecution that may appear appropriate.

9. NATO member states must bring to justice any of their nationals suspected of being responsible for serious violations under international humanitarian law, in particular grave breaches of Protocol I, in line with international standards for fair trial and without the possibility of the death penalty. Those member states with inadequate national legislation to ensure the full criminal enforcement of international humanitarian law should introduce such legislation without delay.

10. Other states should exercise their obligations to conduct criminal investigations of anyone suspected of grave breaches of international humanitarian law during Operation Allied Force. If there is sufficient admissible evidence and the suspect is within their jurisdiction, such states should prosecute or extradite the suspect to another state willing and able to hold a fair trial without the possibility of the death penalty.

11. The International Criminal Tribunal for the former Yugoslavia should investigate all credible allegations of serious violations of international humanitarian law during Operation Allied Force with a view of bringing to trial anyone against whom there is sufficient admissible evidence. States should surrender to the Tribunal any suspect sought for prosecution by the Tribunal.

Redress for the victims

12. NATO should ensure that victims of violations of international humanitarian law receive adequate redress, including compensation through a mechanism set up for this purpose. NATO member states should also ensure that their own national laws allow any such victim to seek redress through civil actions.

5. Case Studies

The precise number of civilians who died as a result of NATO air attacks is not known. Yugoslav estimates of civilian deaths are contradictory. Some official public estimates put the number of civilian deaths in "the thousands." *NATO Crimes in Yugoslavia (The White Book)*, published by the FRY Ministry of Foreign Affairs, is the most detailed official account of the damage caused by the NATO bombing. It lists around 400 civilians killed in over 40 incidents involving civilian fatalities, although it

seems clear from the text of *The White Book* that it does not represent a complete list of all civilians killed in the NATO bombing. Reuters reported on 23 March 2000 a new FRY government estimate of 1,002 army and police known to have either died or gone missing. The government did not make clear whether this was only during the air strikes. According to Human Rights Watch, between 489 and 528 Yugoslav civilians were killed in 90 incidents.

NATO has not made public any estimate of civilian casualties. NATO officials told Amnesty International in Brussels that they could not assess the civilian toll because they do not have access to the FRY. But they have not disclosed any estimate of civilian casualties from NATO attacks in Kosovo either. NATO officials have characterized Human Rights Watch's figure of 90 incidents involving civilian deaths as reasonable and they have not disputed their estimate of 500 civilians killed.

In testimony to the US House of Representatives in July 1999, Assistant Secretary of Defence John Hamre referred to 30 incidents involving fatal "collateral damage", but did not give an estimate of civilians killed. In September 1999, General Joseph W. Ralston, Vice Chairman of the US Joint Chiefs of Staff, said: "Over Kosovo, only one side suffered. Despite the weight of bombs dropped, Serbian civilian casualties were amazingly light, estimated at less than 1,500 dead. More importantly, this was accomplished with near total impunity. Only two NATO aircraft were lost, and both pilots were quickly recovered."[28] He did not give any indication of how he arrived at that estimate of civilian deaths.

Many questions remain unanswered about the precise circumstances of many NATO attacks. NATO's refusal to reveal more details of its Rules of Engagement and its withholding of other crucial operational details also preclude a proper assessment of compliance with international law in specific incidents. For example, NATO has not released a complete list of attacks by its forces. And it has not disclosed information about specific attacks such as the type of aircraft, type of weapons and munitions, available intelligence, or the nationalities of attacking and supporting aircraft.

Nevertheless, there are instances where sufficient information is available to conclude that violations did occur. In other cases, it remains an open question whether NATO adhered to its obligations under international humanitarian law.

The summaries of the incidents given below do not provide an exhaustive list of attacks which may have been unlawful or a complete list of attacks which resulted in civilian deaths. In many cases

[28] "Aerospace Power and Military Campaigns", a speech delivered by General Joseph W. Ralston, Vice Chairman of the US Joint Chiefs of Staff, at the Air Force Association (AFA) Policy Forum, 14 September 1999.

where Serb sources claimed that civilian targets had been hit, NATO simply denied that they had targeted such a site, or said that the facility had not been used only for civilian purposes. For example, in April 1999 reporters asked NATO to confirm that its forces had hit a number of factories which belonged to relatives of President Slobodan Miloševi*ć*. NATO denied that it had selected any targets on this basis, saying either that it had no report of any such site having been hit, or that a cigarette factory, for example, was in fact producing "something having to do with ammunition".[29] In the absence of further information, Amnesty International cannot assess whether such facilities constituted legitimate military targets or not.

The cases included below, ordered chronologically, were selected because there is evidence that civilians were victims of either direct or indiscriminate attacks, in violation of international humanitarian law. These attacks do not amount to a comprehensive list of problematic incidents, but Amnesty International believes that they illustrate a broad range of concerns about NATO's conduct of the bombings.

5.1 Attack on Grdelica railroad bridge, hitting passenger train: 12 April

On 12 April, a civilian passenger train crossing a bridge in Grdelica, southern Serbia, was hit by two bombs. The attack took place in the middle of the day. At least 12 civilians reportedly died.[30] NATO admitted that its aircraft had bombed the bridge and hit the train, but said that the target had been the bridge itself and that the train had been hit accidentally. At a press conference on 13 April, General Clark, Supreme Allied Commander, Europe (SACEUR), explained that the pilot's mission had been to destroy the railroad bridge. He launched the weapon from a distance of several miles unaware that the train was heading towards the bridge:

> "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."

[29] NATO press conference, 21 April 1999. A day previously, NATO spokesperson Jamie Shea had said at the press conference, "I'm generally not aware that NATO struck a cigarette plant, I haven't seen that on any of the reports on targets that we have struck."

[30] Human Rights Watch reports that 20 were killed, a figure which includes five persons whose remains were unidentified and three missing persons.

General Clark then gave the following account of how the pilot returned to drop another bomb on the bridge, striking the train again, even though he had realized that he had hit the train instead of the bridge in the first attack.

> "The mission was to take out the bridge.... He believed he still had to accomplish his mission. 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 the bridge 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."

The video of the cockpit view of both attacks was shown at the press conference on 13 April. Several months later it was reported in Germany's *Frankfurter Rundschau* newspaper that this video was shown at three times speed, giving the impression to viewers that the civilian train was moving extremely fast.[31] According to press reports, the US air force attributed the speeded-up film to a technical fault, which they discovered months after the videotape was shown but they did not consider it useful to publicly disclose this information after it was uncovered. Jamie Shea, NATO spokesperson, told Amnesty International in Brussels that, due to the volume of videotape that analysts had to review each day during the campaign, the tapes were speeded up to facilitate viewing. He said that the press office was at fault for clearing the tape for public screening without slowing it down to the original speed.

NATO's explanation of the bombing -- particularly General Clark's account of the pilot's rationale for continuing the attack after he had hit the train -- suggests that the pilot had understood the mission was to destroy the bridge regardless of the cost in terms of civilian casualties. This would violate the rules of distinction and proportionality.

Also, NATO does not appear to have taken sufficient precautionary measures to ensure that there was no civilian traffic in the vicinity of the bridge before launching the first attack. The attacking aircraft -- or another aircraft -- could have overflown the area to ascertain that no trains were approaching the bridge. Had it done so, it might have been able to wait until the train had crossed before launching the attack.

[31] Agence France-Presse, 5 January 2000

Yet, even if the pilot was, for some reason, unable to ascertain that no train was travelling towards the bridge at the time of the first attack, he was fully aware that the train was on the bridge when he dropped the second bomb, whether smoke obscured its exact whereabouts or not. This decision to proceed with the second attack appears to have violated Article 57 of Protocol I which requires an attack to "be cancelled or suspended if it becomes clear that the objective is a not a military one ... or that the attack may be expected to cause incidental loss of civilian life...which would be excessive in relation to the concrete and direct military advantage anticipated. " Unless NATO is justified in believing that destroying the bridge at that particular moment was of such military importance as to justify the number of civilian casualties likely to be caused by continuing the attack -- an argument that NATO has not made -- the attack should have been stopped.

Further questions about this attack were raised in the *New York Times* on 14 April, which reported that while NATO officials had refused to name the type of weapon or aircraft involved, officials in Washington had said that the plane had been an American F-15E, firing an AGM-130 bomb. General Clark had only referred to the aircraft pilot as being involved, but the F-15E carries a crew of two: the pilot and a weapons officer who controls the bombs. According to this report, the AGM-130 is at first guided by satellite, but as it nears its target, the pilot or weapons officer can guide it, using a video image. One reporter's account cited witnesses as identifying the attacking aircraft as a Harrier jet, which hovered within sight of the bridge before firing the second missile.[32] Other witnesses reported that two additional bombs were dropped on an adjacent highway bridge.[33] NATO has never mentioned that this attack struck the highway bridge.

On 15 April 1999 Amnesty International called on NATO to conduct an inquiry into this attack. NATO officials who met with Amnesty International delegates in Brussels said they were not aware of the second bomb being dropped by the pilot. Assistant Secretary General Buckley said that if General Clark's account is that the pilot fired a second time at the bridge, it must mean that there was an internal investigation and the pilot was cleared.

5.2 Attacks on a convoy of ethnic Albanians near Djakovica: 14 April

Over 70 ethnic Albanian civilians were reported to have been killed and as many as 100 wounded when NATO planes fired upon their convoy in the vicinity of Djakovica (Gjakovë), Kosovo, on 14

[32] Robert Fisk, *The Independent*, 7 February 2000.

