

1.0 CHAPTER ONE: INTRODUCTION

1.1. Introduction.

This study sought to assess the effectiveness of International Humanitarian Law (IHL) in cases of military interventions. This chapter provides a general introduction to this research. In order to achieve this, the chapter consist of the background to the study which shows the historical relationship that exists between the concept of military intervention and International Humanitarian Law (IHL). The research objectives and the research questions are also contained in this chapter. This provided the researcher with the direction to take when undertaking this research. The chapter contains again the hypothesis which is the theoretical assumption against which the research was carried out. The justification of the study contained herein gives a chain of the reasons why this research was carried out while the methodology section provides with the data gathering and data analysis methods used by the researcher. The delimitations contained herein draws a non disputable boundary between what this research sought to cover and what it didn't. The last part of the chapter shows the limitations which are the challenges faced by the researcher during the course of the study as well as the ways used by the researcher to reduce the impact of these limitations on the research.

1.2. Background to the Study

Military conflicts, although bringing undesired outcomes to both the winner and the loser have become a reality of world politics to the extent that its occurrence cannot be ruled out. To this end, chapter seven of the United Nations (UN) charter authorises the use of force as a means of settling disputes. In as much as it may be impossible to avoid military conflicts, International Law (IL) provides for the rules that regulate the conduct of war with the aim of minimising the losses to property and life that can be suffered during war times.

Wieruszewski (1989: 447) defines International Humanitarian Law (IHL) as law whose aim is, “ensuring at least a minimum of protection to the victims” of armed conflicts. From this, it can be noted that IHL is not law prohibiting armed conflicts but rather, regulating the conduct of such hostilities. The aim therefore of IHL is to ensure that humanitarian considerations are considered in every armed conflict (Wei, 1989: 383). To date, there are a number of conventions, draft codes, resolutions and declarations approved by the United Nations General Assembly (UNGA) with regards to issues of humanity in times of war. These include, but are not limited to the 1864 Geneva Convention, The Hague Peace Conference of 1899 and 1907, the Geneva Conventions of 1949 and the Additional Protocols of 1977 (Wieruszewski 1989: 447).

To ensure the objectives of IHL are achieved, Customary International Humanitarian Law (CIHL) is made up of six principles which are; the principle of distinction; specifically protected persons and objects; specific methods of warfare; weapons; treatment of civilians and persons *hors de combat* and implementation (ICRC 2012). The principles show that IHL is not concerned about the legality or the basis upon which a war can occur but the way by which the armed conflict is conducted. The provisions of IHL give a clear manifestation of the contemporary shift in IL from focussing on states to focussing on individuals and from focusing on international conflicts to focussing on both international and national conflicts. Thus IHL covers issues regarding states, individuals as well as internal and international conflicts (Wieruszewski, 1989: 447).

The UN, through its Charter, states that it is determined to

save succeeding generations from the scourge of war, reaffirming faith in fundamental human rights, establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.

The United Nations Security Council (UNSC) may thus authorise military interventions if such an intervention will help to serve for peace. Chapter VII of the

UN Charter provides for the “Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.” Article 41 of the Charter provides for the use of sanctions while Article 42 specifically authorises military intervention as a measure which can be taken to give effect to the decisions of UN. Article 42 of the UN Charter provides that;

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Chapter XIII of the UN charter provides for the formation and conditions of operation of regional organisations. The regional organisations are, as specified on Article 52(1) of the UN charter, “...agencies for dealing with such matters relating to the maintenance of international peace and security...” while article 53.1 of the UN charter provides that the UNSC may utilise these regional organisations for enforcement action. Article 52(2) of the same charter emphasise on the use of pacific means to achieve these objectives. The North Atlantic Treaty Organisation (NATO) is one such regional organisation which was formed in 1949 following the signing of the North Atlantic Treaty in Washington DC on the 4th of April (NATO *formation, membership and purpose*. [Online]. Available at: http://www.johndclare.net/cold_war9_NATO.htm [accessed: 15 February 2013]. The main aim of NATO as a regional organisation is to “unite their efforts for collective defence and for the preservation of peace and security”. The organisation is therefore concerned with the security issues of the member states. Having been formed with a membership of 12 countries, the membership of NATO has risen to 28 with more nation states joining in as shown on table one.

Table One

NATO members and their dates of joining the regional organisation

country	Date of accession
Albania	01 April 2009
Belgium	04 April 1949
Bulgaria	12 March 1999
Canada	04 April 1949
Croatia	01 April 2009
Czech Republic	12 March 1999
Denmark	04 April 1949
Estonia	12 March 1999
France	04 April 1949
Germany	09 May 1955
Greece	18 February 1952
Hungary	12 March 1999
Iceland	04 April 1949
Italy	04 April 1949
Latvia	29 March 2004
Lithuania	29 March 2004
Luxemburg	04 April 1949
Netherlands	04 April 1949
Norway	04 April 1949
Poland	12 March 1999
Portugal	04 April 1949

Romania	29 March 2004
Slovakia	29 March 2004
Slovenia	29 March 2004
Spain	13 May 1982
Turkey	18 February 1952
United Kingdom (UK)	04 April 1949
United States of America (USA)	04 April 1949

(Ibid.)

This research sought to assess the effectiveness of IHL in cases of authorised military interventions. To achieve this goal, the assessment was done in light of the experiences in the former Federal Republic of Yugoslavia (FRY) in which NATO intervened militarily to stop the Serbs’ “xenophobic propaganda” (Drapac 2001: 325) which caused the “worst atrocities in Europe since the Nazi era”(Ibid: 324). A peace keeping force and an interim administration for Kosovo were established by the provision of United Nations Security Council Resolution (UNSCR) 1244. The UNSCR 2144 of June 1999 provides in its paragraph seven that “Member States and relevant international organizations to establish the international security presence in Kosovo”. The study also mirror the means and methods of warfare as well as the weaponry used by NATO in this military intercourse to see the extent to which NATO did adhere to the principles of humanity when it was in Kosovo.

1.3. Objectives of the Study

- To identify and assess the available international mechanism to ensure that forces taking part in humanitarian military intervention do abide with IHL.
- To critically examine the conduct of military forces participating in operations in light of IHL.
- To assess the effects of military interventions on the host nation.

- To come up with recommendations that will influence future military interventions to increase the safety of those not or no longer participating in the hostilities.

