



NATO Intervention in Kosovo Based on International Humanitarian Law

Arif Riza¹; Valeri Qatani²

¹Associate Professor, Faculty of Law, University "Ukshin Hoti", Prizren, Republic of Kosovo

² Student, Faculty of Law, University "Ukshin Hoti", Prizren, Republic of Kosovo

Email: arif.riza@uni-prizren.com; valeriqatani1@gmail.com

<http://dx.doi.org/10.47814/ijssrr.v6i7.1252>

Abstract

After the violent suppression of Kosovo's autonomy in March 1989, contrary to the will of the citizens, the Constitution of 1974 was changed, leaving Kosovo an integral part of Serbia. Kosovo Albanians first started their resistance in a peaceful way, after Serbia started with the closure of all schools of all levels as well as the closure of state and health institutions, which resistance contributed to its international awareness, but still peaceful resistance it was not enough to bring freedom to Kosovo. But even in spite of the aforementioned suspensions, Serbia at that time was not satisfied with just that, but started the military, police and paramilitary offensive against the majority population, with the sole purpose of "cleansing" the affiliations and expelling the Albanians. Against this offensive, the population of Kosovo started military resistance against the Serbian military, police and paramilitary forces. From this moment, Serbia now openly in the years '98 - '99 used all its military artillery for the sole purpose, the extermination or the expulsion of all Albanians from Kosovo. The international factor, seeing this situation that there were indeed crimes against humanity in Kosovo (William Walker who had declared that on January 15, 1999, in Recak there were monstrous and barbaric crimes committed by Serbia), began immediate intervention by the great powers' world. Whose motto was ultimately the establishment of peace and stability in this Balkan region, where after the 72nd extension of the NATO bombardment on the military forces of Serbia, which was forced to sign on June 9 and entered into force with the withdrawal of all its military, police and paramilitary forces from Kosovo on June 11, 1999. But thanks to the international factor, Kosovo declared its independence on the 17th of 2008, which is now recognized by 117 countries of the world.

Keywords: *Humanitarian Intervention; NATO; Kosovo; International Humanitarian Law*

1. Introduction

In the detailed topic, we will argue the issue of NATO's humanitarian intervention in Kosovo, which was in accordance with the rules defined by international law. Due to the relevance of the history, we considered it necessary to give a brief and essential look at some of the historical events that Kosovo took a turn, passing through different periods and great challenges for the Albanian people, so the general overview of the history. For centuries fighting for the rights that belonged to them.

The second chapter in the explanation of the notion of international humanitarian law and the international legal infrastructure, providing the legal basis for supporting humanitarian intervention in necessary cases. When we talk about the humanitarian intervention by NATO, the structure, the protective purpose, its role will be clarified based on the purpose for which it was created as an international organization, that is, the very mission of its establishment.

Considering that during the war in Kosovo, the rules of war were violated, it is necessary to know the moral damages above all that the civilians suffered. It will continue with the positions that international actors had regarding the destabilization and violation of peace in the world. In the last chapter to elaborate on this topic, we will clarify the consequences of NATO's humanitarian intervention in Kosovo based on international law.

The methods that will be used in this research are descriptive, argumentative, analytical and statistical. Necessity of the nature of the topic, the analytical method will be used in most of the paper, analyzing the legal aspect of NATO's humanitarian intervention in Kosovo, as a legitimate issue and in full compliance with international law humanitarian. The argumentative method is used to describe the legality and coordination of humanitarian intervention in support of international conventions, in the elaboration of its elements and forms of application. This method has also served us to describe the application, respect and functionality of the rules of international humanitarian law, as well as the support of these international legal acts in order to regulate, preserve and respect human freedoms and rights.

The analytical method is used to analyze humanitarian intervention and the impact it has in times of war and a time of unrest where people are mistreated in the most brutal ways. Through this research method, the analytical dimension has been given importance in this paper, in order to reach clear and acceptable conclusions. In this paper, a thorough analysis of the challenges that Kosovo has gone through has been made. At the end of this paper, after an analytical look, conclusions and recommendations are drawn.

Hypothesis

H1 - NATO's humanitarian intervention in Kosovo was based on international law.

H2 - During the war in Kosovo, the rules of war were not respected.

H3 - The mass killings, disappearances and other gross forms of ill-treatment that came from the attacker under the pretext of the "clean" war that was being waged.