[33] Ministry of Foreign Affairs of Federal Republic of Yugoslavia, *The White Book (vol 1).*

April. The circumstances surrounding the attack remain somewhat unclear. It appears that NATO aircraft dropped bombs on internally displaced persons at four different locations near Djakovica over a two-hour period. It took NATO five days to give their definitive account of what had happened and the handling of the public inquiries led to a revamping of the press operation at NATO headquarters with the support of media specialists mainly from the UK. Their final public version of the incident, however, still raises many serious questions about compliance with the rules of war.

Officials from the alliance initially attributed the incident to Serbian forces. A few hours after the incident, Pentagon spokesperson Kenneth Bacon referred to reports that Yugoslav aircraft had been used to attack convoys of internally displaced ethnic Albanians in Kosovo.

Then at the press conference in Brussels on the following day, 15 April, NATO General Marani admitted that NATO forces had been responsible for the attack on the convoy and expressed regret for the loss of life, but provided inconsistent information. It was suggested at the same time that one or two attacking aircraft were involved. At the press conference, NATO played an audio recording of an unidentified pilot's account of how he had dropped a bomb on what he believed to be a military vehicle. General Marani introduced the recording as a "tape [which] gives the description of what may be this incident." There was also confusion about the precise location of this attack, or even about whether more than one attack in different locations near Djakovica had taken place.

At NATO's press conference the following day, 16 April, NATO spokesperson Jamie Shea affirmed that there was only one incident which may have resulted in civilian casualties and that it had occurred north of Djakovica. He invited journalists to seek explanations from Belgrade with regard to other incidents near Djakovica on 14 April, the sites of which had been visited by international journalists the day after the attacks took place.

International journalists found physical evidence as well as eyewitness accounts which gave a different picture of the nature of the attack from that given by NATO. For example, it appeared that there had not been just one attack on one site, but attacks at up to four sites during the day. Eyewitnesses were reported describing several aircraft descending to bomb, circling, and then returning to dive-bomb again. Reporters also believed that some of the physical evidence at the sites indicated that cluster bombs had been used in the area.[34]

[34] Paul Watson, "Cluster bombs may be what killed refugees", *Los Angeles Times* 17 April 1999,

The victims were ethnic Albanians, many of whom had been forced from their homes by Serb forces, and who were trying to leave Kosovo. Tractors and wagons had been destroyed, and reports indicated that there was no evidence of any military vehicles having been among them. Survivors interviewed said they had no Serb escorts.[35] NATO suggested, however, that as reporters only visited the scene a day or two after the attacks took place, such evidence might have been removed.

At NATO headquarters on 17 April, General Marani refused to respond to questions about how many attacks NATO planes had carried out in the area concerned or how many bombs had been dropped, pending the completion of NATO's investigation of the matter. There was also confusion about how the account given in the audio recording of the pilot related to the attack or attacks in question. After a Pentagon spokesperson stated that the audio recording actually referred to an attack on a military vehicle and was not related to this attack which resulted in civilian casualties,[36] General Marani explained on 18 April that the tape was played solely to provide an example of the type of procedures that a pilot goes through when making such an attack:

> "The pilot tape was brought here because the intention was to clarify what was the procedure of a pilot involved in an action of that type, what he was taking care of, what he was saying and because that tape was clear and was available it was brought to you to tell you what that type of attack was like."

NATO finally presented the results of its investigations to the press on 19 April. Brigadier General Daniel P. Leaf said that there had been two separate target areas which were hit. The first was northwest of Djakovica, where "NATO aircraft struck the ... target area with two bombs, and may have hit a civilian-type vehicle ... associated with the burning of houses". The second area was on the main road to the south east of Djakovica, towards Prizren, where "they struck the lead elements of the convoy". The vehicles had appeared to be military, but NATO said it was possible that there were civilian casualties at both locations.

[35] Robert Fisk, "This atrocity is still a mystery to NATO ...", *The Independent*, 17 April 1999; Paul Watson ("Searching for answers in a tragedy", *Los Angeles Times*, 16 April 1999) states "None of the survivors interviewed confirmed NATO's claim that military vehicles were trying to hide in their long convoy". Amnesty International's own information, obtained from witnesses, confirms this.

[36] Captain Pietropaoli, DoD News Briefing, Saturday, 17 April 1999.

The Brigadier General stated that several aircraft were involved, none of which descended to low altitude during their attacks. He said Serb anti-aircraft artillery with a range of 13,000 feet fired at the aircraft. He also said that all bombs used were GBU-12 laser-guided bombs.

Attack northwest of Djakovica

Rather puzzlingly in light of the comments that had been made in the previous days about the audio tape, Brigadier General Leaf said that the attack northwest of Djakovica was carried out by the pilot whose recording had been played to the press on 14 April, with a 500 pound GBU-12 laser-guided bomb. "From the altitudes [the pilot] was operating at [the vehicle which he witnessed setting houses on fire] appeared to be a military-style vehicle and matched those travelling with it as a small convoy". The Brigadier General then showed some video taken by an unmanned aerial vehicle (UAV) of the result of this attack (before the second pilot dropped his bomb) which showed the damaged vehicle and other vehicles and also a C-shaped building.

The second pilot then arrived and visually assessed the target area for over 10 minutes. He saw "what appeared to be large vehicles in the courtyard of the C-shaped complex and made the determination that they were likely to be military vehicles". He attacked them with a single bomb of the same type as used in the first attack. The Brigadier General pointed out a large secondary explosion evident on the video, indicative of a flammable substance such as gasoline being present in the structure. He pointed out that there had been reports that Serbs had been hiding gasoline in their homes which they used to refuel their vehicles and burn Kosovar property. He then played the Serb TV video showing the destroyed trucks and "what appear to be tractor-type vehicles" in the vicinity of the C-shaped building. This attack ended, he said, about 45 minutes after it started. His assessment was that this attack struck "a valid military target ... a vehicle directly involved in the burning of houses".

The Yugoslav government *White Book* states that after the first missile was fired, the survivors in the column abandoned the vehicles and ran for refuge towards a nearby house. The NATO pilots then struck this house and its adjoining buildings, farm machinery and vehicles in the yard. More civilians were killed here and others fled to the woods.

This account is consistent with testimony taken by Amnesty International from survivors of the bombing near Meja, who had reached Albania. They indicated that the column involved in the Meja incident included people from the villages around Dobroš (Dobrosh) who had been forced to leave

their homes by Serbian police the previous day, as well as others who had fled their homes earlier and had joined the column for security. At least one witness described the column that was hit as being between 200 and 300 metres long, but part of a far larger convoy made up of cars and tractors.

Although their accounts offer some conflicting details, none mention that there were military vehicles or police accompanying the column. Most recounted that, when they had reached Meja, a single bomb hit the first tractor in the column and its trailer, wrecking it and killing a number of people. Most of the witnesses described either hearing or seeing a high-flying aircraft at the time of the attack.

All agree that there was a police presence in Meja, and that within a few minutes of the first explosion a small number of police officers in uniform arrived. These officers told the people that NATO was attacking and told them to take shelter in a nearby house.

However, another witness reported that she had already taken her children to seek shelter in the house before the arrival of the police. The police then left and the people, who according to witnesses' estimates numbered between 100 and 300 people, remained inside or in the yard. The yard itself held about seven tractors but no one described seeing military vehicles in the area. Two of the witnesses claimed that the police had been stationed in the house, but others do not mention this.

After a period of between 10 and 30 minutes there was a second attack, described by one witness as "a harsh bombardment" during which more bombs fell on and near the house. Estimates of the number of those killed vary widely, with most people saying that they themselves had seen five, eight or 10 bodies at this time, but believed that there were many more. Many people fled to the hills behind the house and took shelter there, returning to the road after an hour or two. More police officers had arrived in the meantime and collected the bodies of the dead and wounded, which the witnesses believed were transferred to hospital in Djakovica.

Attack southeast of Djakovica

Meanwhile, at the second site, according to Brigadier General Leaf's account, another pilot was investigating a large convoy of over 100 vehicles to establish whether or not it was military. He decided it was, on the basis that the first 20 vehicles were "uniform in shape and colour as seen from the air. They were maintaining a set spacing and pace, characteristics of military movement". The identification of the target was discussed with Airborne Command Control and Communications (ABCCC), and because of a risk that there might be internally displaced persons within the convoy,

they "took additional precautions to validate their target" by means which Brigadier General Leaf did not disclose. NATO aircraft then dropped a series of bombs on the targets about half an hour after the end of the attack on the first site.

After several bombs had been dropped, ABCCC asked for the target to be verified again, because the combined air operations centre in Italy had pointed out that Serb forces did not generally travel in such large convoys. Further attacks were suspended after about 40 minutes while the verification was carried out by aircraft whose crew were able to view the site with binoculars. It was established that there were "definitely military vehicles in there", but that there were also multi-coloured and possibly civilian vehicles among them. The attack was thus terminated about an hour after it started.

In conclusion, the Brigadier General stated:

> "I cannot explain the bodies seen on Serb TV... we did not have observers on the ground or at the site... it's unlike in a peacetime environment where we have full access to the accident scene; we can only speculate on their association with our attacks. There may have been unforeseen casualties; however, the nature of our exhaustive process to positively identify targets and their association to military or repressive acts remains a key factor that led our pilots to conclude the targets were in fact contributing to Serb military or paramilitary activities."

