

## CHANGING NORMS OF UNILATERAL INTERVENTIONISM

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### **ABSTRACT AND INTRODUCTION**

Operation Allied Force was a humanitarian military intervention beginning on March 24, 1999, led by the North Atlantic Treaty Organization (NATO) and the United States (US) to stop human rights violations in Kosovo. For the first time, the use of force was employed without authorization from the United Nations Security Council (UNSC), thus marking a unique precedent in unilateral humanitarian interventions. (Unilateral will be defined as without the authorization of the UNSC, and discussion of humanitarian interventions restricted to military operations.) According to the existing laws of intervention, outlined in the UN Charter, Operation Allied Force was illegal and therefore could not be defended on legal grounds. The alternate justifications proposed and the US's role in the intervention so transformed the norms of legitimate interventionism that unilateral action may occur in the future. The actual legitimacy of the operation or of the proposed justifications will not be discussed. Legitimacy will instead be restricted to that which is accepted, but not necessarily officially approved, by international governing bodies.

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The modern Kosovo conflict dates back to 1946, when Kosovo gained autonomy as a province within Serbia. This status was confirmed by a new constitution by Yugoslavian President Joseph Broz Tito in 1974. In 1989, however, the new president Slobadan Milosevic asserted that the Serb minority in Kosovo was at risk, and so revoked Kosovo's status as an independent province.<sup>1</sup> Kosovo Albanians, faced with widespread discrimination, rebelled against the government in a nonviolent way by creating their own institutions. By the mid-1990s, the situation became less peaceful. The Kosovo Liberation Army (KLA) was formed after ethnic Albanians were excluded from peace talks held in Dayton, Ohio, in 1995. They grew disillusioned about the effectiveness of nonviolent resistance and so turned to other means.<sup>2</sup> The violence increased between the KLA and the Yugoslav army; by 1998, over 200,000 Kosovo Albanians, forced from their homes, had taken refuge in the countryside surrounding their villages.<sup>3</sup>

The international community's opinions about the situation were expressed through UNSC resolutions passed regarding the Kosovo conflict. Resolution 1160, adopted on March 31, 1998, called upon the Yugoslav government to fix the problem peacefully.<sup>4</sup> The succeeding resolutions, 1199 and 1203, also passed in 1998, became increasingly specific about human rights violations and more focused on the Serbs as the aggressors.<sup>5</sup> Additionally, the US Department of State wrote a special report outlining specific atrocities and ethnic cleansing happening in Kosovo.<sup>6</sup> There was no question in the international community about the severity of the problem, and while never officially approving NATO's intervention, the UNSC passed several resolutions, increasingly urgent, appealing for state action.<sup>7</sup> They also defined the conflict as a "threat to international peace and security."<sup>8</sup>

With the international community demanding action, the United States seemed ready to answer that call. Indeed, a "Clinton doctrine" emerged in the 1990s of trying to stop human rights violations whenever possible.<sup>9</sup> When questioned about America's interest in the Kosovo conflict, President Clinton remarked on February 13, 1999, that significant loss of life that would occur in Kosovo if the United States did not take a stance was America's national interest.<sup>10</sup> Secretary of State Madeleine Albright stressed American interests in the region as perhaps not immediately apparent, but definitely present. In a dispatch dated January 1999, Albright emphasized that peace and security in Southern Europe are fundamental American interests, as is the responsibility to uphold justice.<sup>11</sup>

The United States led diplomatic efforts to prevent the need for air strikes, but unfortunately the talks failed. On January 27, 1999, the Clinton administration announced it would sponsor talks between the Federal Republic of Yugoslavia (FRY) and the KLA to map out a political solution. The goal was for Kosovo to remain a Serbian province, but with the autonomy it had enjoyed in the past.<sup>12</sup> To promote acceptance, the US threatened both sides individually: the FRY with NATO air strikes, and the KLA with blockage of arms to their militias. These peace talks, which took place from February 6 to 23, 1999 in Rambouillet, France, were welcomed by NATO, European states, Russia, and the UNSC. Solidifying US involvement in the conflict, President Clinton announced during the talks that the US would provide 4,000 ground troops to assist the 28,000 NATO peacekeepers if an agreement was reached. Unfortunately, the talks proved unsuccessful, neither side accepting all of the terms and the FRY government unconditionally rejecting a semi-autonomous Kosovo.<sup>13</sup>