2. Overview of the History of Kosovo

Kosovo as a separate administrative-judicial unit was constituted by the Turkish regulation of 1864 (Bajram, 2014). The Albanian population and lands were reduced, while the neighboring countries expanded to their detriment, due to the all-Albanian movement for freedom and self-determination, organized on the strong foundations of the Albanian League of Prizren in 1878 (Tahiri, 2001). The date that follows and remains long in the minds of Albanians is the Bujani Conference, to secure the Resolution for the self-determination of Kosovo Albanians. In this resolution, among other things, it was said: "For the only way freedom can be archived is it all peoples, including the Albanians, have the possibility of the deciding on their destiny, with the right self-determination, up to and including secession (Mancolm, 1998)" The Serbian army, police and paramilitary forces did not stop their repressive actions against the Albanian population in Kosovo, despite Resolution No. 1160 of the UNSC.

On September 23, 1989, the UN Security Council adopted Resolution 1199, which was for the end of fighting and a cease-fire between the warring parties in Kosovo.

Resolution 1199 of the UN Security Council was not respected by the military, police and paramilitary forces of the FRY. For this reason, in October 1998, NATO publicly declared a threat to the FR of Yugoslavia, i.e., Serbia and Montenegro, notifying the international opinion that it will implement Resolution 1199 by undertaking coercive measures under Chapter VII of the United Nations Charter with military intervention to prevent the humanitarian disaster and the Serbian massacres against the Albanian population in Kosovo (Susuri, 2019).

An armed conflict between the KLA (Kosovo Liberation Army) and the police forces of Serbia led to a military intervention by the Atlantic Alliance on March 24, 1999, and its victory in June of that year placed Kosovo under international administration (Bytyçi, 2015). The internationally supervised citizenship model has also been proposed in the "Kosovo Status Package" of the mediation of the UN, Marti Ahtisari (Reka, 2006).

3. The Notion of International Humanitarian Law

The idea of humanitarian intervention was mentioned for the first time by Thomas Aquinas (Toma Aquini) in the 13th century that a sovereign has the right to intervene in the internal affairs of another "When the latter mistreats his citizens (subjects)" (Gruda, 2003). The notion of "Humanitarian law" is a new notion of international law which has not been accepted by all states, a set of norms of international law aimed at protecting people or limiting human suffering in international and non-international armed conflicts (Kasumaj, 2019). It means the rules of international law, especially the law of war in the narrow and broad sense, which aim at the humanity of war (Gruda, 2003).

3.1. Legal infrastructure for International Humanitarian Law

Human rights and freedoms enjoy special protection guaranteed by documents starting from the first acts that guarantee basic human rights, both in times of peace and times of war. All international instruments have sufficient legal basis for intervention when it comes to the rights and freedoms of the innocent in times of war.

While, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984). Among the international instruments we have the 1949 Geneva Conventions, with additional protocols. Other, St. Petersburg Declaration, Hague Declaration (Read more on: Krasniqi, 2023).

3.2. Humanitarian intervention

This intervention can be carried out by individual states, international organizations or multi-state cooperation. (Jaeschke, 2010). The term humanity lat. "humanitas" (Freitag, 2006). Even the statements that have been given by the international community or more precisely by important personalities, have undoubtedly been expressed against genocide and other cruel forms of mistreatment and the need for humanitarian intervention in Kosovo.

President Clinton: "and we don't want our children to grow up in a 21st century world where innocent civilians can be hauled off to the slaughter, where children can be dying en masse, where young

boys of military age can be burned alive, where young girls can be raped en masse, just to intimidate their families – we don't want our kids to grow up in a world like that..." (Brown, 2000).

Chancellor Gerhard Schröder: "There is no doubt about our determination to stop the killing in Kosovo. Only the leadership of Belgrade has the power to end NATO's mission by choosing peace" (Wahlenkamp, 2014).

4. History of the Intercontinental Organization NATO

The North Atlantic Alliance was founded in the aftermath of the Second World War (1945 - 1949). The threats of the Soviet Union were highlighted by the threat of sovereignty to some states, which further increased the need for security, so in March 1948 the Western European states signed the Treaty of Brussels, creating common defense.

The states that signed the Brussels Treaty continued negotiations with the US and Canada with the aim of reaching a security treaty. They produced the creation of NATO based on guarantees of security and joint commitment between Europe and North America. These negotiations culminated in the creation of the Washington Treaty in April 1949 (Bashkurti, 2010). NATO's structure is divided into two parts: A civilian - It consists of the NATO Council and the NATO Parliament. The task of the Parliament is to create links between NATO and national parliaments (Riza, 2012). A military - The Military Commission is the main military body consisting of the Chiefs of Staff (Riza, 2012).

4.1. The role of NATO and the defense position of the alliance

NATO consists of thirty (30) member states. These NATO member states have a common goal and serve the same cause. "The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations" (The North Atlantic Treaty, 1949).