He did, however, acknowledge that in this second incident NATO "may well have caused damage to a civilian vehicle and harm to civilian lives". But he added that "Serb reports claimed 80-plus dead, but reporters saw only approximately 20 victims, many of whom did not appear to be victims of bombings".

He stated that there was evidence that the Serbs had attacked this column as well. In support of this he cited "numerous reports from the area of the large convoy [southeast] of Djakovica [which] showed [that] refugees died from machine gun and mortar wounds. He said also that "refugee interviews conducted by … OSCE revealed [that] Serbian forces attacked a refugee convoy in the vicinity of Djakovica. The refugees reported attacks by low-flying MIG-type aircraft expending cluster munitions and grenades thrown from helicopters." But, he said, in this attack NATO aircraft did not fly at low altitude, expended no cluster munitions and used no helicopters.

He also referred to witnesses in the region who "relayed that they observed a refugee column being attacked by Serb mortars" at the same time as the second site was being attacked by NATO.[37] Some survivors interviewed several months afterwards persisted in their view that the attack was carried out by Serbs, because they could not believe that NATO would have attacked their convoy.[38] Human Rights Watch states that no evidence was produced to indicate Serb responsibility for any of the deaths.[39]

Brigadier General Leaf also referred to witnesses who believed that the Serbs had used the convoy as a human shield, positioning police and military vehicles at the front. Referring to the "government-sponsored media tour of the area southeast of Djakovica" which took place a full day later,[40] he stated that the 24-hour delay would have allowed sufficient time for Serb forces to remove any military vehicles or personnel from the area.

The Yugoslav government's *White Book* refers to attacks on the road south of Djakovica at Terzijski Most near the village of Bistražin (Bistrazhin), and at Gradiš (Gradishë) and some other locations, giving names and details of those killed and injured. A retrospective article written by a British journalist several months later after a follow-up visit to the area[41] refers to attacks at Bistražin and Gradiš . In the Yugoslav government's description of these attacks the weapons used are described simply as missiles launched from NATO planes. The notes of the inspection of the various sites, and the injuries on the bodies (shrapnel wounds and explosive injuries), do not give any clear indication as to whether cluster bombs were believed to have been used.

Reports also indicate that there may indeed have been military vehicles intermingled with the convoy; others go so far as to suggest that the convoy was being deliberately used as a human shield. An OSCE report is not conclusive in this respect:

> "Sometimes interviewees may have been used as human shields but did not recognize it from their perspective. Yugoslav authorities frequently accompanied convoys of IDPs [internally displaced persons] with military

[37] Robert Fisk, "Convoy of the Damned", *The Independent*, 28 November 1999, states that these reports emanated from CNN, but that the people concerned were never interviewed live.

[38] Robert Fisk,"Convoy of the Damned", *The Independent*, 28 November 1999.

[39] Human Rights Watch, *Civilian Death in the NATO Air Campaign*, February 2000, p.22.

[40] But Paul Watson ("Searching for answers ...", *Los Angeles Times*, 16 April), states explicitly that his visits to the four sites -- one northwest of Djakovica, at Meja on Wednesday afternoon 14 April, the same day as the bombing, and three southeast of Djakovica the next morning, Thursday 15 April, were neither escorted nor controlled by government officials.

[41] Robert Fisk, "Convoy of the Damned", *The Independent*, 28 November 1999.

> materiel and personnel, a practice which may have been motivated by the desire to protect such equipment during its movements. At times, NATO, when targeting such materiel and personnel, hit civilians instead. As was very widely publicized internationally, on 14 April NATO bombed convoys of IDPs at two locations close to Djakovica/Gjakova town (Meja/Meje and Bistražin/Bistrazhin). The presence of military vehicles accompanying the convoy at Meja may indicate that people in the convoy were being used as human shields.
>
> On that day, several villages in Djakovica municipality near the border zone were emptied by Serbian forces and the Kosovo Albanian population was escorted in convoys to Djakovica town. At the time, a convoy of Kosovo Albanians escorted at front and rear by military vehicles proceeded towards Djakovica. NATO observed the collections of displaced people and a series of burning buildings, and decided to fire on vehicles it thought carried those responsible for committing the acts. As recounted by an interviewee who had fled Paçaj [Po...aj] village with his family when they saw other villages burning in the neighbourhood, he was at Meja when an explosive device hit a tractor. Following this event, some villagers were ordered back to their villages, but police ordered a group containing the interviewee into a large three-storey building nearby, using also its garage. After about 15 minutes this location was again targeted, and at least seven civilians were killed. It is possible the displaced people were intentionally herded into the building because the Serbian forces were aware that it could become the subject of an attack. Approximately one hour later, the convoy of refugees, possibly the one described above, was wrongly identified by NATO as being VJ and was fired upon twice near Bistražin, resulting in numerous casualties".[42]

A journalist who interviewed several witnesses and survivors some months later stated that one witness at that time recalled some army vehicles mixed up with the civilian convoy - "... The army were always moving. They were bound to get mixed up with the refugee convoys". Another stated "the [Yugoslav] army moved through convoys so NATO wouldn't hit them".[43]

[42] *An analysis of the human rights findings of the Kosovo Verification Mission: October 1998 to June1999*, Organization for Security and Cooperation in Europe (OSCE).

[43] Robert Fisk, "Convoy of the Damned", *The Independent*, 28 November 1999.

Regardless of whether there were military vehicles within the convoy of ethnic Albanian civilians, the civilians in the convoy should have been protected. Article 50(3) of Protocol I provides, "The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

NATO's accounts do not suggest that its aircraft believed that the convoys of displaced civilians were being used to shield Serb military. Rather they mistook the convoy for a military column. The mistake stemmed from a failure to institute sufficient precautions to be able to distinguish between civilians and military objectives. The 15,000-feet rule effectively made it impossible for NATO aircrew to respect the fundamental rule of distinguishing between military objectives and civilians or civilian objects.

Despite NATO having previously said that the high altitude maintained by its pilots for their own protection did not affect the accuracy of their targeting, in this instance it was suggested that altitude had indeed been a factor in misidentifying the convoy in the second incident. During the 19 April press briefing, Brigadier General Leaf said:

> "as we watch these videos on the large display in the comfort of this room, it appears possible the vehicles are tractor type vehicles. As I reviewed the tapes with the pilots, they agreed. However, they were emphatic *from the attack altitude* to the naked eye they appeared to be military vehicles..." [emphasis added].

In an interview in a BBC television documentary General Michael Short elaborated on pilots' reactions to the Djakovica bombings:

> "They came back to me and said, 'We need to let the forward air controllers go down to 5,000 feet. We need to let the strikers go down as low as 8,000 feet and in a diving delivery, to ensure that they verify their target, and then right back up again to 15,000 feet. We think that will get it done. We acknowledge that that increases the risk significantly, but none of us want to hit a tractor full of refugees again. We can't stand that'."[44]

In the February 2000 meeting in Brussels with Amnesty International, NATO officials confirmed that following the Djakovica bombings aircrew were required to visually ascertain that there were no civilians in the vicinity before attacking a target of opportunity.

One obvious question is whether it is ever possible to distinguish reliably between a tractor and a military vehicle at a distance of 15,000 feet (5km/3 miles). Indeed, according to NATO's own account, the second attack was called off when the slower aircraft were able to view the site through

[44] "Moral Combat - NATO at War", broadcast on BBC2 on12 March 2000.

binoculars -- which, it was implied, the faster bombers could not do. This suggests that NATO operational procedures may well have contributed to an indiscriminate attack, in breach of international humanitarian law. The fact that, in the wake of this incident, NATO said that it changed operational directives by ordering pilots to visually ascertain that no civilians are in the vicinity when identifying a target, raises the question of why such essential precautions were not implemented from the outset of the campaign.

5.3 Serbian state television and radio: 23 April

In the early morning of 23 April, NATO aircraft bombed the headquarters and studios of Serbian state television and radio (*Radio Televisija Srbije* -- RTS) in central Belgrade. There was no doubt that NATO had hit its intended target. The building was occupied by working technicians and other production staff at the time of the bombing. There were estimated to be at least 120 civilians working in the building at the time of the attack.[45] At least 16 civilians were killed and a further 16 were wounded. A news broadcast was blacked out as a result. RTS broadcasting resumed about three hours after the bombing.

At the press conference later that day, NATO's Colonel Konrad Freytag placed this attack in the context of NATO's policy to "disrupt the national command network and to degrade the Federal Republic of Yugoslavia's propaganda apparatus". He explained: "Our forces struck at the regime leadership's ability to transmit their version of the news and to transmit their instruction to the troops in the field." In addition to housing Belgrade's main television and radio studios, NATO said the building "also housed a large multi-purpose communications satellite antenna dish."[46]

On the day of the attack Amnesty International publicly expressed grave concern, saying that it could not see how the attack could be justified based on the information available which stressed the propaganda role of the station. The organization wrote to NATO Secretary General Javier Solana requesting "an urgent explanation of the reasons for carrying out such an attack." In a reply dated 17 May, NATO said that it made "every possible effort to avoid civilian casualties and collateral damage by exclusively and carefully targeting the military infrastructure of President Miloševi*f*". It added that RTS facilities "are being used as radio relay stations and transmitters to support the activities of the FRY military and special police forces, and therefore they represented legitimate military targets".