1.4. Research Questions

- What are the methods and ways used by the international community to make sure humanitarian forces in military intervention do abide with IHL?
- What efforts were put in place by NATO to minimise civilian death toll in the 1999 Operation Allied Force (OAF)?
- What were the effects of the 1999 intervention on FRY?
- What can be done in future to make sure military interventions are conducted in a manner that does not violate the objectives of IHL?

1.5. Hypothesis

IHL seeks to protect those who are not or are no longer actively participating in a military conflict. The realisation of this objective of IHL in cases of military intervention is very difficult considering the nature of the intervention.

1.6. Justification of the Study

This is a purely academic research which was carried out in partial fulfilment of the requirements of the degree of Master of Science in International Relations with the University of Zimbabwe (UZ) department of Political and Administrative Studies. There is however a number of related reasons justifying the completion of this study.

It is again expected to add value to my intellectual capacity through enhancement of my research skills and abilities.

The research is also intended to provide information that will influence the policy makers and the decisions by the executive arm of government in the ministries such as Ministry of Home Affairs (MoHA), Ministry of Foreign Affairs (MoFA), Ministry of Regional Integration (MoRI) and Ministry of Defence (MoD) among other ministries.

International organizations such as the ICRC, Human Rights Watch (HRW), Amnesty International (AI), International Organization for Migration (IOM) and other Specialised UN agencies are expected to obtain useful information through this research.

Findings of the research are also to add knowledge and improve the analysis given on the concept of IHL and Military Interventions in general and provide specifically a better understanding of these concepts with regard to the experiences in the former FRY after the intervention by NATO.

1.7. Methodology

The research is a case study. Information used was therefore case specific and thus there was greater need to do the best to acquire as much information as possible. The researcher used the literature obtainable such as text books, journals and even international and local magazines. Text books were found to be helpful on the part of the conceptual and theoretical information which was available in abundance in law text books.

The researcher also made use of the e-sources available to strengthen the assessment. The internet provided the current debates on the issue of Kosovo and as well the evolving IHL. It also helped the researcher to get access to comments and views by other intellectuals world over hence reinforcing the assessment.

Research findings and reports by other organizations such as the Amnesty international dealing with the legality of the procedures followed in the conduct of war and the ICRC as well as HRW were used. Informal discussions with personnel from the Zimbabwean MoFA and the Zimbabwe Republic Police (ZRP) were found useful since Zimbabwe participated in Kosovo as part of the UN-Peace Keeping Forces.

The researcher also made use of key informant questionnaires with respondents being obtained from Zimbabwe Defence Forces (ZDF), ZRP, tertiary education students, International Labour Organisation (ILO) and ministry of Social welfare staff members and members of the corporate world.

The researcher had therefore to cross referee the sources so as ensure effective data validation as a way of obtaining objective information.

1.8. Delimitations

The research was concerned with the humanitarian situation during and after the intervention. It was concerned about the weapons and the military strategies used by NATO and the humanitarian situation during the period referred to. The research covers The Hague and the Geneva Law provisions. The study was limited to the situation in the area covered by the NATO bombing and were covered by UN resolution 1244. The humanitarian situation in some parts of Kosovo not influenced by the NATO's presence in Kosovo fell outside the scope of this study. Again, the study was not concerned about the legality of the presence of NATO in the country of concern as this is out of the *jus in bello*, a central principle in this study.

1.9. Limitations

The research was prone to a number of limitations but the researcher had to do the best possible to limit these limitations. Considering the nature of the research, the researcher found a challenge of finance for travelling to organizations and people that were expected to provide information. Money was needed for issues as printing required documents, accessing internet and for telephoning. The researcher had to screen the sources to remain with the most useful that could fit in the budget without compromising the quality of the work.

The researcher also expected to face a challenge of denial of access to other crucial organizations and persons. The researcher had to work with formal appointments while at the same time making use of informal discussions to obtain an insight on the matter under study.

The researcher also required access to sensitive information which some organisations were not willing to disclose. The researcher had to consult the widest range of sources so that there could be alternatives in such cases. The researcher also capitalised on explaining the aim of the research properly to the expected respondents so as to get acceptance.

2.0 CHAPTER TWO: THEORETICAL FRAMEWORK AND LITERATURE REVIEW

2.1. Introduction

This chapter contains the theoretical framework and the literature review to the study. The former gives a detailed description of the concept of International Humanitarian Law (IHL) and the concept of military intervention. The chapter shows the relationship that exists between these two concepts. The latter gives light on the findings by other researchers on related areas. The literature review covers much on researches covering the concepts of IHL and military interventions. Again, the researcher did the best possible to consider those researches carried out with the case of Federal Republic of Yugoslavia (FRY) as a case so as to shed more light on the area under study.

2.2. Theoretical Framework

The concepts making up the framework for this research are the concept of IHL and the concept of military intervention. IHL is defined by McCoubrey (1990: 01) as the “branch of the laws of armed conflict which is concerned with the protection of the victims of armed conflicts.” IHL is therefore derived from the concept of *jus in bello*, which makes provision for the legal regime applicable during an armed conflict (Ibid.). The aim of IHL is, “ensuring at least a minimum of protection to the victims of these situations...” (Wieruszewski 1989: 447). This therefore means that the concept is not concerned with the legality of the armed conflict but the conduct of such hostilities.

Historically, IHL is traced back to the experience and works of Henri Dunant, a Swiss citizen who was, “appalled by the large numbers of the wounded left to die on the battlefield for want of medical attention” at the battle of Solferino in 1859 (McCoubrey 1990: 06). Dunant is believed to have started the humanitarian mission after having realised that in battlefields, many were dying mainly because they were not cared for as they were left to die without even receiving the basic medical attention. It was from

the efforts of this Swiss citizen that the International Committee of the Red Cross (ICRC) was formed courtesy of the Geneva Public Welfare Society (GPWS). More to this, the philosophical influence of St Augustine and St Thomas Aquinas on the *bellum justum* also influenced the development of IHL (Ibid. 07). Although the works of these two theorists covered a broader ground to include the *jus ad bellum*, (legality) and the *jus in bello*, IHL as it is considered in this study will link much with one of St Thomas Aquinas' criteria for a just war, "limitation of action to the satisfaction of the original cause without pursuit of excess" (Ibid. 08). The research in this regard considered the aim of military intervention to assess the objectivity of the means and methods employed in war.