In particular, the tasks in the security field of NATO are included in the Treaty as follows: Security, consultation, protection, crisis resolution, partnership (Bashkurti, 2010). Considering the role and importance of NATO, the Republic of Kosovo should make efforts to join the NATO organization as soon as possible.

5. Non-Respect of Freedoms and Rights in the Kosovo War

Disrespect for the freedoms and rights of the civilian population, cruel and torturous abuses have prevailed, where the argument for the disrespect and disregard for the freedoms and rights of civilians during the war will be dealt with in the first part of this chapter.

5.1. Damage from the war in Kosovo

During the war in Kosovo, the aggressor caused great damage. These damages include legal damages, the disruption of internal order apparently since Kosovo became forcibly part of the former composite state, in addition to the economic damages that are great, from the decline of the market and the destabilization of the population and the destruction of the construction infrastructure. They will rebuild and redo what they have worked on for many years. On February 28, 1998, the attacks of the

Serbian army began in the villages of Likoshan and Qirez in Drenica, Kosovo. The intensity of military actions increased from July 1998 onwards, with fierce and bloody battles.

On August 1, after numerous shelling, several Albanian houses were set on fire (Syla, 2022). Meanwhile, in February 1998, the Serbian authorities launched a large-scale series of operations against the Albanian population and the Kosovo Liberation Army. In support of the operations of the Serbian authorities, in January 1998, Serbian paramilitary and volunteer forces known as Arkan's "Tigers" returned to Kosovo to terrorize the civilian population (Syla, 2022). Regularly in such cases a victim was kidnapped and then killed usually within a very short period of time (forumZFD, 2019). 31,600 documents unequivocally prove the death or disappearance of 13,535 (FDH, 2009) people during the war in Kosovo. The Racak events have been described as a "massacre" (Stein, 1999). With the end of the armed war, 6,063 were reported missing, while currently (May 2019) the number of missing is 1,653 (forum ZFD, 2019).

6. NATO Intervention in Kosovo

President Milosevic's policy of ethnic cleansing produced flows of refugees and internally displaced people. After Yugoslavia did not stop the military actions on the Albanian people of Kosovo, the NATO Council decided to intervene, even without a Security Council Resolution, where all this came as a result of the massive violation of human rights on the local Albanians (Riza, 2012).

In 1999, once all diplomatic avenues had failed, NATO launched an air campaign to halt the humanitarian catastrophe unfolding in Kosovo; operation Allied Force started on 24 March 1999 and was suspended on 10 June, lasting a total of 78 days; On 10 June 1999, the Federal Republic of Yugoslavia accepted the withdrawal of its military, police and paramilitary forces and the deployment of an effective international civil and security presence (NATO, 2022).

7. NATO Intervention in Kosovo Based on International Law

After the breakup of Yugoslavia, after beginning of the wars in former Yugoslavia, the role of Regional Organizations was big enough that there were efforts to prevent war in the former Yugoslavia or prevent war in general. For example, OSCE with its mission participated as observers in the former Yugoslavia with a very broad mission. Also, WEU police mission in Balkans` States, the European Union's contributions for the Balkan states, and NATO, which presented in the former states of Yugoslavia. But her role was decisive when its forces bombed military targets of the Union of Serbia - Montenegro, due to the war in Kosovo (Riza & Leka, 2016).

Humanitarian intervention is driven by norms, values, moral considerations, and the responsibility of the international community to save those populations that are in danger (Jude, 2012). The international community was presented with emerging signs of genocide being perpetrated against the Kosovo Albanian population in 1997 (Carter, 2019).

Security Council Resolution: "affirmed that the deterioration of the situation in Kosovo poses a threat to peace and security in the region" (IDRC, 2001). The language NATO's charter preserves a degree of flexibility for allies, stipulating the "each... will assist... by talking... such action as it deems necessary" (Binnendijk & Priebe, 2019). Intervention is motivated by humanitarian concerns, such as human suffering or threat to life (Ludlow, 1999).

The U.N. High Commissioner for Refugees estimates that more than 600,000 people, the vast majority of them ethnic Albanians, have left Kosovo since NATO began its air assault on 24 March (MSF, 1999). Isn't it inhumane to kill innocent people and drown them arbitrarily, isn't it enough that 13,535 innocent people were killed and disappeared by the Serbian military forces and again to ask for a pretext for humanitarian intervention???

The UNHCR estimates within a few days of NATO bombing there were 750,000 refugees in Albania and Macedonia, as well as 250,000 IDPs at the border as against 410,000 ethnic Albanian internally displaced persons (IDPs) as a result of Serb operations, and another 90,000 across the border before the intervention (Odoeme & Gwoza, 2018).