[45] Inter Press Service (IPS), "NATO and Serbian TV Accused of Rights Crimes", 19-26 October 1999.

[46] NATO press conference, with Jamie Shea and Colonel Konrad Freytag, 23 April 1999.

At the Brussels meeting with Amnesty International, NATO officials clarified that this reference to relay stations and transmitters was to other attacks on RTS infrastructure and not this particular attack on the RTS headquarters. They insisted that the attack was carried out because RTS was a propaganda organ and that propaganda is direct support for military action. The fact that NATO explains its decision to attack RTS solely on the basis that it was a source of propaganda is repeated in the US Defence Department's review of the air campaign, which justifies the bombing by characterizing the RTS studios as "a facility used for propaganda purposes." No mention is made of any relay station.[47]

In an interview for a BBC television documentary, UK Prime Minister Tony Blair reflected on the bombing of RTS and appeared to be hinting that one of the reasons the station was targeted was because its video footage of the human toll of NATO mistakes, such as the bombing of the civilian convoy at Djakovica, was being re-broadcast by Western media outlets and was thereby undermining support for the war within the alliance. "This is one of the problems about waging a conflict in a modern communications and news world...We were aware that those pictures would come back and there would be an instinctive sympathy for the victims of the campaign".[48]

The definition of military objective in Article 52(2) of Protocol I, accepted by NATO, specifies that

> "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."* [emphasis added]

Amnesty International recognizes that disrupting government propaganda may help to undermine the morale of the population and the armed forces, but believes that justifying an attack on a civilian facility on such grounds stretches the meaning of "effective contribution to military action" and "definite military advantage" beyond the acceptable bounds of interpretation. Under the requirements of Article 52(2) of Protocol I, the RTS headquarters cannot be considered a military objective. As such, the attack on the RTS headquarters violated the prohibition to attack civilian objects contained in Article 52 (I) and therefore constitutes a war crime.

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[47] US DoD, *Kosovo/Operation Allied Force After Action Report*, submitted to Congress 31 January 2000.

[48] "Moral Combat - NATO at War", broadcast on BBC2 on12 March 2000.

The authoritative ICRC *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* interprets the expression "definite military advantage anticipated" by stating that "it is not legitimate to launch an attack which only offers potential or indeterminate advantages."[49] More recently the commentary on the German Military Manual states, "If weakening the enemy population's resolve to fight were considered a legitimate objective of armed forces, there would be no limit to war." And, further on, it says that "attacks having purely political objectives, such as demonstrating military power or intimidating the political leaders of the adversary" are prohibited.[50] British Defence doctrine adopts a similar approach: "the morale of an enemy's civilian population is not a legitimate target".[51]

It is also worth recalling in this context 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 of the Third Reich, including as head of its Radio Division from November 1942. The prosecution asserted that he had "incited and encouraged the commission of War Crimes by deliberately falsifying news to arouse in the German People those passions which led them to the commission of atrocities." The Tribunal acknowledged that Fritzsche had shown in his speeches "definite anti-Semitism" and that he had "sometimes spread false news", but nevertheless found him not guilty. The Tribunal concluded its judgment in this case as follows:

> "It appears that Fritsche [sic] sometimes made strong statements of a propagandistic nature in his broadcasts. But the Tribunal is not prepared to hold that they were intended to incite the German People to commit atrocities on conquered peoples, and he cannot be held to have been a participant in the crimes charged. *His aim was rather to arouse popular sentiment in support of Hitler and the German war effort*."[52] [emphasis added]

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[49] ICRC *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para 2209.

[50] Stefan Oeter, AMethods and Means of Combat@ in *Handbook of Humanitarian Law in Armed Conflict*, Dieter Fleck, ed. Oxford University Press 1995.

[51] Doubts about the lawfulness of attacking an object on propaganda grounds have been expressed, with specific reference to the RTS headquarters, by George Aldrich, who headed the US delegation at the diplomatic conference that led to the adoption of Protocol I: "[I]f the television studios ... were targeted merely because they were spreading propaganda to the civilian population, even including blatant lies about the armed conflict, it would be open to question whether such use could legitimately be considered an effective contribution to military action." See "Yugoslavia Television Studios as Military Objectives", in *International Law FORUM du droit international*, Volume I, No.3, September 1999, p.150.

[52] *American Journal of International Law*, Volume 41 (1947), p.328.

On the issue of the legitimacy of attacking a television station in general, reference has been made to a list of categories of military objectives included in a working document produced by the ICRC in 1956, the Draft Rules for the Limitations of Dangers incurred by the Civilian Population in Time of War.[53] In paragraph (7) the list included "The installations of broadcasting and television stations". However, the French text of the Draft Rules made clear that such installations must be of "fundamental military importance."[54] Also, Article 7 of the Draft Rules stated that even the listed objects cannot be considered military objectives if attacking them "offers no military advantage".

Whatever the merit of the Draft Rules, it is doubtful that they would have supported the legitimacy of the attack on the RTS headquarters. In any case the Draft Rules were discussed at the 1957 International Conference of the Red Cross, for which they had been prepared, but in the following years the approach of drawing up lists of military objectives was abandoned in favour of the approach eventually adopted by Protocol I in Article 52.

The attack on the RTS headquarters may well have violated international humanitarian law even if the building could have been properly considered a military objective. Specifically, that attack would have violated the rule of proportionality under Article 51(5)(b) of Protocol I and may have also violated the obligations to provide effective warning under Article 57(2)(c) of the same Protocol.

Article 51(5)(b) prohibits attacks "which may be expected to cause incidental loss of civilian life ... which would be excessive in relation to the concrete and direct military advantage anticipated." The ICRC Commentary specified that "the expression 'concrete and direct' was intended to show that the advantage concerned should be substantial and relatively close, and that advantages which are hardly perceptible and those which would only appear in the long term should be disregarded."[55] NATO must have clearly anticipated that civilians in the RTS building would have been killed. In addition, it appears that NATO realized that attacking the RTS building would only interrupt broadcasting for a brief period. SACEUR General Wesley Clark has stated: "We knew when we

[53] See for example, Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, February 2000, p. 26. The list is referred to in the ICRC Commentary on the Additional Protocols, paragraph 2002, note 3.

[54] The text of this paragraph in French is "Les installations des stations de radiodiffusion et de télévision, les centres téléphoniques et télégraphiques d'intérêt essentiellement militaire." In the English version, a semi-colon was inserted after the word "stations": "The installations of broadcasting and television stations; telephone and telegraph exchanges of fundamental military importance."

[55] ICRC *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para 2209.

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".[56] In other words, NATO deliberately attacked a civilian object, killing 16 civilians, for the purpose of disrupting Serbian television broadcasts in the middle of the night for approximately three hours. It is hard to see how this can be consistent with the rule of proportionality.

Article 57(2) (c) of Protocol I requires that "Effective warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit." Official statements, issued prior to the RTS bombing, on whether NATO was targeting the media were contradictory. On 8 April, Air Commodore Wilby stated that NATO considered RTS as a "legitimate target in this campaign" because of its use as "an instrument of propaganda and repression". He added that radio and television would only become "an acceptable instrument of public information" if President Milošević provided equal time for uncensored Western news broadcasts for two periods of three hours a day.[57] And on the same day, General Jean Pierre Kelche, French armed forces chief, said at a press conference, "We are going to bust their transmitters and their relay stations because these are instruments of propaganda of the Milošević regime which are contributing to the war effort."[58]

But at the NATO press conference on the following day (9 April), when asked by a reporter for a clarification of NATO's policy on media in the FRY NATO spokesperson Jamie Shea said: "...whatever our feelings about Serb television, we are not going to target TV transmitters directly...in Yugoslavia military radio relay stations are often combined with TV transmitters but we attack the military target. If there is damage to the TV transmitters, it is a secondary effect but it is not the primary intention to do that." Jamie Shea also wrote to the Brussels-based International Federation of Journalists on 12 April that "Allied Force targets military targets only and television and radio towers are only struck if they are integrated into military facilities...There is no policy to strike television and radio transmitters as such."

It appears that the statements by Wilby and Shea came after some members of the media had been alerted to the fact that an attack on the television station had already been planned. According

[56] "Moral Combat - NATO at War", broadcast on BBC2 on 12 March 2000.

[57] NATO press conference, 8 April 1999.

