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**THE LEGACIES OF NATO INTERVENTIONS IN THE BALKANS FROM
THE PERSPECTIVE OF NEW INTERVENTIONISM**

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Abstract

This paper focuses on the analysis of the NATO interventions in the Balkans from the perspective of new interventionism. NATO has been considered one of the basic and leading components of peace and stability in the region—especially after Kosovo War. Besides, as the role of NATO in Atlantic security and world politics has been transformed after the Cold War and its strategic concept is renewed since September 11; security in the Balkans is gaining more and more importance. NATO has interfered into the conflicts in the Balkans with military means and after the conflicts; it maintains peacekeeping missions in the region. Can NATO's Balkan interventions be evaluated as legitimate within the framework of humanitarian intervention? What are the legacies and significance of NATO interventions for providing enduring peace and stability in the Balkans? Did the presence of NATO contribute to create the necessary conditions for human rights and democracy in the region -especially for the adaptation purposes of the regional countries to the new international system in Post-Cold War era? Or did the big powers use the humanitarian intervention to shape the developments in terms of their interests and policies? While trying to find answers of these questions, I will use the perspective of new interventionism. Firstly, I will discuss the relevant articles and chapters of Charter of the United Nations in terms of use of force to evaluate the legalities of the humanitarian interventions. And afterwards, I analyze the Kosovo and Bosnia interventions from this point of view.

Keywords: *New interventionism, NATO interventions, NATO in the Balkans, Balkan conflicts.*

Introduction

There is an ongoing argument between two different views over new interventionism and the contrast between these two views reflects a dilemma in this respect. First view is based on the classical rules of law; focused on the borders of the nation state and principle of non-interference to the internal affairs of a state. But on the other side, the liberal defense of new interventionism relies on the principles of fundamental human rights and highlights the normative approach which specifies that, there can be no excuse for human rights violations. The second

view emphasizes that today; the domestic law argument is not effective and valid as before. There can be interferences to domestic affairs of states, if there are problems regarding to fundamental human rights and freedoms. According to those who defend this view, the interventions have been taking place due to the presence of serious threats to not only internal but also international peace and security as well.

Defenders of new interventionism find it necessary to redefine the concept of intervention in today's world. They think that the United Nations Charters' provisions on the use of force need to be rearranged and new norms for humanitarian intervention should be developed in international law. International community needs a ground of legal justification for intervention firstly. Besides, the humanitarian intervention should be done with public support and under the leadership and command of the United Nations and when there is a multilateral participation.

Charter of the United Nations and Use of Force

The contrast in new interventionism is coming from the past; we can see its bases in the Charter of the United Nations. Today, United Nations seems to be a platform on which this dilemma has been experienced in fact.

The paramount international convention governing the exercise of armed force in the international community is the Charter of the United Nations. Opponents of humanitarian intervention point to Article 2(4)'s injunction that "all states... refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any state, or in any other manner inconsistent with the purpose of the United Nations." They also note Article 2(7)'s declaration that "nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state." For some international lawyers, this is the end of the matter. (Holzgreffe, 2003, p.37)

However, in Article 26 of the Charter, the Security Council is authorized "in order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the members of the United Nations for the establishment of a system for the regulation of armaments. As we can see, Security Council has been authorized for providing international peace and security. The exceptions to this fundamental norm are very narrow and consist of a) self-defense against armed attack, as provided in Article 51 of the Charter, b) use of force or authorization of the use of force by the Security Council which is defined under Chapter VII centralized security system for the maintenance of peace, c) decentralized 'enforcement action' by regional organizations as contemplated by Article 53. (Francioni, 2000, p.113)

Those, who defend that humanitarian intervention is legitimate, think that it is not violating the territorial integrity and political independence of a state. That is why it is not contradicting the United Nations Charter. But according to the others, there is an external intervention to a state's internal affairs and thus political independence of the state is being violated.

Humanitarian Intervention and NATO Interventions in the Balkans

New interventionism and the privacy of the borders of the nation state are being discussed in the Post-Cold War era and these discussions have been much more intensified in the 21st Century because of the increasing role of the human rights in world politics. "As the 20th Century fades away, so too does the international consensus on when to get involved in another state's affairs. The United States and NATO -with little discussion and less fanfare- have effectively abandoned the old United Nations Charter rules that strictly limit international intervention in local conflicts. They have done so in favor of a vague new system that is much more tolerant of military intervention but has few hard and fast rules." (Glennon, 1999, p.2)

When it comes to the definition of humanitarian intervention; it is the use of force across state borders by a state (or group of state) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied. (Holzgrefe, 2003, p.18) There were several discussions about the NATO interventions in the Balkans in terms of humanitarian intervention considering their legality and legitimacy.