This intervention happened as a result of the failures of the talks. In order not to fail in the mission and not repeat the same as in Rwanda and Bosnia-Herzegovina. The 1994 Rwandan genocide occurred despite the existence of a peace and power sharing agreement (the Arusha Accords) to which all parties to the conflict had ostensibly subscribed (Storey, 2012). In the beginning, specific people were targeted and killed, but in time, Tutsi were herded to public places and killed enmasse (Wielenge, 2010).

In Bosnia - Herzegovina "From July 11 to 16, 1995, 8,372 men and boys in the enclave were killed. They were shot or beheaded and buried in mass graves, these were the worst atrocities committed in Europe since the Second World War" (The Bosnian Genocide, 1995). Genocide can be punished by domestic and international courts. International law gives precedence to the latter (Schabas, 2003).

The violation of human rights in Kosovo was considered (*erga omnes*) also a violation of the principles on which the value of NATO itself was built, even NATO based this humanitarian intervention in Kosovo on Article 51 in relation to Article 2, point 4 of the UN Charter (Riza, 2012). Intervention which served the objective of the UN. Therefore, the legitimacy of humanitarian intervention by NATO in Kosovo originates on the basis of international law.

Conclusion

Kosovo has gone through different periods, along with its fate, of course, the people have also experienced these "reforms". When we stop during the process when Kosovo became part of the former Yugoslavia by force. Kosovo has experienced territorial changes since 1913 without its desire to have these changes.

After entering the former Yugoslavia by force, the Albanians of Kosovo were mistreated in various ways, until Serbia attacked Kosovo and broke all the laws of war. And these laws that define the rules of war aren't few. Mass murders, the disappearance of a large number of civilians, the removal of Albanians in large measure (ethnic cleansing), ill-treatment, rape dhe sexual offences and other more brutal forms of human abuse increased the need for humanitarian intervention in Kosovo. This intervention was made after the failure of many talks between Kosovo and the aggressor alongside the international community.

The strong intensity of the attacks and the immense oppression of civilians influenced that NATO, the North Atlantic Organization, one of the international organizations aimed at protecting and providing assistance to the victims, as well as stopping this arbitrariness that the Albanian people were experiencing.

Humanitarian intervention is defined by many international instruments, among others such as the prohibition of genocide, the laws of war... NATO's humanitarian intervention in Kosovo is entirely based on international humanitarian law; with international humanitarian legal norms.

After all these sacrifices that the Albanian people went through as in peacetime (part of the former Yugoslavia; by force), from the aggressor who didn't respect the rules of war. Constitution of the Republic of Kosovo/ Chapter I/ Basic Provisions/ Article 1 [Definition of State] defines: ‘‘The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state. The Republic of Kosovo is a state of its citizens ‘’.

Recommendation

When it comes to basic human rights and freedoms, they are well protected by international instruments, and these basic human rights and freedoms are also guaranteed both in times of peace and in times of war.

States should know that the non-respect of human rights and freedoms, even in times of war, are sanctioned and have many-dimensional consequences in cases of infringement, endangerment and annihilation.

The consequences will serve not only the parties to the conflict but also the world and they cannot remain only a part of the past but the cases of persecution and inhuman mistreatment, will convey the consequences in the future even for a long time.

- Make the states aware that they will not receive more than what you have.
- You will not fight for something that doesn't belong to you.
- Unjust wars will be punishable, and these have been dealt with by international instruments.
- And anyone who forcibly intends to take the right of another without any legal basis will be punished.
- The wars will violate the peace in the world, they will directly violate the statutes of the international entities and will implement the apparatus for preventing unfair wars and establishing security measures.

Let them understand that humanitarian intervention by NATO in Kosovo is according by international humanitarian law. And that the detailed text best argues how the Albanian people suffered and were misused both in times of peace and in times of war, there was denigrating torture against them.

The argumentation of the text clearly shows the necessity of humanitarian intervention and not avoiding such a need, because the attacker under the umbrella of war was killing, disappearing, violating, forcibly removing innocent people from their homeland.

References

Abazi, Enika "Kosovo Issue and International Diplomacy (1991-1999)": A predictable conflict. Historical Studies, Institute of History, Tirana, 201.