[58] Press conference of the (French) Minister of Defence and the Chief of Staff of the Armed Forces, 8 April 1999. (French original: "Et donc, nous avons décidé de nous en prendre aux relais radio, aux émetteurs radio, aux relais télévision, aux émetteurs télévision, car ces outils-là sont des outils de propagande de la part du régime de Monsieur Milošević, et qui vont dans le sens de la poursuite du combat.")

to Eason Jordan, the President of CNN International, in early April he received a telephone call from a NATO official who told him that an attack on RTS in Belgrade was under way and that he should tell CNN's people to get out of there. Jordan told the official that loss of life at RTS would be significant and, given the short notice, unavoidable. The official persuaded NATO to abort the mission (apparently half an hour before the plane would have reached its target). Jordan believes that NATO's subsequent public threats against Serbian "propaganda" organs were made in order to minimize civilian casualties in a future attack.[59]

John Simpson, who was based in Belgrade for the BBC during the war, was among the foreign correspondents who received warnings from his headquarters to avoid RTS after the aborted attack. He believes that it was in response to the spreading of rumours about the aborted attack among the foreign media in Belgrade, that NATO issued the statements cited above.[60]

UK Prime Minister Tony Blair blames Yugoslav officials for not evacuating the building. "They could have moved those people out of the building. They knew it was a target and they didn't. And I don't know, it was probably for, you know, very clear propaganda reasons ... There's no point–I mean there's no way of waging war in a pretty way. It's ugly. It's an ugly business."[61]

Amnesty International does not consider the statement against official Serbian media made by Air Commodore Wilby two weeks before the attack to be an effective warning to civilians, especially in light of other, contradictory statements by NATO officials and alliance members. As noted above, Western journalists have reported that they were warned by their employers to stay away from the television station before the attack, and it would also appear that some Yugoslav officials may have expected that the building was about to be attacked.[62] However, there was no warning from NATO that a specific attack on RTS headquarters was imminent. NATO officials in Brussels told Amnesty International that they did not give a specific warning as it would have endangered the pilots.

[59] Communication to Amnesty International from Eason Jordan, President, CNN International, 8 March 2000.

[60] Amnesty International interview with John Simpson, 31 January 2000.

[61] "Moral Combat - NATO at War", broadcast on BBC2 on 12 March 2000.

[62] See:"Death of a Makeup Girl" by Julian Manyon, in *The Guardian*, 30 April 1999, and "Des victimes du bombardement de la television serbe par l'Otan se retournent contre Sobodan Milosevic", *Le Monde*, 1 November 1999.

Some accounts in the press have suggested that the decision to bomb RTS was made by the US government over the objections of other NATO members. According to the writer Michael Ignatieff, "within NATO command allies were at loggerheads: with British lawyers arguing that the Geneva Conventions prohibit the targeting of journalists and television stations, and the US side arguing that the supposed 'hate speech' broadcast by the station foreclosed its legal immunity under the conventions." Due to the disagreement on the legality of the target "the British refused to take part in the bombing of the Serbian television station."[63] Others have reported French objections to the attack. Human Rights Watch has reported that an attack on RTS that was to take place on 12 April was postponed due to "French disapproval of the target."[64]

At the Brussels meeting a NATO official told Amnesty International that one nation judged RTS to be a legitimate target, without specifying the country in question. If this information is correct, it empties of all practical meaning NATO officials' assertion that a target deemed illegal by one nation would not be reassigned to another member. The case of RTS appears to indicate that NATO's way of dealing with such objections was to carry on bombing controversial targets without the participation of members who objected to the specific attacks. However, if in fact the UK or other countries did object and abstain from participating in this attack, they may not be absolved of their responsibility under international law as members of an alliance that deliberately launched a direct attack on a civilian object.

5.4 Civilian bus and ambulance hit at Lužane: 1 May

At about 1pm on Saturday, 1 May, a civilian bus was blown in half on a bridge in Lužane (Luzhanë), about 20 kilometres north of Priština, Kosovo. It was a scheduled bus service, running south from Niš to Priština. One half of the bus fell some 60 feet onto a riverbank below. Tanjug, Yugoslavia's official news agency, said that 40 people had been killed.[65] Two victims were dressed in military uniform, but

[63] Michael Ignatieff, "Virtual War", *Prospect*, April 2000.

[64] Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, February 2000, p. 26.

[65] The same figure is given in the news item issued by the Yugoslav Army Press Centre, 2 May 1999. A later assessment put out by the FRY Ministry of Foreign Affairs on 1 July put the toll at 60 deaths and 13 injured, but the *White Book (vol 2)* gives a figure of 39 killed and 13 injured.

the others appeared to be civilians, including children. The attack caused minimal damage to the bridge itself.[66]

The air raid continued after the bus had been hit. Ambulances which were returning from the wreckage of the bus towards Priština hospital were delayed when bombs exploded at the Jug Bogdan bridge about two miles away at 1.51pm, and then at a smaller, parallel bridge at 1.55pm. One ambulance reportedly was hit by shrapnel from the explosions; one of its medical crew was injured. These two further explosions were witnessed by a group of journalists.[67]

At the NATO press conference on 2 May Colonel Freytag said:

> "Unfortunately on one of our attacks on Saturday unintended damage occurred and NATO aircraft carried out one single attack against the Lusana Bridge north of Priština. This was a legitimate military target on a key north-south resupply route for the Federal Republic of Yugoslavia military and special police operations between Priština and Podujevo. ..."

Then, in a statement reminiscent of General Wesley Clark's description of the bombing on the Grdelica railroad bridge two weeks earlier, he said:

> "... Unfortunately, after weapons release a bus crossed in the bridge [sic] but was not seen by the pilot whose attention was focussed in his aim point during weapon trajectory. He did not target the bus and there was no intention to harm civilians, and any loss of innocent life is regretted."[68]

When asked about casualties, Colonel Freytag said

> "... when you see the hit of the bridge *and how the bus is running into it*, you must assume there were casualties if there were passengers on board that bus, at least the driver or some others but we do not have any evidence about the

[66] Paul Watson, "Nato bombs civilian bus, causing scenes of horror", *Los Angeles Times*, 2 May 1999.

[67] Paul Watson, "Nato bombs civilian bus, causing scenes of horror", *Los Angeles Times*, 2 May 1999.

[68] NATO Press Conference, 2 May 1999.

> casualties, we have only seen the same pictures on TV as you have seen, ... that can only be verified on the ground." [emphasis added]

The bombing of these bridges again raises concerns that NATO did not take the precautionary steps necessary to avoid civilian casualties. The bridge at Lužane was on the main road between Niš, Serbia's second largest city, and Priština, the capital of Kosovo. Like the railroad bridge that had been attacked on 12 April, this road is regularly used by civilian traffic, yet the bridges were attacked in the middle of the day, when the likelihood of causing civilian injuries would be much greater. Furthermore, NATO gave no indication as to whether the pilots had attempted to ensure that no civilian traffic was in the area prior to launching the weapons.

Indeed, Colonel Freytag's statements suggest that the pilots have their eyes fixed on the target and if anything civilian gets in the way that is not their concern. When asked whether there is any way to undertake operations such as the destruction of bridges during the night so that buses and trains are not struck, he replied:

> "... we did not target the bus as we have not targeted earlier the train. We target bridges and I am sure that the Serb authorities know that these bridges are of extreme value to their lines of communications *and when they allow public traffic over these bridges, then they risk a lot of lives of their own citizens*." [emphasis added].

At the Brussels meeting in February 2000 with Amnesty International, NATO spokesperson Jamie Shea said that this incident is still very unclear. He said that there was fighting activity in the area of the bridge and that Serb forces may have somehow been involved in the damage to the bus. Shea said NATO was not certain that it had hit the bus, but if it did it was a mistake.

5.5 Market and hospital at Niš hit by cluster bombs: 7 May

At around mid-day on Friday, 7 May, cluster bombs landed in two residential areas of Niš in Serbia, around the market place near the centre of town and near a hospital several blocks away.[69] News reports at the time referred to two bombs which scattered bomblets (submunitions) over this wide

[69] The distance between the market and hospital has been variously estimated at between 500 metres (official Web site of the city of Niš) to 1.5 kilometres (according to *The Independent*) to 4 kilometres (according to Human Rights Watch). Human Rights Watch has estimated that the distance from the airfield to the market place is more than 1.5 kilometres.

area.[70] According to the FRY government's *White Book*, 14 people were killed, and about 30 injured. International correspondents who visited the scene saw unexploded cluster bomb submunitions still lying in the gardens of people's homes, posing a continuing threat to civilian lives.[71] The bombs fell on a busy part of town at a time when people were out in the streets and at the market, not protecting themselves in the bomb shelters where they had spent the night. According to a Serbian news source, this was the 14th attack on Niš, the third within 10 hours, and the first to have taken place in daylight hours.[72]

On 8 May, at the daily press briefing NATO "confirmed that the damage to the market and clinic was caused by a NATO weapon which missed its target." It also confirmed that cluster bombs had been used in this attack. NATO said that the strike had been aimed at Niš airfield, to destroy Serbian aircraft parked there as well as air defence systems and support vehicles, these being "targets to which cluster munitions are appropriately suited". It expressed regret at the loss of civilian life.

Responding to a journalist's question, Major General Jertz said that "cluster bombs are used in aerial targets where we know that collateral damage could not occur," a statement which belies the evidence in this instance. The General did not know why some of the clusters missed their target, speculating that there could have been a technical malfunction, "or they could have been inadvertently released".

At the Pentagon later that day, Kenneth Bacon, in response to a question, stated that "We believe it was a weapons malfunction, but we don't know the full details". He also stated:

> "After every attack and particularly after there's a, in this case, a bomb that landed where we didn't intend it to, there's a review that's completed. Very, very comprehensive. Takes a lot of time. ... So ... [t]hey've probably gone through the whole mission to make sure they understand why that happened, whether it would be a system error, whether it be a mechanical error, whether it be human error. And they will then do whatever they can to correct it, and they will get the word

[70] Julian Manyon "NATO cluster bombs leave trail of death", *The Independent* 8 May 1999; CNN: "Yugoslavia says NATO cluster bombs kill 10 in Niš", 7 May 1999.