Finally, despite warnings from both NATO and the US that air strikes would commence if peace was not maintained, the FRY sent troops into Kosovo on March 20, 1999, driving thousands of Kosovars from their homes. In a final diplomatic attempt, Clinton dispatched Ambassador Richard C. Holbrooke to try to work things out between the two parties. When this failed, NATO authorized air strikes on March 23 against the FRY.<sup>14</sup> The US supported this action. According to Albright, "Nothing less than strong engagement from NATO ... and nothing less than firm American leadership [would] ensure decisive action."<sup>15</sup> Clinton warned that if the US waited any longer, "any effort to stop it [would] come at a higher price, under more dangerous conditions. The time to stop the war [was] right [then]."<sup>16</sup> The US committed 31,600 personnel to the NATO force, 650 aircraft, and eleven of the thirty ships contributed by NATO members.<sup>17</sup>

The legality of this intervention can be best understood first addressing the legal issues of intervention in general. The UN Charter is designed to protect the best interests of the international community. Written at the end of World War II and the beginning of the Cold War, it is concerned with tensions between state sovereignty and the international community. The language of the Charter expressly prohibits unilateral intervention by a state or group of states unless authorized by the UNSC or for the purpose of self-defense. By *unilateral intervention*, the Charter means a state or group of states acting on its own authority, without authorization from the UNSC. This is to keep states from intervening in other nations to further national interests that may conflict with those of the international community.<sup>18</sup>

Under Article 2(7) of the Charter, certain situations may justify intervention if the UNSC deems them threats to "international peace and security."<sup>19</sup> However, the Charter is not explicit about humanitarian intervention. Indeed, the word "humanitarian" does not appear in the Charter.<sup>20</sup> This is not to say that the writers of the UN Charter thought humanitarian crises were unimportant, but that "justification for humanitarian intervention is often ambiguous."<sup>21</sup> Since no laws provide guidelines for such interventions, it is left up to the UNSC to decide their legality case by case.<sup>22</sup> As current written international law stresses state sovereignty and nonintervention, humanitarian intervention is therefore the exception to the rule.<sup>23</sup>

Thus, it becomes clear that Operation Allied Force was illegal by the standards of written international law. NATO did not even attempt to obtain UNSC approval. According to UNSC procedure, any of the fifteen permanent members can use their veto power to block a resolution authorizing an intervention. It can be argued, therefore, that humanitarian intervention is essentially prohibited by the interplay of law and politics.<sup>24</sup> It was known at the time that Russia and China had reservations about the use of force to further humanitarian goals, and probably would have vetoed the intervention had it come before the UNSC. The resolution Russia attempted to pass with the sponsorship of India and Belarus on March 26 condemning NATO's actions supports this claim.<sup>25</sup> "NATO evidently decided that not asking for authorization was preferable to having it frustrated by veto, which could have hindered the intervention diplomatically and politically."<sup>26</sup> With the evident illegality of the action, neither the US State Department nor NATO attempted to legally justify the intervention.<sup>27</sup>

The justifications that were given for Operation Allied Force by NATO, the United States, and scholars indicate a change in norms relating to humanitarian intervention. The international community became increasingly focused on human rights violations in the 1990s, for a variety of reasons including

increased public awareness of distant issues because of their spotlight in the media and the end of the Cold War. However, it was not until the Kosovo intervention that this heightened focus on human rights became a legal issue. Operation Allied Force set a precedent because it marked the first time a group of states intervened in a sovereign nation without even bothering to ask for UNSC approval. Without the law on their side, NATO and the US turned to other justifications. Their use of these alternatives reflects a new political environment more sympathetic to future unilateral action.

The first set of proposed justifications show a shift in attitudes towards state sovereignty, which until recently, was automatically protected by the UN Charter. However, the world has changed since the late 1940s, when protection of state sovereignty was paramount.<sup>28</sup> The sovereignty of nations is now questionable when a government fails to comply with international laws or violates human rights.

The Kosovo intervention was defended partly because the FRY was neither obeyed the law nor honored peace agreements. The United States emphasized the FRY's noncompliance with the October 1998 agreements endorsed by the UNSC in Resolution 1203. Just prior to the start of air strikes, US Department of State spokesman James P. Rubin noted that "the Yugoslav military and police forces have committed serious and widespread violations of international law."<sup>29</sup> While holding nations accountable to international law is not new, citing this as one reason for intervening in Kosovo indicates a decreased tolerance for such violations.

