

## NATO'S INTERVENTION AND JUS IN BELLO PRINCIPLES IN KOSOVO

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**Abstract:** *The intervention by NATO is synonymous with its claim on humanitarian intervention in Kosovo during the Kosovo crisis in late February 1998. During the crisis, NATO attempted a military intervention based on humanitarianism mission. The alliances waged war with airstrikes rather than deploying its troops on the land. Even though such intervention lacked authorization from all members of the United Nations Security Council, NATO carried along with the strikes and managed to prevent the violation of rights on the scale of the Kosovo war and later on received notable support in the international community. The Independent International Commission states that interventions carried out by NATO in Kosovo are a category of implementing a humanitarian intervention that is considered legitimate, even if referring to the principles of international law, it can also be regarded as invalid. But the principles in jus in bello provide restrictions on just conduct during the war, which is separate from questions of who should intervene so it could help to understand these cases. This paper is to study on the issue of whether an illegal but effective intervention should be supported or should not be supported and is it permissible if it is based on humanitarian intervention and to save tens of thousands of innocent lives.*

**Keywords:** Humanitarian intervention, jus in bello, military intervention, Kosovo, Serbia, NATO

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### I. INTRODUCTION

Kosovo lies in the southern part of Serbia, with a majority of ethnic Albanians in its population. The region enjoyed autonomy within the former Yugoslavia until, in 1989, Slobodan Milosevic, the Serbian leader, removed the autonomy and made Kosovo under the direct control of Serbian capital, Belgrade. Due to this event, a tension in Kosovo by the Kosovar Albanians had risen.

A tragic moment occurred in 1998 when a conflict broke out between Kosovar Albanians and Serbian police and army forces, which left no less than 400,000 Kosovar Albanians driven from their own homes and killed more than 1,500 people (NATO, 1999). Many casualties fell on the part of Albanian civilians killed by the forces in the war to the point that the international community was in deep concern that this might escalate the conflict along with its humanitarian consequences, which later on might proliferate and surpass another neighboring country (NATO, 1999). NATO (North Atlantic Treaty Organization) intervened to achieve increased security and stability in the former Yugoslavia countries with a heavy emphasis on ending the war and peace improvement in Albania.

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On June 12th, 1998, the North Atlantic Council had a meeting at the Defense ministry level (NATO, 1999). One of the most important outcomes of the meeting was that NATO had to conduct further assessments and further action to resolve the crisis, which had eventually led to a large number of military options. Following a deterioration of the crisis on October 13th, 1998, Activation Orders policy for airstrikes in Kosovo was authorized by NATO Council. This action was chosen to suppress Milosevic forces in Kosovo, thus destroying the regime as well as overcoming the refugee problem. A series of diplomatic initiatives were taken but turned out as a failure when the Serbian delegations failed to comply. On March 18th, 1999, the Paris peace talks stalled when a proposal to approve Kosovo's autonomy and the permission of NATO troops to enter the conflict area to support the agreement was rejected outright by the Serbian delegation. Serbian forces reacted directly to the failure of the talk, namely by invading Kosovo. On March 24th, 1999, the NATO air campaign was launched, followed by incessant international efforts by diplomatic means. The NATO air campaign targeted the government's buildings in Serbia along with other infrastructure to impair the Milosevic regime. The warplanes of the United States of America and NATO were seen visible in Yugoslavia skies and commenced the 78-day bombing campaign (Merriam, 2001). However, the campaign ended on 10 June 1999 due to the willingness of Serbia to withdraw their troops. However, at the same time agreed to the replacement of their positions by NATO peacekeeping troops. (History, 2010).

NATO was successful in halting the crimes against humanity in Kosovo despite not obtaining enough authorization from all of the veto powers in the Security Council (Pattison, 2010). Despite its success in saving many lives, NATO's airstrikes were heavily criticized since it involved a massive scale use of force against a small state. The legitimacy of the bombing and the measures taken by NATO were questioned, whether NATO acted legally during the intervention. Many argued that NATO's intervention was morally right but unlawful (Greenwood, 2002). In a logical sense, if the intervention was morally right and based on humanitarian and saving tens of thousands of lives, then it should be legally permissible for such intervention to happen.

