

KOSOVO: HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE 4th REPORT, JUNE 2000

FOLLOWING NATO's intervention in Kosovo in 1999, the United Kingdom House of Commons Foreign Affairs Committee commenced an inquiry with the following terms of reference: "To inquire into the foreign policy lessons of the Kosovo crisis and how the Foreign and Commonwealth Office might best promote peace and stability in the region." The Committee heard oral evidence from government ministers, diplomats, FCO staff, journalists, academics, and lawyers. It also received written memoranda. The President of Montenegro and the Foreign Minister of Albania were interviewed in private, and the Committee visited Kosovo, Macedonia and Montenegro. The Committee's Report was published on 7 June 2000 as the *4th Report of The House of Commons Foreign Affairs Committee* (HC28-I, ISBN 010 2331006) together with the evidence and appendices (HC28-II, ISBN 010 2333009).

Although most of the report is concerned with other matters, there is much in it of interest to international lawyers. It is impossible to reproduce all of it, or all of the appendices, here, but the memoranda submitted in evidence by Professor I. Brownlie FBA, QC, Professor Christine Chinkin (LSE), Professor Christopher Greenwood QC (LSE), and Professor Vaughan Lowe (Oxford) are of particular interest because of the views they express on the legality of NATO's intervention in Kosovo, its compatibility with the UN Charter, and the possible evolution of a right of humanitarian intervention in customary international law. These were not the only memoranda on legal matters submitted to the Committee: additional evidence was provided by Professor Peter Rowe (Liverpool), Professor Bruno Simma (Munich), and Mark Littman QC. The Government declined to disclose the advice received from the Law Officers, but in evidence to the Committee the Foreign Secretary and the Minister of State asserted that States have a right to use force in cases of "overwhelming necessity where, in the light of all the circumstances, a limited use of force is the only way to avert a humanitarian catastrophe".¹ The Committee summarised its understanding of British practice with regard to humanitarian intervention, and its own conclusion, as follows:

To justify its action the British Government relied not just upon a defence of humanitarian intervention, but a defence of humanitarian intervention in support of the Security Council, if not specifically endorsed by the Council. The Government's position on the legality of *Operation Allied Force* was in this way clearly set out by the then Defence Secretary on 25 March 1999. He told the House that the Government was "in no doubt that NATO is acting within international law" and that "the use of force . . . can be justified as an exceptional measure in support of purposes laid down by the UN Secretary, but without the Council's express authorisation, where that is the only means to avert an immediate and overwhelming humanitarian catastrophe".

Identical wording was used in evidence to the Committee. This legal justification was described by Professor Lowe as "one of some subtlety" because it wrapped

1. Evidence, Vol. II, 1.

up two separate issues—the criteria on which it might be lawful to intervene, and the manner in which it can be determined whether those criteria have been met. We conclude that, faced with the threat of veto in the Security Council by Russia and China, the NATO allies did all that they could to make the military intervention in Kosovo as compliant with the tenets of international law as possible.²

Although UN Security Council Resolutions 1199, 1203, and 1244, “could properly be interpreted as supportive of the NATO allies’ position”,³ the Committee concluded that NATO intervention was “contrary to the specific terms of . . . the UN Charter”, but that this might have been avoided if the Allies had attempted to use the Uniting for Peace procedures of the General Assembly.⁴ It further found that the NATO Treaty did not provide authority to act for humanitarian purposes, but recommended that “the Government examine whether any new legal instrument is necessary to allow NATO to take action in future in the same manner as it did in Kosovo”.⁵ The Committee went on to consider the development of the law on humanitarian intervention, and considered various criteria put forward by several witnesses. It supported the FCO “in its aim of establishing in the UN new principles governing humanitarian intervention”.⁶ Finally, the report also considers the compatibility of the NATO air campaign with 1977 Protocol I to the Geneva Convention. An extensive memorandum from Professor Rowe (not reproduced here) addresses this question, which is also touched on in other submissions set out below, and in paragraphs 145–157 of the Report. The Committee’s conclusion was that “On the evidence available . . . NATO showed considerable care to comply with the 1977 Protocol and avoid civilian casualties”.⁷

The memoranda provided by Professors Chinkin, Greenwood and Lowe are set out in full. Professor Brownlie has edited his two memoranda in the interests of space. The *ICLQ* is grateful to the House of Commons Foreign Affairs Committee for permission to reproduce these documents.

ALAN BOYLE
General Editor

2. Report, Vol. I, para.134. Footnotes omitted.
3. Report, Vol. I, para.127.
4. Report, Vol. I, para.128.
5. Report, Vol. I, para.135.
6. Report, Vol. I, para.144.
7. Report, Vol. I, para.157.