Kwakwa (1992: 01) notes that in its traditional scope, the law of war did consist of the "law of Geneva" governing the treatment of military personnel placed *hors de combat* and persons not taking part in hostilities and the "law of the Hague" governing the choice of the means of harming the adversary. This distinction was not considered theoretically valid in this research for they were considered to jointly impinge on 'humanitarian' concerns (McCoubrey 1990: 02). The subject matter making up this study therefore include, from the Geneva Law point of view, the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the field (Ibid. 11); 1907, 1929 and the 1949 Geneva Conventions and the 1977 and 2005 Additional Protocols (ICRC 2012). On the part of the Hague law of the IHL, the study considered among other agreements the 1868 Declaration of St Petersburg outlawing the use of projectiles in war times (Wei 1989: 375), the 1929 Geneva Convention prohibiting Gaseous, Poisonous and asphyxiating Weapons (McCoubrey 1990: 15), the 1981 United Nations (UN) convention on the use of certain conventional weapons which are unpredictable to x-ray when logged in the body (Ibid.). Some other multilateral agreements such as the nuclear Non-Proliferation Treaty (NTP) were also considered for the purpose of this study.

Akehurst (1982: 202) notes that states, as members of the UN are, according to Article 2(3) of the UN charter, obliged to "settle their international disputes by peaceful means

in such a manner that international peace and security, and justice, are not endangered". The problems and challenges faced in trying to settle disputes in a peaceful manner in international law as provided for in Article 2(3) of the UN charter normally leads to the application of the concept of military intervention. Beyond the use of peaceful means to settle disputes, Article 41 of the UN charter provides for the use of sanctions as a measure to use to enforce the decisions by the United Nations General Assembly (UNGA) or the United Nations Security Council (UNSC). Article 42 of the UN charter specifically authorises military intervention as a measure which can be employed to give effect to its decisions. Article 42 of the UN charter provides that the UNSC "may take such action by air, sea, or land forces..." This provision therefore authorises the action of military intervention. For the purpose of this study, the legality of the concept was not considered crucial. What was important to this researcher was the assessment of the effectiveness of the concept of IHL discussed above in cases of military interventions.

2.3. Literature Review

Several authors and researchers have dedicated their time to researching and writing on the issues included in this research. Issues relating to IHL have covered a wider ground especially after the Cold War which, according to Rodrick (1994: 98), was characterized with a chain of internal conflicts. Authors have written extensively on IHL which, according to Pardon (2005: 34), seeks to protect those who are no longer or are not actively participating in an international military conflict. Following the 1999 Kosovo military intervention by North Atlantic Treaty Organisation (NATO), various authors and researchers reported on issues such as women's rights, human rights, legality of NATO's intervention, effect of the intervention on the regional peace and security among other issues. This research however differed in a number of aspects with these researchers as it aimed at assessing the effectiveness of IHL in cases of military interventions with particular reference to the case of former FRY.

Traditionally, the international system, influenced by the treaty of Westphalia, did not recognise the individual person as an actor in international relations. Wieruszewski (1989: 441) notes that only sovereign states were recognised as “bearers of rights and duties” in International Law (IL). In this study, the author shows that the Geneva Convention of 1864 as well as the Hague Peace Conference (HPC) of 1899 and 1907 has recognised the individual as the beneficiary of state obligation (Ibid). The research also shows that there is much specification on the position of the IHL with regard to the individual with particular reference to provisions such as Article III and IV of the 1949 Geneva Convention on the protection of the prisoners of war and the civilian person respectively (Wei 1989: 377). Although there are variations between the proposed research and the works by Wieruszewski, the research findings brings to light a crucial revelation in the field of IHL where the victims of war, particularly the prisoners of war find it difficult to access their rights such as the right to “make request to the military authorities regarding the conditions of captivity” as provided for in Article 78 of the Geneva convention III of 1949 (ICRC 2012). The current study however considered this aspect as well but looking at it in times of military intervention with reference to the Kosovo case.

McCoubrey (1990: 02) argue that although the Geneva and the Hague Laws are distinguished, with the former referred to as the humanitarian law and the latter referred to as the law governing the means and choice of the methods used in armed conflict, both laws impinge upon ‘humanitarian’ concerns. In light of this argument, Wei (1989: 375) argues that the employment of some of the means and arms in times of war is in contradiction with the laws of humanity and that the aim of IHL is to “balance the necessities of war and the requirements of humanity”. Article 22 of the 1907 Hague convention on land warfare provides that “the right of belligerents to adopt means of injuring the adversary is not unlimited” (Ibid. 376). Critically looking at this provision and other provisions such as the restrictions on the use of asphyxiating, poisonous or other gases and bacteriological warfare (1925 Geneva Gas Protocol), it can be argued that the general aim of the Hague Laws is to “ensure at least a minimum of protection to the victims of these situations” (Wieruszewski 1989: 447).

This literature obviously influenced the current study as the researcher took the broader and modern definition of IHL which combine both Hague and Geneva law.

While this research focussed on assessing the effectiveness of IHL in cases of military interventions, Mertus (2001: 21) assessed the circumstances and ways in which civil and military peace building efforts by the international community may positively nature human rights norms. The main aim of this research was to obtain the views of human rights activists in countries where interventions have taken place. The research was thus concerned about the effects of military interventions on civil society as well as assessing the roles of local Non Governmental Organisations (NGO) before and after the arrival of foreign troops.

Samantha (2010: 236) analysed the doctrine of humanitarian intervention and its impact on women in recipient states, particularly with regard to sexual violence. The author, who used the case of Kosovo following the NATO intervention, presents a challenge to the 'feminist hawks' who have called for military intervention in situations of systematic sexual violence. From this point of view humanitarian interventions are at times counterproductive for women's rights and thus constitute a disproportionate response to sexual violence in terms of the international law governing the use of force (Ibid).

The presents of peace keeping forces in troubled areas has also been associated with an increase in human trafficking and related abuses. Smith and Cuesta (2010: 287) assessed the role of peace keeping forces in the formation of human trafficking networks. The research which used reference of the experiences in Kosovo, Haiti and Sierra Leone shows that in times of military intervention, there is generally a sharp increase in human trafficking and sexual abuses (Ibid). For instance, in the case of Kosovo, a total of 114 peacekeepers were expelled by UN after they were found guilty of paying for sex (Smith and Cuesta 2010: 296, Smith and Smith 2010). To add on, Smith and Smith (2010: 07) note that in 2004, the United Nations Mission in Kosovo United Nations Mission in Kosovo (UNMIK)'s Trafficking and Prostitution Investigation Unit (TPIU) made a total of 77 arrests conducted 2,386 raids and assisted

48 victims of human trafficking. The presence of the peacekeeping forces have therefore, in most parts of Bosnia been associated with the increase and proximity of brothels near the barracks (Mendelson 2005: 10). Human trafficking and sexual violence has therefore become a renowned effect of the UN peace keeping forces in Kosovo. This, though crucial and being part of this present research, was not the core issue at hand as the present research was concerned about the extent to which the presence of the UN forces was of any positive significance to the humanitarian situation in Kosovo.