## II. LITERATURE REVIEW

In its 50-year history, the NATO alliance carried out the most controversial act when intervening in the form of the bombing campaign against the Federal Republic of Yugoslavia. The intervention was carried out by the armed forces for 11 weeks in the spring of 1999 (Roberts, 1999). It is apparent that the implementation of the UN Security Council resolution using a destructive armed force approach but without the Security Council's authorization is an odd moment, and even NATO leaders do not want to call its actions a form of war. Consequently, these actions have a broader impact and are contrary to the principle of using the armed forces against a sovereign state. But this was done based on justification to stop the atrocities and, at the same time, drive out the Serbian army from the Serbian province, i.e., Kosovo. That is the end of the term 'humanitarian war' appears as a form of peace campaign. (Roberts, 1999).

European security after the Second World War and notably throughout 1990 was primarily determined by the active role of NATO in maintaining peace. However, in the case of the

Kosovo war, NATO had taken measures to avoid a spillover of conflicts (Solana, 1999). It is not easy to realize NATO's political goals because it is based on conflicting political goals between Albanian Kosovo and Serbs. On the one hand, Serbs aim to maintain its sovereignty, and on the other hand, Albanian Kosovars want independence. NATO did not formally support Kosovo's independence. Even in this context, NATO was in the position to support the Serbs. The Security Council Resolution no. 1244 made in June 1999, which mentioned the integrity and sovereignty of the Federal Republic of Yugoslavia, recognized its commitment by all its member states. (Papasotiriou, 2002). In the real level, Yugoslavia's sovereignty over Kosovo is classified as a formality because the province is basically under the authority of KFOR (Kosovo Force led by NATO for peacekeeping). But the Albanian Kosovars would not be satisfied with such status.

There are intrinsic reasons why NATO intervened. That reason is based more on the implementation of universal moral principles. NATO has a desire to avoid humanitarian disasters both at that time and those that will occur in the future, which have the possibility of wider scope (Papasotiriou, 2002). Interventions are not permissible if the United Nations Security Council does not authorize them. Thus, the NATO intervention is classified as a violation of international law because it is contrary to the principle of mutual recognition of states' sovereignty, which results in fears from many small states and the same concerns emerged from Russia as well as China. (Papasotiriou, 2002). These concerns and fears are realistic because violations of international law are carried out by the world's largest alliance, which ironically uses the reasons for implementing universal moral principles as the basis for its intervention.

In terms of geopolitics, NATO's intervention in Kosovo has a deeper meaning than just aiming at stopping the 'Serbian War'. There are other reasons why the intervention broke out. That reason is the importance of securing a Pro- Western orientation and giving the realization of the Balkans' progress. For this reason, Serbia was proposed to participate in Western integration by changing its regime and political orientation. Looking at this geopolitical aspect, recognition of Kosovo's secession from Yugoslavia is not a single NATO political goal. There are other reasons, namely, to stop mass evictions and cruel treatment of Albanian Kosovars, avoiding widespread humanitarian disasters in the surrounding area and beyond that is to achieve the goal of realizing Southeast European progress in an integrated scheme with the Western (Papasotiriou, 2002).

Even though NATO intervention did happen, Russia did not approve of such action, which was done by the mighty military alliances. Russia stands in the position that the secession of Kosovo from Yugoslavia will fully guarantee the rights of Albanians in Kosovo even though at the same time, it would be contrary to the Serbs interests. The reason that Russia vetoed the intervention by NATO was Russia viewed that ethnic cleansing would emerge in Kosovo as a form of dangerous consequences if not accompanied by a transparent and fair agreement on every detachment of territory from Serbian (Antonenko, 2007). Putin could not hide his furious when he was present at the G8 Summit in Heiligendamm, openly accusing the political interests of world leaders to control the countries. He further stated that the Serbian agreement was signed to resolve the Kosovo problem. Disregarding this will be a violation of legal and moral norms. In the context of Western support for Kosovo's independence, especially Western projects, Russia sees it comprehensively as a challenge to sensitive issues such as military intervention,

sovereignty or independence, or Russian domestic politics, which includes a new pan-Orthodox ambition (Antonenko, 2007).

In the early 1990s, policymakers were struggling to build a new European security architecture based on the dynamics of international relations that occurred, namely the collapse of the communist regime in Eastern Europe, German unification, conflict in the Middle East marked by the 1990-1991 Gulf War, instability security in the former Yugoslavia countries, and the collapse of the superpower state, Soviet Union. These developments eventually led to three alternative options that should be highlighted. Firstly, the Atlanticist option. This option places the US as a state that plays a vital role in the European security architecture, while NATO is within the framework of a significant security organization for Europe. Second, the European arrangement option, which prioritizes the implementation of the EU expansion policy. And third, the pan-European variant option that laid the foundation for its reformed Conference on Security and Cooperation in Europe (CSCE, the Europe-wide child of 1970s detente) (Cottey, 2009). Regardless of those as mentioned above, this still did not justify NATO's actions and gave it permissibility to conduct the airstrikes on Kosovo to put an end to human rights violations in Kosovo.