Bajrami, Education "The Constitutional System of the Republic of Kosovo"/ Prishtina, 2014/ ISBN: 978-9951-494-44-1/

- Bashkurti, Lisen "International Institutions and Regional Initiatives"/ Tirana, 2010/ ISBN: 978- 9928-105-18-9/
- Binnendijk, Anika & Priebe Miranda "An Attack Against Them All? Divers of Decisions to Contribute to NATO Collective Defense"/ ISBN: 9781 977402776/
- Brown, Bartram "Humanitarian Intervention at a Crossroads", 2000
- Bytyçi, Enver "Coercive Diplomacy of NATO in Kosovo"/2015/ISBN:978-1-4438-7272-0 Tahiri, Edita "THE RAMBOUILLET CONFERENCE"/Dukagjini 2001/ISBN:995105010-7
- Carter, Victoria "Hope for Another Humanitarian Inter Hope for Another Humanitarian Intervention? Rwanda, Kosovo, Libya and the Consequences of the Responsibility to Protect (R2P) on Myanmar/ 2019/
- Charter of the United Nations/ 1945/ Treaty of Washington
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948/
- D.R.L Ludlow "Humanitarian Intervention and the Rwandan Genocide" Volume XIX, No. 1 Spring 1999/ E.V), Pristina 2019/
- FDH, LKK - Lista e të vrarëve, zhdukurve dhe të rënëve 1998 - 2000 (liberkujtimiikosoves.org)
- forumZFD – (FORUM CIVIL PEACE SERVICE / FORUM ZIVILER FRIEDENDIENST
- Geneva Conventions/ 1949/ and their Additional Protocols
- Gruda Zejnullah, "International Protection of Human Rights", Pristina, 2020 Artini, ISBN 978- 9951-803-40-3/
- Gruda, Zejnullah "Public International Law" / Pristina, 2003
- Hoti, Afrim and Musliu, Arton "THE PRINCIPLE OF SELF-DETERMINATION AND ITS EVOLUTION IN INTERNATIONAL LAW"/ Pristina, 2015/ ISBN: 978-9951-459-42-6
- Human rights: Compendium of international instruments/ Translator Ilir Dugolli- Pristina/ OHCHR, 2004/ ISBN: 9951-402-17-8/
- Kasumaj, Sylë: Dictionary of justice terms/I. Albanian, 2019/ ISBN: 9789951240772/
- Macolm, Noel "KOSOVO- a short History" / LONDON, 1998 / ISBN: 0-8147-5598-4/ Schabas, William "Genocide in the International Law" / Prishtinë, 2003
- Montral Holocaust Museum / The Bosnian Genocide/ The Bosnian Genocide - Musée de Holocauste Montréal (museeholocauste.ca)/

ODOEME, C.V. & ADAMU M.G. ARMING REBELS IN INTERNATIONAL LAW. UNIMAID JOURNAL OF PRIVATE AND PROPERTY LAW (UJPPL), VOL. 3 NO 2, 2018, PP 119 – 134

Riza, Arif "The Law of International Organizations and International Organizations"/ Pristina, 2012/ ISBN: 978-9951-19-012-1/

RIZA, ARIF & LEKA "INTERNATIONAL AND REGIONAL ORGANIZATIONS IN THE BALKAN THE CASE OF KOSOVO" / MCSER - Vol 5 No 2 July 2016

Sorana-Cristina Jude "Saving Strangers in Libya: Traditional and Alternative Discourses on Humanitarian Intervention"/ France, 2011/

Storey, Andy/ Structural violence and the struggle for state power in Rwanda: What Arusha got wrong"/ African Journal on Conflict Resolution/ Volume 12, Number 3, 2012/

Susuri, Hazër "The Constitutional Right of the Republic of Kosovo"/ Pristina, 2011/ ISBN: 9789951599030/

Syla, Sabit "The War of the Kosovo Liberation Army in the operational area of Shala"/ 2022/ Reka Blerim, "EU Constitution", 2006, Pristina, LOGOSA,

Syla, Sabit "Lufta e Ushtrisë Çlirimtare të Kosovës në zonën operative të Shalës"/ 2022/ The Journal of Philosophy Vol. 87, No. 9, Sep., 1990

The Responsibility to Protect: Research, Bibliography, Background Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty/ Issued by the International Development Research Centre/ 2001 /ISBN 0-88936-963-1/

United States Information Agency: Report of the EU Forensic Team on the Racac Incident, 17 March 1999 (phdn.org)

Vahlenkamp, Jan "Völkerrecht gegen Menschenrechte? Der Eingriff der deutschen Bundeswehr in den Kosovokonflikt"/ ISBN: 978-3656838043: //

Wielenge, Coreanne /UNIVERSITY OF KWAZULU-NATAL/"THE ROLE OF NARRATIVE IN HEALING IN RWANDA"/ 2010/

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).