[71] "NATO bombs hit hospital", BBC News, 7 May 1999. Nearly 11 months after the bombing of Niš, Reuters reported that a 70 year old man was killed in Niš, on 4 April 2000, when a submunitions from a cluster bomb exploded while he was gardening.

[72] "Aggressor's atrocious crime", Serbia Info News, 7 May 1999

> out to everybody else that flies in that mission. And they will change the way they deliver things, if they have to. I've seen things changed in mid-course. I've seen modifications to aircraft be made in mid-course in operations just because we found out something. Or individual aircraft that may have had a problem. So everything that can be done will be done and it's very comprehensive. Takes a lot of effort. So if anything can be changed to make it better that we won't have a problem like that in the future, that will be taken into consideration. On the other hand, we'll continue to fly missions."[73]

The fact that cluster weapons were used on a target in proximity to a civilian area, and at a time of day when civilians were on the streets and most likely to be harmed, raised serious concerns as to whether NATO was indeed taking the proper steps to distinguish between military targets and civilians and civilian objects, and whether it was taking all the necessary precautions to ensure that civilians were not put at risk. The daytime attack on 7 May killed civilians at two locations that were not in the immediate vicinity of the airfield. However, there are residential buildings very close to the perimeter of the airfield, in the suburb of Medoševac.[74] Several of these houses were damaged in a NATO attack on the airfield that took place around 3am on 7 May. According to *The White Book*, three civilians were injured in this attack.

On 11 May 1999, Amnesty International wrote to NATO Secretary General Javier Solana asking whether these factors had been considered in planning the attack and the choice of munitions. Again, in response NATO reiterated its general commitment to uphold international humanitarian law, and to "make every possible effort to avoid civilian casualties and collateral damage".

Four days before this incident, Jamie Shea had told the press that on the night of 2 May, the electrical transformer yard at Niš had been hit, and that the command, control and communications capabilities of the 3rd Yugoslav Army headquartered at Niš had been "degraded significantly". He continued: "I want you to know -- and I want to stress this -- that NATO forces took the utmost care to ensure that important civilian facilities like hospitals had redundant power capabilities and that they had therefore the back-up transformers to keep their systems running through these power outages...". Within days of that statement, however, the hospital itself was hit.

[73] DoD News Briefing, Saturday 8 May 1999

[74] According to Agence France-Presse (AFP), Medoševac is within 150 metres of the airfield. See "Sorrow and rage in Niš, as NATO raids kill 15", 7 May 1999.

Even if the casualties at Niš resulted from technical malfunction or error, as Major General Jertz suggested might have been the case, this would not mean that no violation of international humanitarian law had taken place. As already stated, Article 57 of Protocol I requires precautionary measures to be taken to spare civilians. These include taking "all feasible precautions in the choice of means and methods of attack" to avoid, or at least minimize, loss of civilian life, and refraining from deciding to launch an attack which "may be expected to cause incidental loss of civilian life...which would be excessive in relation to the concrete and direct military advantage anticipated." The use of cluster bombs and the fact that the attack was made at a time of day when civilians were bound to be present, suggests that NATO may have failed to ensure that the necessary precautionary measures were taken in this instance, in violation of the laws of war.

According to Human Rights Watch, a US executive prohibition on the further use of cluster bombs was issued shortly after the killing of civilians in Niš.[75] But this does not explain why cluster bombs were being used near civilian concentrations in the first place. NATO officials in Brussels could not confirm to Amnesty International that the US stopped using cluster munitions after this incident. NATO did confirm reports that the UK forces participating in Operation Allied Force continued to drop cluster bombs at least until 4 June. NATO Assistant Secretary General Buckley told Amnesty International that US and UK forces were using different types of cluster bombs. The UK cluster bombs (RBL 755) were not malfunctioning and continued to be used by the Royal Air Force (RAF).[76]

The use of cluster bombs is not prohibited by international law. But Amnesty International believes that in this instance, NATO failed to meet its obligations to take necessary precautions by using cluster weapons in the vicinity of civilian concentrations, thereby violating the prohibition of indiscriminate attacks under Article 51(4) and (5) of Protocol I.

5.6 Attack on the Chinese Embassy in Belgrade: 8 May

A B-2 aircraft attacked the Chinese Embassy in Belgrade in the early hours of Saturday, 8 May 1999 killing three and wounding more than 20 people. NATO said it was a mistake and expressed deep regret. The intended target had not been the Chinese Embassy, but the Federal Directorate for Supply

[75]Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, February 2000.

[76]According to the UK Ministry of Defence, British forces dropped 532 RBL 755 bombs during the campaign. Each RBL 755 contains about 100 bomblets. According to the US DoD, US forces dropped 1100 cluster bombs (CBU-87) -- each containing about 200 bomblets (US DoD News briefing, 22 June 1999).

and Procurement in Belgrade. Although the location of the Chinese Embassy had been targeted, NATO had erroneously believed this to be the site of the Federal Directorate. Faulty intelligence had led it to bomb a civilian target by mistake.

At the NATO press Conference on 10 May 1999, Jamie Shea said that NATO was undertaking a comprehensive review of operational procedures and the targeting databases, and had taken action to ensure no repetition of such an error. However, he did not comment on targeting policy as such. His statement confirmed what US Secretary of Defence William S. Cohen and George J. Tenet, director of the Central Intelligence Agency (CIA), had said in a joint statement issued on 8 May. They had expressed their regret at the bombing, and said that "faulty information led to a mistake in the initial targeting of this facility. In addition, the extensive process in place used to select and validate targets did not correct this original error". They believed such a mistake would not happen again.

On 10 May, Defence Secretary Cohen gave a news briefing in which he described further the errors involved. He said that the bombing instructions had been based on an outdated map, and that there had been a failure to locate correctly the actual target on the maps. The intended target -- the Procurement Directorate -- was in fact close to the Chinese Embassy, but the maps being used had shown the Embassy to be in a different part of town. Furthermore, an intelligence official said that the database used when targeting contained no record of the move of the Chinese Embassy to its new site in Belgrade. Cohen stressed that NATO had conducted around 18,000 sorties, including some 4,036 strike sorties, and that in only about a dozen had unintended casualties been involved. Far more harm to civilians had been inflicted by President Miloševi*f*, he said.[77]

Although faulty maps and an incomplete database had been blamed for the error, Cohen stressed that the bombing would continue uninterrupted, even before these resources could be corrected. The intelligence failure that led to the bombing of the Chinese Embassy appeared to confirm Amnesty International's fears that NATO was not taking sufficient safeguards in selecting and vetting targets for attack.

In October 1999 the UK newspaper *The Observer* carried a report asserting that the bombing of the Chinese Embassy was intentional and not an accident.[78] The report cited senior military and

[77] DoD News Briefing, May 10 1999.

[78] *The Observer*, "NATO bombed Chinese deliberately," 17 October 1999.

intelligence sources in Europe and the US as divulging that the Chinese Embassy was acting as a re-broadcast station for the Yugoslav army after the military's own transmitters were destroyed by NATO bombing.

However, the US Department of Defence review of Operation Allied Force, issued in January 2000, reiterated that the bombing was an accident: "The bombing of the Chinese Embassy in Belgrade was entirely unintended. It was the result of a failure in the process of identifying and validating proposed targets. The headquarters of the Yugoslav Federal Directorate of Supply and Procurement was a legitimate military target, but the technique used to locate it was severely flawed. None of the military or intelligence databases used to validate targets contained the correct location of the Chinese Embassy. Nowhere in the target review process was a mistake detected."[79] NATO officials, at their meeting with Amnesty International in Brussels, insisted that the bombing was an accident.

NATO's stated failure to properly identify the Chinese Embassy resulted in striking a civilian object and killing civilians. While not all errors incur legal responsibility under international humanitarian law, all indications are that the very basic information needed to prevent this mistake was publicly and widely available at the time. It would appear that NATO failed to take the necessary precautions required by Article 57(2) of Protocol I.

In April 2000, the CIA announced that it had "taken a number of personnel actions" in response to the recommendations of its Accountability Board. The statement explained that for reasons of security and privacy, they would not divulge what measures were taken. But it was reported in the press that the CIA dismissed one employee whose inaccurate information had led to the bombing of the embassy. Six additional CIA staff members reportedly were reprimanded for their part in the misidentification.[80]

In its public statement, Bill Harlow, director of the CIA's Department of Public Affairs, said that blame for the "tragic accident" was widespread. "Numerous CIA officers at all levels of responsibility failed to ensure that the intended bombing target ... had been properly identified and precisely located before CIA passed a target nomination package to the US military for action ...

[79] US DoD, *Kosovo/Operation Allied Force After Action Report*, submitted to Congress 31 January 2000.

[80] "CIA Fires Official over Embassy Bombing", Associated Press, 9 April 2000.