### **III. METHODS**

The methodology adopted for this paper is purely from secondary sources. The data was obtained entirely from reliable and trustworthy sources such as literature, books, journals, and other internet sources during the completion of this research on the Phenomenon of Humanitarian Intervention in Kosovo by NATO. The methodology used is the qualitative method, which involves the collection of the previous articles and other reliable sources for the research purposes, which have been outlined and interpreted into new writing based on the gathered sources.

### **IV. RESULTS**

#### **Humanitarian Intervention in Kosovo**

Humanitarian intervention is a means to prevent the emergence of grave human rights violations in which the state itself becomes the perpetrators of its people, or at least the state is unable to protect its people. Any form of humanitarian intervention, if implemented without permission from the United Nations Security Council, is seen as an illegal intervention, and such intervention is held accountable for a self-interested intervention. In this study, the phenomenon of humanitarian intervention in Kosovo by NATO will be analyzed thoroughly of its legitimacy and its permissibility according to international law.

The term 'Humanitarian Intervention' is built on the Just War principle of 'right authority'. This principle highlights that humanitarian intervention must be authorized by the appropriate body of the United Nations Security Council. The 2005 World Summit had stated that any robust action must go through the council in order such actions to be determined as actions that carry proper legal authorization (Roberts, 1999). However, some interventions are claimed as humanitarian interventions that lacked legal authorization from the council. For example, this

appeared to be in the war in Iraq led by Britain and the US, along with NATO's humanitarian intervention in Kosovo. The similarity between both of these interventions is that both interventions claimed to be a humanitarian intervention despite not having proper authorization from the council. In both cases, these interventions did not secure a full authorization from whole permanent members of the Security Council.

Based on the original Intervention Commission on Intervention and State Sovereignty (ICISS) doctrine, the doctrine admits the possibility of justifiable actions outside the Security Council as a last resort. However, when the agreement reached the World Summit, it differs ultimately from the original doctrine of ICISS. Nevertheless, the ICISS asserts that for matters of human protection using the military intervention model, only the Security Council is eligible to give permission, which means that the essential and central factor in legitimizing intervention actions should require legal authorization. In some cases, illegal interventions still break out, even when it is not morally acceptable. The ICISS also stated that humanitarian intervention, which is approved by the Security Council, is legitimate and permissible since an international authority recognizes it. On the other hand, unauthorized interventions are often seen as illegal because of strong reasons for implementing self-interest.

NATO undertook Kosovo two years before the publication of the ICISS report. It was loudly criticized by lawyers and commentators for its legitimacy to intervene because of its inability to obtain full authorization from the Security Council (Pattison, 2010). Even so, the intervention had succeeded in putting a halt on the suppression of human rights that occurred in the Bosnian war, and NATO had received notable support in the international community. Based on the view of the Independent International Commission in Kosovo, the actions taken by NATO are legal, but illegal, as stated by international law. This had risen doubts over the necessity of the intervention actors' status. If humanitarian action is taken to stop violations and crimes against humanity, then why do we have to emphasize the intervener's legal status? If an intervener is about to intervene in any states that violate human rights, should we support or should we maintain our stands based on the ICISS doctrine, which said that only interveners with full authorization from the United Nations Security Council should be allowed to intervene?

### **An Intervener's Conduct: Humanitarian Intervention and Jus In Bello**

Humanitarian interventions have been documented to have caused massive problematic conduct (Pattison, 2010). A prominent example can be traced back to Somalia in 1992, where the Canadian airborne division made many allegations of torture, murder, and racist behaviorism. Another misconduct of humanitarian intervention was documented too in the UN Personnel operations in Burundi, Côte d'Ivoire, DR Congo, Haiti, and Liberia are states that are classified as high cases of sexual harassment. NATO's humanitarian intervention in Kosovo was also documented for its problematic conduct, which is on NATO's use of airstrikes, which targeted the Serbian government buildings and infrastructure, and it was heavily condemned.

An intervener's conduct is a primary thing to look into when considering whether an intervention has its legitimacy or not. The UN Peacekeeping Operations 'Capstone Doctrine' had already outlined the principles and guidelines to prevent violations in the mission; the principles of international humanitarian law must be used as an essential basis for participating forces. The ethics of humanitarian interventions must also be put into account. In this case, interveners must conduct interventions according to the guidelines of *jus in bello*. *Jus in bello* means the law of war, which governs the way of how the war should be conducted. Mainly, *jus in bello* regulates the importance of minimizing the suffering and victims by helping and protecting all victims of armed conflict, which must be carried out by the parties involved (ICRC, 2015). International humanitarian law is implemented in wars to help victims of armed conflict regardless of political affiliation and ensuring war can take place somewhat.