As I have emphasized, written international law stresses the protection of state sovereignty. Modern interpretation, however, may permit humanitarian intervention as superseding state sovereignty in some cases.<sup>30</sup> While the UN Charter makes no provisions for humanitarian intervention, international law protects certain human rights. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, outlines in detail the fundamental human rights that states are meant to uphold.<sup>31</sup> It was assumed that nation states protect these rights. The Kosovo intervention marks a change in this paradigm, especially in the scholarly interpretation of state sovereignty. Following the Kosovo intervention, the literature defined "sovereignty as responsibility."<sup>32</sup> Increasingly, scholars and politicians assert that if states are to be treated as legitimate and sovereign, they are responsible for the protection of their people.<sup>33</sup> Some even claim that when states "do not meet their duties to protect the rights of their citizens, they should forfeit their right to be regarded as legitimate sovereigns."<sup>34</sup> The justification for the Kosovo intervention on humanitarian grounds contributed to this reinterpretation.

The United States strongly rooted its justification for involvement in Operation Allied Force in humanitarianism. While the use of these arguments contributed to the reinterpretation of state sovereignty, by themselves they reflected the emerging notion that states can justify intervention by moral imperatives. As President Clinton remarked, "By acting now, we are upholding our values, protecting our interests and advancing the cause of peace."<sup>35</sup> Secretary of State Madeleine Albright also stressed the moral issues of Kosovo as reasons for intervention.<sup>36</sup> Without a legal basis for justification, the US emphasized human rights violations as a means of validating Operation Allied Force.

The shifting norms of state sovereignty and justification by moral imperative suggest interventions can be legitimate without being legal. Operation Allied Force was unilateral in because it was not authorized by the UNSC. However, scholars have argued that this term inadequately describes the nature of the intervention, and that Operation Allied Force was "collective" rather than "unilateral." While strongly supported by the United States, NATO is still a collaborative organization, which means it is protected against abuse by any one state using its power to pursue its own goals. Moreover, it is composed of UN members bound by the UN Charter to protect international peace and security. NATO has thus argued that it "pursued recognized, clearly compelling humanitarian purposes," which are "in the common interest."<sup>37</sup>

Finally, these justifications were approved retroactive by the UNSC and the International Court of Justice. While scholars may continue to argue the legitimacy of the arguments, their acceptance by these two bodies is compelling.

Hindered by the threat of veto and wary of approving the use of force, the UNSC nevertheless passed Resolution 1244 on June 10, 1999, supporting the Kosovo settlement. This gave Operation Allied Force approval after the fact. This resolution passed with 14 votes in favor and China in abstention.<sup>38</sup> The Yugoslav government also tried to bring NATO to the International Court of Justice (ICJ) on the

grounds that Operation Allied Force was illegal because it failed to obtain UNSC approval. The ICJ, however, rejected the FRY's bid to bring the case to the court by a vote of 12 to 4.<sup>39</sup>

The case of Kosovo has many implications for the normative foundations of international order. Recognizing that it was illegal by the standards of written international law, the United States offered alternate justifications that both reflected and contributed to changes in the interpretation of state sovereignty, moral imperatives, and legitimacy. The validity of these justifications is reflected in the ex post facto endorsement by the UNSC and the ICJ. While it is unlikely that international law will soon change to permit unauthorized interventions, the apparent shift in norms after Kosovo makes future unilateral actions more likely.

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## ENDNOTES

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<sup>2</sup> James Hooper, "Kosovo: America's Balkan Problem," Current History (Apr 1999): 160.

<sup>3</sup> Wedgwood 828.

<sup>4</sup> United Nations, Security Council, S/Res/1160 (31 March 1998), 30 Nov 2007 <<http://daccessdds.un.org/doc/UNDOC/GEN/N98/090/23/PDF/N9809023.pdf?OpenElement>>.

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<sup>8</sup> Wedgwood 829.

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<sup>13</sup> Murphy 629.

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<sup>27</sup> Thomas M. Franck, "Lessons of Kosovo," The American Journal of International Law (1999): 859.

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<sup>34</sup> Hugh Walker, "The Case of Kosovo," Civil Wars 7 (Spring 2005): 30.

<sup>35</sup> Murphy 630.

<sup>36</sup> Albright.

<sup>37</sup> Henkin 826.

<sup>38</sup> Groom and Taylor 302.

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