Impunity is again one of the main problems faced by the international community when it comes to dealing with violators of IHL. AI assessed the effectiveness of the EU-led Rule of Law mission in Kosovo (EULEX) in dealing with the challenge of impunity in Kosovo (AI 2012: 03). There is a lot, therefore, that needs to be done in this regard as the majority of Serb military forces, police, and paramilitary forces responsible for the war crimes against Kosovo Albanians were not brought to justice (Ibid). AI in this report suggested a number of changes to be incorporated in the EULEX mandate in Kosovo so as to avoid the challenges faced by its predecessor, the UNMIK. In the era of the latter, AI (2006: 10) note that impunity for crimes involving rape and other forms of gender violence continued with only six cases of war crimes having been brought to court by 2002 (Ibid. 11). The 2012 AI recommendations included the observation that EULEX inherited 1,187 war crime cases which has not been investigated by UNMIK which had only completed 40 cases since 1999 (AI 2012: 18). From this, AI concluded that the UNMIK had failed to prosecute the perpetrators of violence in a case that left 13, 000 people killed and 3, 600 displaced (Ibid). This research did however focus mainly on the works by the UNMIK and the EULEX with the main aim of influencing the mandate of the EULEX in the 2012 to 2014 presence in Kosovo while the present research was broader in its scope on this matter.

2.4. Conclusion

Theoretically, the two concepts seeks to protect the ordinary people in times of conflict but the problem is that by using military means to settle international disputes, there are high chances that the situation may escalate if the laws governing the conduct of war are not effectively implemented. The current research assessed the effectiveness of such intervention in light of IHL. The literature review in this chapter shows clearly that the majority of the researches carried out in areas of military interventions identify a number of challenges faced by the institutions involved as well as the individual people in these areas. Although the researches referred to in this chapter had different aims and objectives to those of this research, it is imperative to note that they all show that the presents of military force in any given situation negatively affect the host society in one way or the other.

3.0 CHAPTER THREE: INTERNATIONAL HUMANITARIAN LAW (IHL) AND MILITARY INTERVENTION.

3.1. Introduction

From 24 March to 10 June 1999 the North Atlantic Treaty Organization (NATO) conducted an air campaign against the FRY, codenamed Operation Allied Force (OAF). NATO aircraft conducted over 38,000 combat sorties, including 10,484 strike sorties, against targets in the provinces of Kosovo and Vojvodina, Serbia proper and the Republic of Montenegro AI (2000: 01). NATO only lost two aircraft in this operation of which the pilots were recovered (Fenrick 2001: 489). During the bombing campaign by the humanitarian intervening force, it can be argued that IHL was violated in many ways beyond the expectation of many. This is so because the number of civilians who lost their lives during this operation, 400 to 500 civilians (AI 2000:01), can be regarded as being disproportional. At the end of the bombing campaign, the United Nations Security Council Resolution (UNSCR) 1244 of 10 June 1999 led to the deployment of peace keeping forces which latter remained in FRY. Some international and nongovernmental organisations worked in this region too to provide humanitarian assistance in various ways. This chapter sought to assess the means and methods of warfare used by NATO forces when in FRY. To achieve this, the chapter gives a background to the 1999 Operation Allied Force (OAF) before assessing the conduct of NATO forces in the selected cases of NATO bombings.

3.2. IHL and the Military Intervention in Federal Republic of Yugoslavia (FRY).

3.2.1 Background to the 1999 Military Intervention.

The international conflict occurring in 1999 involving the FRY forces and Serbian police on one side against NATO can be argued to be a non international conflict which later evolved to become a dual conflict consisting of the non international conflict which was fought simultaneously with an international conflict. The former aspect of the conflict was characterised by the military confrontation between the FRY forces and the Serb police fighting against the

Kosovo Liberation Army (KLA) and other organised Kosovo Albanian military pockets while the latter refers to the military confrontation between the FRY forces and the Serb police fighting NATO forces (AI 2012: 07). Although the conflict took this dual shape between March and June 1999, the roots of the conflict are much longer than this period as it can be referred back to as early as 1989, a decade before the NATO bombings (Ibid).

The main bone of contention leading to the 1999 military intercourse in FRY was mainly on the question to do with the independence of Kosovo. The province of Kosovo happened to be part of Serbia which by 1999, the year when the international military conflict occurred was part of the FRY (Ibid). Kosovo was made up of only 5% Kosovo Serbs with the majority being Kosovo Albanians (Burwitz 2009: 01). There were however other smaller minority groups including Roma, Ashkali and Egyptians, Turks, Bosniaks and Gorani (AI 2012: 07). Historically the province of Kosovo was recognised as an independent province until 1989 when the Serbian authorities revoked this status of Kosovo and considered it part of the Serbian republic (Ibid). In 1991, following a referendum which was boycotted and never recognized by the Kosovo Serbs and the FRY respectively, Kosovo declared itself independent. In response to this move, Serbia and FRY embarked on a massive human rights violation which was orchestrated against the Albanian population for the next decade. The intensification of these violations, it can be argued, later lead to the birth of the KLA which was the main military group to fight for the liberation of Kosovo. Fig 1 shows the geographical map of the Federal Republic of Yugoslavia by 1999.

fig One. The geographical map of FRY by 1999



<http://upload.wikimedia.org/wikipedia/commons/9/91/FRYugoMap2k.jpg> [Online] accessed on: 23 December 2012)

In March 1998, a non international conflict had erupted between the KLA and other independent Kosovo groups against the FRY forces, Serb police and paramilitary groups (Ibid). The indiscriminate attack on the Kosovo Albanian civilian population by FRY forces and Serbian police as well as the paramilitary groups created a situation of socio-political insecurity as an estimated 60 000 ethnic Albanians had fled their homes or had been forced to leave their homes between March 1998 and June of the same year (Ibid). (Burwitz 2009: 01) note that, “Serbian authorities were reported to exercise human rights violations in a massive scale against the majority Kosovo Albanian population”. The international community’s efforts to foster a peaceful settlement between the conflicting parties in the FRY failed to bear fruit. AI (2012: 07) notes that the resort to use of force by NATO only came after the failure of talks in early 1999 at Rambouillet in France, which “sought agreement between the FRY and representatives of Kosovo’s ethnic Albanians”. The intervention by NATO did not however bring the desired political weather instantly as the situation even became worse than before. Human rights violations by the FRY force, the Serb police and the paramilitary groups intensified during the NATO bombings causing as many as 9000 men, women and children of mainly Albanian civilians to be killed while women and girls were being raped with villages shelled and houses burnt (Ibid).