The principles in *jus in bello* provide restrictions on just conduct during the war, which is separate from questions of who should intervene. This is because the raising question of who should intervene directly implies the account of legitimacy. However, the adoption of the *jus in bello* principles will determine the legitimacy of an intervener to intervene. According to The Just War Theory, there are four main principles of external in *jus in bello*: first, the principle of two parts 'discrimination' related to 'soldier moral equality' and 'non-combatant immunity'.

Second, the principle of proportionality. Third, the principle which emphasizes specific methods and prohibitions on the use of biological weapons in warfare and the use of antipersonnel mines. And fourth, the principles governing the humane treatment that must be carried out against prisoners of war, civilians, and person *hors de combat* (Pattison, 2010). However, the first two of these principles emphasized are on discrimination and proportionality.

### **The Use of Military Forces for Humanitarian Purposes by NATO**

There are a few humanitarian interventions that are involved in an outright war many missions, especially those in the 'grey area' between peacekeeping and classical humanitarian intervention, are tasked to monitor, to keep, to build, along with to enforce the peace. Sometimes, humanitarian intervention can also be seen as one step closer to the implementation of domestic law than outright war (Pattison, 2010). The obligation for interveners must prioritize the realization of the rule of law, especially against potential spoilers, not just defeating opponents.

The conduct of humanitarian interventions should be looked into account and be driven as if they are the domestic policy of the armed conflict region. The humanitarian intervention must have the objective of protecting civilians and maintaining peace in the region. According to George Lucas Jr. (2003), if ground forces control Kosovo, the ground troops would be able to prevent the soldiers from killing Kosovar civilians and deviate a further war between the Serbs and the Kosovar militia.

The aftermath of NATO's humanitarian intervention was indeed a success, but the notions of supposedly minimum use of force and the notions of military necessity were critically questioned. However, the intervener, which is NATO, was conducting the intervention for humanitarian purposes. Thus supposedly, *jus in bello* should protect the purpose of the operation by strictly implementing external principles. According to the non-combatant immunity principle, which in this context, an intervener should have a human spirit so that his involvement in humanitarian intervention becomes meaningful. To look into the intention, we should look into the intervener's conduct of an intervention. Interveners that kill civilians are unlikely to have 'humanitarian' intentions. The use of airstrikes and bombs by NATO in Serbia indeed had incapacitated the humanitarian credentials of its intervention. Even so, NATO's permissibility to the use of force shall come with serious exceptions since by conducting such a manner, it would best believe to be a cause to halt the human rights violations in Kosovo. Ergo, it would be right to say that in Kosovo, humanitarian intervention by NATO is not wrongful conduct at all. Still, according to the ICISS doctrine, it is an unlawful act since NATO did not obtain a full authorization from the Security Council to bombard Kosovo through its airstrikes.

## **V. DISCUSSIONS**

The study found that the fall of Socialist Yugoslavia was followed by the rise of the Kosovo war, and the implication was that the oppressive government of Belgrade became an authoritarian ruler for Kosovo Albania. However, in 1998 the Yugoslavia army was able to reduce the success of the Kosovo Liberation Army (KLA) guerrilla struggle, but in 1999 it finally weakened due to NATO's bombardments (Papasotiriou, 2002). The Milosevic regime cruelly responded to the situation by using an alternative method, which is a ruthless counter-insurgency method, even though it actually could provoke the West's anger. The implication is that the Milosevic regime can quickly take over the Kosovo province from the Kosovo Albanian population, which is increasing in population and other non-Serbian groups, as a consequence of the mass displacement of Albanians from their place of origin.

Due to this, NATO stepped up to prevent more casualties of civilians' lives because of horrendous persecution in Kosovo by the regime, which in this case led NATO to intervene in the small state. The determination of the NATO army has proven successful, which in turn can meet the achievement of NATO's main regional goal, i.e., to advance the Balkans and strengthen the pro-Western orientation. Milosevic faced the fall of his regime in the autumn of 2000. One by one, the former Yugoslav regime fell, and eventually, all had the same desire to join the EU and NATO (Papasotiriou, 2002).