While we can never undo the mistakes that led to the bombing, we are satisfied that the CIA has stood up ... and taken appropriate responsibility for our mistakes," Harlow said.[81]

An article published in *The New York Times* one week after the CIA's public statement provided a detailed account of the factors which may have contributed to the error and suggested that officials outside the CIA shared responsibility for the mistake. Representative Porter J. Goss, chairman of the US House of Representatives' Permanent Select Committee on Intelligence, which investigated the embassy bombing, told the paper: "It was a systemic problem. It was not a problem just at the CIA. The fact of the matter is that, at least at the Pentagon, somebody should stand up and say it isn't just the agency's fault. To fire one person and let off all the other agencies -- including the White House -- isn't doing justice to justice."[82]

This is the only case in which Amnesty International is aware that a member of the alliance has taken disciplinary measures against those found to be responsible for causing unlawful civilian deaths in the campaign. And it is the only instance in which a NATO member has paid compensation to the victims and their families and reparations for damage to buildings. These measures were taken after prolonged and intense diplomatic pressure from China, which had, after the bombing, suspended talks with the US on arms control, human rights, security and trade issues.

5.7 Ethnic Albanian civilians bombed at Koriša: 13 May

At 11.30pm on 13 May 1999, three NATO aircraft bombed the village of Koriša (Korishë), killing a large number of displaced ethnic Albanians who were sheltering there. Tanjug, the official Yugoslav news agency, put the death toll at 87, with 78 people wounded. The Yugoslav *White Book (vol 2)* states that 48 were killed (mostly children, women and the elderly) and at least 60 wounded. Human Rights Watch reported that more than 48 people definitely died in the attack, but was unable to give a conclusive death toll for this incident. Numerous tractors in which they had been travelling were destroyed or damaged in the attack. Yugoslav sources stated that 11 of the injured were children under 15. NATO could not confirm the casualty figures reported in the media.[83]

Koriša is situated at the foot of a range of hills, about one kilometre off the main Prizren to Suva Rea highway. According to UN figures, there were around 4,200 residents in 1998. The KLA

[81] "Statement by Bill Harlow, Director of Public Affairs, on the Inadvertent Bombing of the Chinese Embassy," CIA press release, 10 April 2000.

[82] "Chinese Embassy Bombing: A Wide Net of Blame", by Steven Lee Myers, *The New York Times*, 17 April 2000.

[83] General Jertz speaking at NATO Press Conference, 15 May 1999.

had been active in the area, and the village had suffered a series of punitive Yugoslav security force raids through March and April 1999. A number of ethnic Albanian villagers had been victims of Serbian killings, and houses had been burned in Serbian raids on the village. The village had also been shelled. Most of the villagers left and attempted to flee to Albania. Many did not get there, however, and camped out in woods on the hillsides for extended periods of time.

Amnesty International interviewed several villagers from Koriša about events preceding the bombing. Their accounts made clear that, at times, FRY forces had taken up positions in the village in their offensives against the KLA. Thus, in mid-April, government forces took up an established position at the entrance to the village, where they stayed for about 10 days while police and soldiers set houses alight and killed up to 18 people. These forces were said to have left the village towards the end of April, to move to a police station on the main road. Villagers also spoke of a disused military training camp in the area. The available accounts, some of which are summarized below, however, do not make clear the precise location of the site of the bombing in relation to the village and the police post.

At the NATO press conference on 14 May, NATO was asked, since this attack was apparently similar to the mistaken attack on the ethnic Albanian convoy near Djakovica a month earlier, what specific changes had been made to procedures to avoid tractors being hit after being mistaken for military vehicles. Jamie Shea responded that NATO does not target civilians, that he would not speak on the incident until he had the full facts, and that NATO always tells the full facts on these issues every time. He said he hoped that the Western journalists currently being transported to the site by Belgrade would "break free of their minders" and do their own investigations.[84]

The Pentagon was reported as pointing to the possibility that heavy Serb shelling in the area may have been to blame.[85] Some, speaking privately, referred to discrepancies in timings and asserted that aerial imagery which was taken eight hours after the time when FRY authorities said the attack happened did not show any damage around the village.[86]

[84] NATO press conference 14 May 1999 (exchange between Jake Lynch of Sky TV and Jamie Shea).

[85] "NATO accused of huge blunder as refugees are slaughtered", *The Guardian*, 15 May 1999; Paul Watson's article "Dozens of Kosovo Albanians killed in Nighttime Air Raid", *Los Angeles Times*, 15 May 1999, also refers to such allegations.

[86] "NATO accused ...", *The Guardian*, 15 May 1999. (But the AFP journalist referred to above visited the site twelve hours after the time the attack was said to have happened, i.e. four hours after these aerial images allegedly were taken).

At the following day's press conference[87] NATO denied Serbian claims that cluster bombs had been used in this attack, and asserted that it had attacked "a legitimate military target". NATO said that it had identified a military camp and command post just outside Koriša, which had been in use since the beginning of the conflict, including an armoured personnel carrier and 10 pieces of artillery. It said that after the target had been confirmed, and "positively identified ... as what looked like dug in military revetted positions", two aircraft dropped two laser-guided bombs each, and then 10 minutes later, a third aircraft dropped six gravity bombs on the target.

In response to a question as to how the pilots had interpreted the tractors on the ground at the time the attack took place, General Jertz said the pilot " had to visually identify it [the objective] through the tech 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."

When asked why they bombed at night without sufficient guarantees that they would not cause "collateral damage", he reiterated that since April they had intelligence that there were military pieces in the area and that these had been continually used,

> "so for the pilot flying the attack it was a legitimate target. But when he was in the area for attack it was his responsibility to make sure that all the [objects] he sees are the ones he needs to really attack ... Of course, ... we are talking at night. If there is anybody sleeping in a house you would not be able to see it ...And at night he saw the silhouettes of vehicles and that is why he was allowed to attack ... ."

On 16 and 17 May NATO's Peter Daniel and Jamie Shea suggested that the civilians in Koriša may have been brought there by Serbs as human shields. On 17 May, Pentagon spokesperson Kenneth Bacon estimated that one-third to one-half of all civilians killed in the NATO air campaign may have been deliberately placed around bombing targets, citing an interview on German Radio with a survivor of the Koriša attack.[88] On 18 May NATO held a briefing session on the general matter of the alleged use of human shields. However, this did not reveal any particular factual information on the Koriša incident.

[87] Peter Daniel, NATO press conference, 15 May 1999.

[88] DoD News Briefing, 17 May 1999

The Yugoslav authorities took international journalists to view the scene about a day after the bombing. It emerged that after the bombing campaign started, the people of Koriša left for Albania, but some were turned back by police and returned to Koriša. Their homes were attacked again by Yugoslav forces, and they left for the hills. A day or two before the bombing, they returned home. In some accounts, they did so with the "permission" of the authorities; in others they were "sent back" to Koriša by the police, and kept in the yard of a stone ornament factory under police guard. They had apparently been told they would be able to go back to their homes after the village had been cleared of "terrorists".[89]

In another account,[90] a reporter was told that the displaced civilians had started to run out of food after living out in the mountain woods for a month, so had approached the police commander in Ljudižda (Ludizhdë). He had told them that they could either go home or go to Albania, but that as the border was closed they had better go home. At the village, about 430 displaced persons had camped out as their homes were destroyed, and some 200 more slept in a nearby motel. Many were asleep when the bombing started.

While these reports do not give a strong indication of Serb forces using these civilians as "human shields" in Koriša , a report in the London newspaper *The Times* did appear to support this suggestion.[91] A refugee interviewed in Pobneg, Albania, told a *Times* reporter that Serbian forces had established their headquarters in the village, in a block of residential apartments. They used the ground floor for an artillery post, and on the floor above it they established a police and military post. This source stated that women and children "were held" on the floor above, and that the three blocks of apartments all together held about two or three hundred women and children. However, when an Amnesty International representative subsequently interviewed this same refugee and his brother, neither man had any first-hand information that villagers had been housed in buildings used by FRY forces, and their account of events in the village did not cover the actual time of the bombing.

Reporters who visited the scene the day after the attack saw around 30 tractors still parked in the yard at Koriša , 20 of which had been burnt out.[92] Some questioned whether this could really have been a military target, as it was in an exposed, open field where military hardware could not have

[89] "Their tractors were their homes. Then their tombs," *The Observer* (London), 16 May 1999

[90] "Dozens of Kosovo Albanians Killed in Nighttime Air Raid", *Los Angeles Times*, 15 May 1999

[91] "Bombed village was army base, says refugee", *The Times*, 17 May 1999

[92] "Belgrade says 100 civilians dead in NATO attack on village", AFP, 14 May 1999

been hidden.[93] According to a *Washington Post* journalist, reporters at the scene had been unable to confirm either visually or by interviewing refugees that any military installations or personnel had been present that night.[94] In response, Jamie Shea cited stories in the Kosovar press that refugees had reported seeing a military command post and encampment at the site.

On the basis of this information, it remains unclear whether or not FRY forces or military installations were actually present in Koriša at the time of the bombing. Refugees from Koriša whom Amnesty International interviewed said there had indeed been a FRY military post there in April -- but they also said that these forces had moved out by the end of the month, well before the NATO bombing. As these refugees had left Koriša before it was bombed, however, they would not have known the precise situation at the time of the bombing. A confused picture has emerged from press reports on this point.

NATO insisted that it had hit the intended, legitimate military target. Other accounts have made clear, however, that any military posts at Koriša were temporary, and had not been in use up to the time of the bombing. General Jertz continued to maintain that the pilot had hit the revetments -- although journalists said they saw no sign of such damage at the site.