3.2.2. NATOs Bombing and the Protection of Non-Combatants.

The laws regulating the conduct of an armed conflict basically prohibit the striking of the civilian population and civilian objects by obliging parties to a conflict to direct their operations against military objects. Lawful targets include therefore, according to Fanrick (2001:494),

military equipment, economic targets; power sources; industry (war supporting manufacturing, export and import); transportation (equipment, lines of communication, petroleum, oil, and other lubricants necessary for transport); command and controls; geographic; personnel; military and civilians taking part in the hostilities including civilians working in the industry directly related to the war effort.

In addition, Article 52 of the 1977 additional protocol I to the 1949 Geneva Convention in its definition of military objectives considers those objectives which, on the basis of their “nature, location, purpose or use make an effective contribution to the military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at that time, offers a definite military advantage.”

Because of the technicalities and the nature of an armed conflict, collateral injuries to the civilian population and civilian objects can hardly be avoided completely. IHL therefore contains provisions based on this recognition of the nature of a military intercourse, the aim of which being to minimise the collateral damage in every conflict. Article 57(2)(ii) and (iii) of the 1977 additional protocol oblige parties to a conflict to, “take all feasible precautions in the choice of means and methods of attack with a view of avoiding, and in any event to minimising incidental loss of civilians”. Article 57(2) of the 1977 Protocol I additional to the 1949 Geneva Conventions requires parties to a conflict with to stop any attack that may cause the death of civilians or the damage of the civilian objects or both which can be considered non-proportional to the anticipated military advantage achieved as a result of such an attack.

Discrimination and proportionality can therefore be argued to be, “the central principles that define the laws of armed conflict” (Gaubatz 1999: 02). While the principle of distinction obliges parties to a conflict to refrain from attacking the civilian population and civilian objectives, the law of armed conflict recognises the principle of double-effect allowing the injure of civilians and civilian objects only if they are occurring as a by-product of an attack on a legitimate military target. Collateral damage should however remain, “proportional to the right goals being pursued” (Ibid). From this, it can be argued that in the event that objects of double-effect are attacked and probably civilian population is affected, the effect should be proportional.

In order to understand the conduct of NATO in the OAF against FRY in light of the IHL, it is imperative to assess the laws of war used by NATO as well as their interpretation, the means and methods used to select targets, the rules of engagement followed by the NATO forces, precautionary measures taken before launching the various attacks, the use of specific weapons and the intelligence as it was used to ensure the respect of the principle of distinction. To achieve this objective, some selected cases of NATO bombings were analysed to see the extent to which the operation was carried in accordance with the provisions of IHL listed above. Of the selected

cases, cases of related circumstances were analysed together so as to enable a flowing analysis on related situations occurring in different places at different times but carried out by NATO.

3.2.2.1. Attacks on Grdelica Railroad Bridge (12 April 1999), a Bridge in Lužane (01 May 1999) and Varvarin Bridge (30 May 1999).

The three incidents discussed in this section have a lot in common although they occurred in different areas and at different times. The three incidents involve the attack on communication infrastructure making them, from a general perspective, some military objectives considering the definition of lawful targets that includes "... transportation (equipment, lines of communication, petroleum, oil, and other lubricants necessary for transport)..." Fanrick (2001: 494). Although some of these attacks may have been legal military targets, it is important to assess the extent to which the execution of the military attack in these cases did not result in the collateral damage exceeding the military advantage perused by the forces.

On the 12th of April 1999, NATO forces attacked the railroad bridge in question and 'incidentally' killed 10 civilians after the dual bombing incidents attacked a passenger train (Borch 2003:69). The bridge, which was used as a resupply route for Serb forces in Kosovo was arguably considered a legitimate military target. On the 1st of May, a similar attack occurred when the NATO warplanes bombarded the Luzane Bridge around midday. Again, the bridge was, just like the railroad bridge attacked earlier on the 12th of April, considered a legitimate military target as it was a main supply road between Nis (Serbia) and Pristina (Kosovo) (Borch 2003: 71). AI (2000: 46) note that the strike on the scheduled bus led to the death of about 40 people after half of the bus fell some 60 feet into the riverbank below. The continuation of the air strikes resulted in an ambulance rushing people to a hospital falling victim resulting in one of its medical crews being injured (Ibid). On the 30th of the same month, another similar attack occurred as the NATO forces attacked the Varvarian Bridge in central Serbia at around 1pm (Ibid. 59). The incident which took place in a market place and on a religious holiday led to the death of 11 civilian people and the injury of 40 more (Ibid).

In these three cases OAF's force can be argued to have violated the principles of distinction and proportion by failing to consider a number of factors. Firstly, the attacks shows that the timing by

the NATO forces was scheduled without considering the civilian population likely to fall victim to such attacks, thus were violating the principle of distinction. Borch (2003: 71) notes that the attack on the Lunane Bridge occurred around mid day and a scheduled bus was attacked. AI (2000: 59) alludes that the attack on the Varvarian Bridge in central Serbia took place at about one o'clock in the afternoon on a religious holiday when the streets were full with more than 2000 civilians in the vicinity while AI (2000: 29) provides that the attack on the Grdelica railroad bridge took place around mid day.

The time during which the attacks on stationary objects took place showed that the operation did not take into consideration the obvious effects such timing would have on the civilian population. Firstly there was an option of attacking these bridges during the night when there was a minimum civilian population using these dual objectives. Worse more, the NATO operation showed a great level of negligence when it failed to use its military intelligence to obtain some useful information on its military targets such as the timetables of civilian transport as well as the existence of a public holiday which would obviously gather people in the town. More to this the attackers did not give an effective warning as required by Article 57(2)(c) of the 1977 additional protocol 1 to the 1949 Geneva Convention as giving such a warning was by no means going to jeopardise the effectiveness of the attacks considering that the Serbian authorities could never have moved the bridges in question. For example, Borch (2003: 71) says that the bus hit at Lunane bridge was a scheduled bus while the attack on the Varvarian bridge in central Serbia took place on a religious holiday when the number of civilian in the streets was very high (AI 2000:59). Had NATO carried out its preliminary investigations properly before executing its attacks, it can be argued that different timing could have been opted for only to reduce the civilian carnage. Borch (2003: 72) notes that NATO argued that the FRY government officials were obliged, under Article 58(c) of the 1977 additional protocol 1 of 1949 Geneva Convention to, "take necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations". Failure by the FRY government to protect its civilian population cannot however be used as a justification for the attack on civilian population.