The humanitarian intervention has emerged alongside the use of force, and it is highly controversial and requires full authorization from the Security Council to wage a legitimate and legal war (Hurd, 2011). At first, what happened with the phenomenon of humanitarian intervention was considered to divergence with the UN Charter. But in its implementation, it turns out to have an exciting and unique development; that is, it is possible to be accepted in

certain circumstances; in other words, the practice is legal. However, in the case of the Kosovo war, the NATO attack, which used the method of airstrikes, had damaged Albanian cultural heritage, which included several Albanian historical monuments during NATO's assessments of war crimes in Kosovo (Herscher & Riedlmayer, 2000). Kosovo took a lot of time and money in reconstructing the state due to the damages done.

Regarding the report of Focus Economics (2018), this study also found that Kosovo is on the Misery Index Forecast 2018 as the 8th country in the world, which has the most miserable economy in terms of unemployment and inflation. Kosovo ranked as the 6th country in the Misery Index Forecast 2018 to have the most miserable economy with 28.4% of unemployment and inflation rate. Compare Venezuela at 1st rank (1,993%), or Yemen at 2nd rank (47%). This could be due to the destruction which had happened during the humanitarian intervention conducted by NATO, which inflicted terribly on Kosovo's development as a state. This can be proven in the data provided above.

## VI. CONCLUSIONS

In conclusion, on the phenomenon of humanitarian intervention by NATO in Kosovo, the air campaign conducted by NATO achieved one of its goals when it successfully compelled Milosevic to accept the alliances demand on June 3. After 77 days of no casualties, NATO had prevailed and managed to return one million refugees in safety (Solana, 1999). Thus, ethnic cleansing had been reversed. This is in line with what was stated in UN Resolution 1199 of September 1998, which demanded that Yugoslavia stop all of its army activities, which affected civilians. If it were not obeyed, then further action would be taken. Also, UN Resolution 1203 of 24 October 1998, demanded the Serb to comply with previous Security Council resolutions and cooperate with NATO and OSCE (Organization for Security and Cooperation in Europe) Mission of Air Verification in Kosovo (Roberts, 1999).

Expectations were growing for new optimism internationally following the fall of Milosevic in October 2000 (Yannis, 2001). But that hope is not always accompanied by the same reaction. In Kosovo, there are mixed reactions. One of them is a reaction that doubts the sincerity of the new Belgrade government, whether it is still consistent or not. Because for them, the resistance was not just against Milosevic but rather to all Serbian governments. This concern has led to skepticism about the success of Kosovo's independence. In a statement made by NATO to the international public, its primary attention was paid to the expulsion of Kosovo Albanians. This is one of the diplomatic successes of the Albanian delegation that convinced NATO within the Partnership for Peace framework. The next step undertaken by NATO is to manage civil emergency planning and to handle a massive influx of refugees in the border region. For this purpose, NATO sent eight expert groups to Albania in the following weeks (Huysmans, 2002).

In the case of Kosovo, there is international law which can be used as a solid basis by NATO. On a legal basis, two main issues must be given significant attention, namely the requirements that must be implemented in the Security Council resolution and the general



international legal basis, both of which are essential aspects in carrying out efforts to protect the population of Kosovo (Roberts, 1999). There are no strong arguments that can shake NATO's actions. This is due to the absence of international legal instruments that could answer the issue of military intervention carried out by force even though it is wrapped in a humanitarian mission. Inevitably this will lead to problems that question the legality of military methods carried out by NATO aimed at achieving political and philanthropic interests. For example, the NATO bombing campaign did raise debates and questions, especially from the legal basis aspect. So far, the argument that has been understood is that regional alliances must be considered reasonable if they take vigilantism based on a Security Council resolution as a reference. This creates a diverse set of debates and awareness on the resolution implementation with the reverse response, whether such actions would trigger an opportunity for the destruction of the structure of international relations with an aggressive military approach.

NATO has quite a variety of motivations that contain not only aspects of humanity but also other aspects that are not specifically related to Kosovo, such as the progress of the Balkans or issues of western orientation. It is difficult to justify a humanitarian intervention that might have caused enormous destruction and numerous casualties in the region. However, this is one of the steps to prevent many civilian deaths due to persecution in their own country. Intervention is permissible only if it follows international law, in particular, war proportionality and war conduct. The humanitarian intervention in Kosovo by NATO is a complicated one since it involves a mighty military alliance against a small state. In the end, if interventions could end further persecution and human rights violations, amendments need to be made to international law such as international humanitarian law. Indeed, it would be comprehensive if the same was done with international human rights law so that human life is the primary concern in acts of war.

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