It also remains unclear on the basis of current information whether or not civilians were being used as human shields in Koriša. If they were, this would constitute a serious violation of international humanitarian law by FRY forces, but would not relieve NATO of the responsibility of ensuring their protection. NATO has said that it had no knowledge of the presence of ethnic Albanian civilians at Koriša . However, NATO's statements on this incident suggest that they failed to take sufficient precautionary measures to ascertain that there were no civilians present, resulting in an inability to apply the rule of proportionality as required by Article 51(5)(b) of Protocol I. Because the command post was on a list of approved targets, rather than a target of opportunity, the attacking aircraft apparently did not take sufficient precautions to verify that there were no civilians in the vicinity before attacking.

5.8 Varvarin bridge: 30 May

[93] "Was she a human shield or just a NATO mistake?" *The Observer*, 16 May 1999

[94] NATO Press Conference, 17 May 1999

The attack on Varvarin bridge in central Serbia took place at about 1pm on 30 May, a market day; it was a religious holiday, when the streets were more crowded than usual, and the risk of civilian casualties was thus very high. Official Yugoslav media reported 11 killed and as many as 40 injured.[95]

There is some doubt as to whether this bridge was a legitimate military objective. Accounts suggest that it was too narrow to accommodate large military vehicles.[96] Yet even if the bridge were a legitimate military objective, Amnesty International is concerned at the apparent lack of necessary precautions in the conduct of this attack.

The conditions surrounding this strike echoed those in the attacks on the Grdelica railroad bridge on 12 April and the road bridge near Lužane on 1 May, when there were also civilian casualties. As in those earlier attacks, the bridge at Varvarin is reported to have been struck twice: as people rushed to assist the victims of the first strike, two more missiles hit, several minutes later, inflicting additional civilian casualties.

According to a local schoolteacher, it was "well known that Sunday is market day here and people are lined all along the street down to the bridge selling things".[97] An estimated 2,000 people were in the vicinity of the bridge[98] and several cars and pedestrians were on the bridge at the time of the attack.[99] A number of cars fell into the river as a result of the bombing.

NATO said it had bombed this bridge as a legitimate military target, and that the bridge was hit accurately. When asked whether NATO could not avoid such attacks at midday, when the risk of civilian casualties is high, Jamie Shea reiterated on 31 May that "NATO pilots do take every precaution to avoid inflicting damage to civilians." Although Shea also said that "pilots know that if they see a risk of harm to civilians, then they don't strike at the target," he failed to give any explanation of why the attack on Varvarin bridge was not aborted, or whether the pilot ever checked

[95] The official government account in the *White Book (Vol 2)* lists nine civilians killed, two missing, and 12 severely injured, plus two people still missing at the time it was published. The toll given in an account by Tanjug on 5 June was at least 11 killed and 40 severely injured. The Yugoslav Daily Survey (issued 1 July by the Ministry of Foreign Affairs) states 24 killed and 74 wounded.

[96] Lara Marlowe, *Irish Times*, 31 May 1999.

[97] Carlotta Gall, "Day for church and market shattered by a day of war", *New York Times*, 1 June 1999.

[98] *White Book, Vol 2.*

[99] Richard Boudreaux, "Civilian deaths in airstrikes erode NATO credibility", *Los Angeles Times*, 31 May 1999.

for the presence of civilians before launching the missiles.[100] Asked again the next day why the bridge had been bombed at lunchtime, he simply replied that "we take the same precautions at midday as we do at midnight".

The attack on Varvarin bridge raised concerns about whether NATO was taking proper precautions to protect civilians in its selection of targets, times for attack and modes of attack. Despite concerns about these matters having been raised on previous occasions, certain attacks continued to be carried out under conditions which raised the risk of civilian casualties. This bombing calls into question the effectiveness of the changes to the Rules of Engagement that NATO said it had instituted after the 14 April bombing of displaced civilians near Djakovica.

At its Brussels meeting with NATO, Amnesty International was told that following this attack, NATO tightened its Rules of Engagement to "take account of the time of day and circumstances." This basic precaution should have been incorporated into the Rules of Engagement from the outset, not one week before the end of the bombing.

5.9 Attack on Surdulica: 31 May

On 31 May, the Yugoslav authorities reported that two missiles had struck the main building of the Special Hospital for Tuberculosis and Pulmonary Diseases in Surdulica and that two more had hit a retirement home which was in the grounds of the hospital. Some 16 or 17 people were killed. Journalists subsequently saw 11 bodies lying under sheets near the destroyed medical complex, and a further four on stretchers in front of the retirement home.[101] The arms of a further victim could be seen protruding from the wreckage of the building.

According to the *White Book* several missiles were launched at the complex of buildings housing the special lung hospital, which also contained buildings used as a nursing or retirement home, and a refugee shelter. One missile hit the sanatorium; two hit the building used as a shelter for Serb refugees from Croatia; another hit the nursing home. A laboratory in the lung hospital was demolished.

[100] NATO press conference, 31 May 1999

[101] Reporters for the *Los Angeles Times*, *The Independent* and *The Washington Post* were among those who visited Surdulica.

Nineteen people were killed,[102] three severely injured and 35 less seriously injured in these attacks. All those killed were civilians.

Residents said there had been four blasts, shortly after midnight, and that the nearest barracks and ammunition storage facilities were over two miles away. The hospital was reported to have been marked on all maps of the area.

At the NATO press conference on 31 May, Colonel Freytag responded to a query about the Surdulica attack by saying that

> "the facts are that last night NATO aircraft attacked the military barracks and an ammunition storage area in the vicinity of that city. Both these targets were legitimate military targets, and both were already attacked before. All munitions hit the planned aiming points. NATO cannot confirm any Serb claims of casualties or collateral damage in Surdulica."

The next day, NATO spokesperson Jamie Shea said that four precision guided missiles were fired at the facilities in Surdulica, all hitting the target accurately. NATO offered no explanation at all of how the hospital complex came to be hit.

However, in July, while testifying before Congress, Deputy Secretary of Defence John Hamre and CIA Director George Tenet testified about an accidental bombing of a hospital during the air campaign. Deputy Secretary Hamre said: "We did have an instance where we hit a hospital. It was totally an accident. In this case, that was human error". Director Tenet said: "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."[103] It is not clear from the transcript of the hearing which incident this statement refers to, since during the course of the campaign NATO hit several hospitals, clinics and medical centres, including a hospital in Niš struck on 7 May and the Dragiša Mišovif hospital in Belgrade on 20 May. Human Rights Watch has attributed this explanation to the 31 May attack on Surdulica.[104]

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[102] At another point the *White Book* gives a figure of 13 killed, five missing.

[103] US Congress, House Permanent Select Committee on Intelligence, Hearing on the Bombing of the Chinese Embassy, 22 July 1999.

[104] Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, February 2000, p.58.

In their meeting in February 2000 with Amnesty International, NATO officials said that the civilian casualties in Surdulica probably resulted from a bomb malfunctioning. They could not confirm the Congressional testimony by Hamre and Tenet that civilians were killed due to pilot error.

One reporter tried to investigate whether there might have been a military encampment in the woods around the hospital, and found the remains of two camp fires and four "foxholes" of the kind soldiers dig to protect themselves from bombs. He found a further 12 newly dug foxholes on another track. The local civil defence commander said they had probably been built by worried hospital staff in self-defence, and other authorities said that defence personnel for a radio repeater station a mile away may have encamped there. There was no sign, however, of a military barracks or munitions depot.[105]

One news report[106] quoted the director of the sanatorium as saying that 60 Serb refugees from Croatia were lodged there along with two sick Yugoslav soldiers. However, an employee of the sanatorium is quoted in the *White Book* as saying that no military personnel ever stayed at the hospital. Another witness, herself a refugee living in the sanatorium, states that the Refugee Commissariat shelter provided the refugees with lodging in some rooms of the building on the first and second floors and that the ground floor was used for the hospital's regular activity. But in a retrospective article[107] written after a follow-up visit in November, British journalist Robert Fisk reports a friend of one of the civilians killed in the bombing as saying that there were a lot of soldiers living on the ground floor of the building where the refugees were accommodated. They had not been injured in the attack because they were on the ground floor.

If NATO intentionally bombed the hospital complex because it believed that it was housing soldiers, it may well have violated the laws of war. According to Article 50(3) of Protocol I, "the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character." The hospital complex was clearly a civilian object with a large civilian population, the presence of soldiers would not have deprived the civilians or the hospital compound of their protected status.

[105] "War in the Balkans - NATO calls the bombing of a hospital collateral damage. I call it a tragedy", *The Independent*, 1 June 1999.

[106] "Another airstrike on civilians kills 16 at Sanitarium Complex" *Los Angeles Times*, 1 June 1999

[107] "Milena's story" *The Independent*, 25 November 1999.

However, if the Congressional testimony about the accidental bombing of a hospital does refer to the 31 May attack in Surdulica and NATO does therefore recognize that an error was made, the question is whether necessary precautions were taken to avoid mistaking a civilian object for a military target.

At the very least, this attack and its aftermath point to NATO's poor record of disclosing information about incidents that resulted in civilian casualties. Initially, NATO categorically denied that it had struck a hospital in Surdulica. Several weeks later, US officials made an oblique reference --in the context of a Congressional hearing about the bombing of the Chinese Embassy in Belgrade -- to hitting a hospital (which may have been in Surdulica) due to pilot error. And more than eight months after the attack, NATO officials told Amnesty International that the civilian casualties may have been caused by a malfunctioning bomb.