The repeated attacks on civilian objects by NATO pilots in these cases gives the implication that NATO did not play its part the just way. For instance, when an F-15E Strike Eagle of the USA hit the train at the Grdelica at the first time, the pilot and weapons system officer argued that they only realised there was a train on the bridge when it was too late to stop the laser-guided bomb (Borch 2003:69). That being reasonable, IHL provides that operation should be halted once it is realised that there are civilians at danger. The second strike by the pilot on the same targets without proper verification some few minutes later shows that the pilot exercised great negligence by launching the second attack on the bridge and the argument by General Clark commanding the operation on the following day that the pilot, “by striking again was trying to do his job, to take the bridge down” (Ibid), only shows that the pilot only considered his duty of taking the bridge down regardless of the implications such an act would bring on the civilian population.

Questionable again is the height from which the NATO war planes were flying when the attacks were launched. Borch (2003: 69) states that the pilot launched his first laser-guided bomb while still, “many miles” from the target from where he “was not able to put his eyes on the bridge”. It can be noted that the average altitude of fifteen thousand feet from which the NATO pilots were flying made it difficult for these pilots to distinguish between military objectives and noncombatants and their property (Ibid. 71). Article 57(2)(ii) and (iii) of the 1977 additional protocol 1 to the 1949 Geneva Protocol obliges parties to a conflict to, “take all feasible precautions in the choice of means and methods of attack with view of avoiding, and in any event minimising incidental loss of civilians...”. In this regard, flying at that altitude, which later contributed to the increased death toll of the civilians in the NATO attacks violated the provisions of laws of armed conflicts although NATO officials argued that the altitude was chosen so as to ensure the safety of the pilots by avoiding surface-to-air missiles (Borch 2003: 71).

3.2.2.2. Missile Attack on Serbian Radio and Television Station (*Radio Televizija Srbije – RTS*) 23 April 1999

As part of OAF in FRY, NATO warplanes attacked the RTS on the 23rd of April 1999. Unlike other targets attacked by NATO in which the organization accepted that they were not legitimate targets, the missile attack on RTS was an intended attack (Franrick 2001: 495). The attack which

occurred around midnight killed a total of between 10 and 17 civilians who included technicians, security and makeup artist while injuring almost a similar number of civilians (Borch 2003: 73). A total of 120 civilian populations were in the building at the time of attack (AI 2000: 40). It is important to critically analyse the extent to which the target could be considered a military target. Beyond this, there is need to identify the precautionary measures, if they were any, which were used by NATO to minimise civilian carnage.

The question of the legality of the attack on RTS arises from the observation that NATO did “intentionally bomb the RTS” (Voon 2001: 1105). While NATO continued to argue that the RTS was a legitimate target, critiques from organisations such as the AI and Human Rights Watch (HRW) are of great consideration here as they give a clear clarification on the legality of the attack. The position of NATO is clear in AI (2000:41) which states that NATO argued that, “the attack was carried out because RTS was a propaganda organ and that propaganda is direct support for military action”. The then premier of the United Kingdom, Tony Blair in an interview for a British Broadcasting Corporation (BBC) television documentary reflected that the RTS was bombed because of its propaganda which was re-broadcast by the western media, thus decampaigning the operation among the members of the alliance (Ibid).

To respond to the position of NATO with regard to this attack, the 1954 Hague Cultural Property Convention (HCPC) indicates that broadcast stations may be attacked while the International Committee of the Red Cross (ICRC) in a list of military objectives included the installations of broadcasting and television stations provided that they are of fundamental importance (Franrick 2001: 496). The term *may*, in the 1954 HCPC shows that the object is not an ultimate military objective but *may* at times be depending on the situation. The term *provided*, as used by the ICRC may be interpreted to mean that this can only be attacked if it offers a military advantage. Considering the RTS as a military objective on the basis of it being a propaganda tool can be considered as a baseless argument considering the situation prevailing at the time of the attack. The judgement given by the International Military Tribunal (IMT) which acquitted Hans Fritzsche, a senior official in the propaganda ministry of the Third Reich can be used to give clarity on this question (AI 2000: 42). In this case, Franrick (2001: 496) notes that the tribunal held that the strong statements of propaganda made by Fritzsche could not be held as a valid

reason to consider him as having been a participant in the crimes charged as his aim was to arouse popular sentiments in support of Hitler and not the war. From this point, it can be argued that RTS could not be considered as a legitimate military attack on ground of it being a propaganda tool for the Milosovic regime. Consequently, the attack on the RTS was, under IHL, a violation of law. The judgement by the IMT again in the Fritzsche case weaves with the explanation given by the committee of the International Criminal Tribunal for the Former Yugoslavia (ICTY) which cautioned that, “had the station gone beyond broadcasting propaganda and actually urged its listeners to kill Albanian Kosovars or engage in other crimes against humanity, it would have become a legitimate military objective” (Borch 2003: 74). Having said this, it can be argued therefore that the attack on RTS by NATO was a violation of the IHL principle of distinction as the operation intentionally targeted and attacked a civilian objective which, according to Gaubatz (1999: 02) should be completely immune from the effects of military attack.

While incidental injury or collateral damage to civilian and civilian objects cannot be completely avoided, Article 57 of additional protocol 1 to the 1949 Geneva conventions requires that this should be proportional to the military advantage achieved. One of the ways of ensuring that this is achieved is through giving adequate warning to civilians before launching an attack as provided for in Article 57 (2)(c) of additional protocol 1 to the 1949 Geneva convention which provides that parties to a military conflict should give an “effective warning” with regard to any attack that may adversely affect the civilian population or civilian objects or both. On the incident at hand, where the NATO missiles attacked a civilian object intentionally in the presence of 120 civilians (AI 2000: 40), it can be argued that the forces committed a crime against humanity as they failed to give an effective warning to the civilian population who later fell victim of the attack, thus violating the IHL.