Actually, NATO interventions have been occurring in two different platforms: with or without United Nations Security Council approval. In Kosovo intervention there was no Security Council resolution. And also about the legality of Bosnia intervention there were also serious discussions. It is difficult to say that NATO had taken action with the accurate and exact United States authorization. However, most international lawyers approved these interventions. On the contrary, some of them argued that Kosovo intervention might be evaluated as legitimate but illegal because it was not compatible with a strict reading of the United Nations Charter. (Koskenniemi, 2002, p.159) "The Independent International Commission on Kosovo found also that the Kosovo intervention was illegal, but legitimate (implying a disjunction between the law of intervention and the ethics of intervention)." (Clarke, 2002, p.93)

In the case of Kosovo, legal commentators argue that intervention was required in order to promote justice and morality, despite the illegality of such intervention. And international lawyers have begun to argue that there are situations in which the international community is justified in undertaking military intervention even when such action is outside the law. According to this argument, a commitment to justice requires the international community to support the NATO intervention in Kosovo, despite its illegality. While earlier literature about international intervention saw the

Security Council as the guarantor of humanitarian values, literature about the Kosovo intervention has begun to locate those values in a more amorphous 'international community'. The conviction about the need for intervention expressed in Post-Cold War legal literature has mirrored the arguments made by European and US political leaders justifying international intervention. (Orford, 1999, p.680)

"It is noteworthy that in Kosovo -and virtually every other case of so-called humanitarian intervention- states were reluctant to justify their actions in legal terms. In particular, states chose not to articulate a legal argument that might be used by other states to justify other interventions. In relation to Kosovo, for example, the German government atypically used the phrase "humanitarian intervention" but emphasized that Operation Allied Force should not be a precedent for further action. US Secretary of State Madeleine Albright stressed that the air strikes were a "unique situation *sui generis* in the region of the Balkans." British Prime Minister Tony Blair retreated from his initial enthusiasm for the intervention to emphasize the exceptional nature of the air campaign." (Chesterman, 2011, p.6)

Kosovo and Bosnia interventions were not under the exact authorization of United Nations Charter directly. There had been some comments which mention that "Kosovo intervention is an apparent violation of the Charter of United Nations and international law rules which govern resort to the use of force. Kosovo also raised questions about the way NATO conducted the bombing" (Bilder, 1999, p.167) and the character of the intervention whether it was humanitarian intervention or not inherently.

Presumably a humanitarian intervention, even it legally and morally justified, should be conducted in humanitarian way and solely to achieve its humanitarian purpose. But, as the Kosovo bombing campaign lengthened, many people were increasingly troubled in this respect. Thus, by June 6, 1999 when bombing stopped NATO had;

- Continuously bombed Yugoslavia and Kosovo for 78 days –more than 11 weeks- using some 1.100 primarily US aircraft which had carried out over 35.000 sorties at a cost to NATO of over 4 billion dollars
- Struck Yugoslavia with over 23.000 bombs and missiles including large numbers of cluster bombs many of which are still unexploded and currently causing civilian deaths and injuries
- According to NATO, killed over 5.000 Yugoslav military and wounded 10.000 more and according to Yugoslavia killed over 1.500 civilians and wounded many more
- According to Yugoslavia, caused some 100 billion dollars in damage to the Yugoslav infrastructure and economy including the widespread destruction of factories, refineries, bridges, roads, railway lines and radio and television stations. (Bilder, 1999, pp.167-8)

There were serious bombings for peace and human rights in both Bosnia and Kosovo. The reason was very humanistic and without this intervention there would

be more serious problems in terms of right to life. But these human right violations could be stopped only with military means. As Richard Bilder argues in his article whether rejecting the new interventionism means that the international community must or should stand helplessly by in the face of genocide or other massive human rights violation, or not? And he gives the answer: "Certainly not! Everyone agrees that we must do something to try to cope with humanitarian disasters. It is clear that the Security Council acting under its Charter VII authority can respond with the full authority of the United Nation's collective weight to such crises." (Bilder, 1999, p.164)

Conclusion

The clash between what is today considered necessary and legitimate and what is permissible under the United Nations Charter framework was highlighted in 1999 with the conflict over Kosovo. Although the military intervention led by NATO lacked formal legal authority in the absence of a United Nations Security Council mandate, the advocates of intervention claimed that the intervention was humanitarian and thereby had a moral legitimacy and reflected the rise of new international norms, not accounted for in the United Nations Charter. (Chandler, 2004, p.59)

Another issue is that; different states may have different motivations and different degrees of humanitarian commitments. For example, European Union members did not have integrated/compatible approach to Balkan conflicts, although they are all against human rights violations. Besides, they were not able to conduct common policy to stop the conflicts and/or interfere to the situation in terms of prevention of human rights violations. There was even no consensus between the European Union members about the strategy which needs to be conducted in the region during the conflicts. It was the United States who had taken initiative and lead to NATO, for conducting intervention in the Bosnia and Kosovo. But it is again the United States who does not take any initiative to stop the human rights violations in Syria nowadays. This shows us that the situation is rather political and the interventions can be used by the big powers as instruments for their interests.

Besides, there has not been created a standard norm for NATO to take decisions about intervention and the decisions are more political than legal. There have been no normative reference point and standard rules for the humanitarian intervention. New interventionism today has not been based on the normative rules, but rather the political will. We can say that today, interventionism is instrumentalized in some respects in consequence of the policies and instruments of the big powers.

It is still the political authority who decides to interfere or not to interfere to the conflicts which contain human rights violations. That is why the dilemma of new interventionism is still an issue of political debates rather than being carried to the legal arena. The legitimacies of the interventions depend on the United Nations Security Council resolutions. But even if there is a Security Council resolution

about the issue (not like in Bosnia and Kosovo interventions) there is still veto mechanism and this subject is still an issue of political sphere.

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