The researcher also found that although NATO claimed to have given adequate warning of the attack, the warning claimed by NATO was not as effective as is required by law as it was violated in a number of ways. First and foremost the contradictory nature of the statement issued in the public media by the NATO officials prior to the attack on the 23rd of April is a clear testimony of this ineffectiveness. AI (2000: 44) notes that on the eighth of April 1999, Air Commodore Wilby

stated that NATO had considered RTS a military target as it was used for propaganda and repression. On the same day, General Jean Pierre Kelche, a French armed Force Chief said that NATO was going to, “burst the transmitters and relay stations” as these were considered instruments of propaganda of the Milosevic regime while on the ninth day of the same month Jamie Shea, the NATO spokesperson made it clear that RTS was not among NATO’s military targets (Ibid). Contradictory as it was, NATO surprisingly continued to claim that Belgrade’s failure to warn its civilian population following the warning given earlier on gives the Serbian government the responsibility for the death of the civilian population as provided for in Article 58 of the 1977 additional protocol to the 1949 Geneva Protocol (Borch 2003: 73). Eason Jordan, the president of Cable News Network (CNN) confirmed to have received a warning of the attack well before and was advised to tell the CNN people to avoid the TRS (AI 2000: 45). Although this has been used by NATO officials as evidence of an effective warning having been given concerning the attack, Voon (2001: 1008) rejected the validity of such a warning and provided that:

if NATO warned CNN and/or Yugoslav officials of the attack, it would still arguably fall short of its duty to give ‘effective’ advance warning. The effectiveness of the warning needs to be judged against whether civilians as a group are made aware of the attack, not just western civilians.

This observation shows that NATO fell short of its duty to warn the civilians while at the same time the Serbian government can be held liable as it failed to uphold the provisions of article 58 of 1977 additional protocol 1 to the 1949 Geneva Convention considering the fact that something was said pertaining to the attack of the RTS by NATO and nothing was done by the Serbian government to prevent such an attack from harming the Serbian civilian population.

Article 52(2) provides that a military attack should give a military advantage to the attacker if the attacked object is really a military objective. The military advantage gained by NATO force following the attack on the RTS is also an issue to question in this regard. Authorities such as Bosch (2003: 73), Voon (2001: 1107) and AI (2000: 41) cordially argues that the attack did not give any military advantage required by article 52 of the additional protocol 1 to the 1949 Geneva Conventions. The main reason for this argument is that in some few hours following the attack and the death of so many civilians, the facility was back to operation and to further support that it was not of any military advantage; NATO forces did not re-attack the facility.

In short, it can be argued that the attack of the RTS shows that both the NATO forces as well as the FRY failed to uphold the provisions of the Geneva protocols governing the conduct of hostilities. This therefore shows clearly the extent to which these laws of humanity were violated in the cases of the military intervention in FRY.

3.2.2.3. Market and Hospital Attack at Nis (07 May 1999)

While the NATO attacks had been criticised for failing to respect the principles of distinction, targeting and provision of preliminary precautions in several attacks executed since the beginning of OAF, the attack on the Market and hospital at Nis raises suspicion as to whether NATO was considering the humanitarian aspect of waging a war. The attack, which according to AI (2000: 48) occurred around mid day was characterised by the dropping of cluster bombs in two residential areas of Nis leading to the death of 14 and severe injure of 30 civilians. NATO argued that this was an incidental loss occurring after NATO forces misfired and missed its target of the nearby air field (Ibid).

Although the use of cluster bombs is not prohibited under International Law, Article 51(4) and (5) of additional protocol 1's prohibition of indiscriminate attack can be argued to have been violated by the use of cluster bombs in such a place where civilian residence were highly prone to the attack. The use of this weapon therefore shows clearly that NATO forces had failed to take measures to spare civilians by taking all feasible precautions in the choice of means and methods of attack to avoid or minimise loss of civilian life and refraining from deciding to launch such an attack as provided for in this article. AI (2000: 49) notes that NATO admitted that cluster bombs should be used in aerial targets where it should be known that collateral damage would not occur. The point here is that considering the devastating effects of cluster bombs, it becomes very much difficult to uphold the principles of distinction when the bomb is used in or near a populated area. The attack on the Korisa village seven days latter clearly shows such an effect as a total of 87 civilians lost their lives as collateral damage following the dropping of ten bombs over the village by NATO (Voon 2001: 1110).

The other paramount point to note is the issue of warning civilian population prior to the launching of an attack as a way of minimising or avoiding collateral damage. The principle of distinctions as provided for in Article 51(8) of the additional protocol 1 of 1977 requires that a

party to a conflict do satisfy this requirement before launching an attack if doing so does not jeopardise the operation. In light of this, the attack on the hospital and market place at Nis can arguably be considered as having been launched without this consideration. Firstly, the attack occurred during the mid day time when the streets were full of civilians population which had just left their bomb covers in the morning following the attack on the so-called targeted air fields which occurred around three o'clock in the morning of the same day (AI 2000: 50). Perhaps, the conduct of NATO in this operation testifies to the argument that forces involved in military interventions sometimes act as if they are beyond the reach of IHL (Lustgarten and Debrix 2005: 361).

3.3. Conclusion

In short, it can be argued that, of the so numerous attacks by NATO during its bombing campaign, the force violated in many ways, the laws regulating the conduct of war. The reason for this argument is, as shown above, the conduct of NATO forces with regard to their interpretation of the law, the means and methods used to select targets, the rules of engagement followed by the NATO forces, precautionary measures taken before launching the various attacks, the use of specific weapons and the intelligence as it was used to ensure the respect of the principle of distinction. The cases selected and discussed above are just but a drop out of the pool of similar cases in which the violations occurred.

4.0 CHAPTER FOUR: THE IMPACT OF INTERVENTION ON FRY AND THE ROLE OF NGOs.

4.1 Introduction

Between the 24th of March and the 9th of June 1999, North Atlantic Treaty Organisation (NATO) forces were in the FRY on a serious humanitarian bombing campaign. The campaign which started following the intensification of the systematic cleansing of the ethnic Albanians by the Serbian military and police forces was initiated with 214 American aircraft and an additional 130 aircraft from other NATO members (Allen and Vincent 2010: 03, Borch 2003: 65). During the period, 13 of the 19 NATO members flew more than 38, 000 sorties (Borch 2003: 65, AI 2000: 02), and released 23 600 air munitions against over 900 targets (Borch 2003: 65). Approximately 500 civilians died while around 6000 others were injured in this operation (Voon 2001: 1085). The province of Kosovo and Vojvodina, Serbia proper and Montenegro were the official targets that saw the bombing of air fields, air defence, emplacements; bridges; command control and communication sites; and police and troops barracks (Borch 2003: 65). The operation was only stopped on the 9th of June the same year after NATO and FRY officials had concluded a Military Technical Agreement (MTA) under which the Serb's police and paramilitary groups were to leave Kosovo while the NATO-led military force code-named Kosovo Force (KFOR) took control over Kosovo (AI 2000: 05). The United Nations Mission in Kosovo (UNMIK) was at the same point established to administer the territory with more than 20, 000 peacekeeping force being deployed under the provisions of the 1999 United Nations Security Council Resolution (UNSCR) 1244 (Smith and Cuesta 2012: 287-288). By 2001, there were more than 50 000 peacekeepers under the joint authority of UN and NATO and a civilian force of nearly 2000 (Smith and Smith 2010: 06). This size of the peace keeping force summed up to 2.4% of the population of the area covered (Ibid).

This chapter discusses the impact of the Operation Allied Force (OAF)s in the FRY. It looks again into the impact of a continued presence of the NATO forces during the cease fire period as well as the presents of the UNMIK force which together with NATO force, KFOR continued to stay in the war wracked community for more years after the conflict. The role of the nongovernmental organisations in cases of military interventions is also discussed with particular reference to the International Committee of the Red Cross (ICRC). Although there are a number

of effects in this regard, this paper focuses on a limited number of these factors which are discussed in great depth to show the link that exist between these effects and the NATO/UN presents in FRY. Issues discussed therefore include the issue of human trafficking, human rights as well as socio-economic security.

4.2. Impacts of OAF and UNSCR 1244 on FRY

4.2.1 Human Trafficking

Following the deployment of the UN/NATO peace keeping forces, one of the first noticed adverse effects of the intervention was the increase in crime particularly human trafficking. The process, Smith and Cuesta (2010: 288) defines it as, “the illegal movement of people either willingly or by force from one region to another for illegal purposes”. A difference however can be noted between trafficking and smuggling. While the latter involve the facilitation of border crossing for illegal cross boarders who do not possess travelling documents normally with their consent, the latter is an involuntary movement of people or person from one zone to another in a way coupled with deception and abduction (Ibid. 289). Mendelson (2005: 01) defines human trafficking as being the, “recruitment, harbouring and movement of people through the use of force, fraud, coercion, or deception for the express purpose of enslavement”. Trafficking in person is believed to generate between seven and nine billion American dollars making it the third largest illegal revenue stream in the world (Ibid. 02). This therefore means that human or person or sex trafficking is a serious international crime which, as shown later is influenced with military involvement in foreign land.

While the primary actors in human or sex trafficking may be recruited by force, the main reason behind this illegal activity by those developing and maintaining trafficking networks is to make profit (Smith and Smith 2010: 03; Smith and Cuesta 2010: 289). From this observation, it can be argued that, like any other economic activity, human trafficking is influenced by market forces of demand and supply. The increase or the presents of the KFOR and the UNMIK in the FRY which, according to Smith and Smith (2010: 06) amounted to 2, 4% of the population of Kosovo

can be argued to have influenced these market forces greatly. This observation can be related perhaps with the assumption that, “an increase in demand in the destination country is the primary force explaining the economic and organised crime models of human trafficking” (Smith and Smith 2010: 04). The presents of peacekeeping force in Kosovo can therefore be argued to have increased both the demand for female by soldiers as well as the presents of richer international soldiers who could pay better.

The presents of KFOR and UNMIK, it can be argued, saw a highly increase in the number of cases of human trafficking with Serbia in general and Kosovo in particular showing up as the main destination for both local and international sex trafficking (Mendelson 2005: 09). While both KFOR and UNMIK toed Kosovo in 1999, there is overwhelming evidence showing that the presents of these forces had a great impact on human trafficking. Between 1999 and 2003, the number of exploited women increased dramatically from 18 to over 200 (Smith and Smith 2010: 293). While there was nothing much said about sex trafficking before 1999 in Serbia and Kosovo, Mendelson (2005: 09) shows that the number of women reporting sexual and physical abuse has been on the rise being at 74,5% in 2001 (out of 141 victims); 85,75% in 2002 (out of 92 victims) to 87,27% in 2003 (out of 60 victims). Research by various organizations in the area during this period also confirms the increase in the cases of human/sex trafficking in the area. Smith and Smith (2010: 7-8) shows that of the 35 Amnesty International (AI) different reports on Kosovo and FRY published in 1998, a year before the NATO went into FRY and the UNSCR 1244 was passed, only one report is devoted exclusively to publicizing human rights violations against women in Kosovo but not mentioning anything specific about human trafficking, sexual exploitation or forced labour. This, the author notes, weaves with the trend in the HRW reports which were all silent about the issues of human trafficking and sexual exploitation while focusing of issues of rights violation (Ibid).

Although there are a wide range of cases of human trafficking worldwide, the rise in the number of people involved in the crime during and after the internationalisation of the Kosovo conflict can be argued to have affected this social aspect. The main reason for this was the availability of a large male population which in turn increases demand for sex. Moreover, the fact that most of

these international peacekeeping forces are well paid means that they are generally able to pay for these criminal activities once they get involved.

4.2.2 Human Rights

Another debatable effect of the 1999 humanitarian intervention in Kosovo is the impact that intervention had on the Kosovar community. The issue of human rights remains a critical subject in this regard as it is highly linked to the principles of distinction as well as the principle of proportionality both enshrined in the 1977 additional protocol 1 to the 1949 Geneva conventions. Responding to questions by this researcher, assistant inspector Kadhani of the Zimbabwe Republic Police (ZRP) argued that deployed forces should be trained on human rights and should be constantly monitored to ensure that there is no abuse of women and children. This observation shows that the environment created by the presents of international forces in cases of military intervention may not guarantee the women and children of their safety hence the need to monitor human rights issues. Although people died, with others being internally displaced while others left Kosovo for other European countries, the main question worth asking when it comes to human rights aspect is weather this was proportionally justified considering the prevailing situation.

The conflict, which resulted in 400 to 500 people losing their lives (AI 2000: 01) can be argued to have resulted in the great violation of human rights. Consideration of the situation prevailing prior to the military intervention would tempt one to weigh the loss resulting from the military intervention to that expected had NATO and USA remained aloof. Roberts (1999: 114) argue that, “it may have been better to bring the crisis to a halt than to let it foster on, albeit in a less intense form”. This observation shows that the situation in FRY was a great threat to peace and security to the extent that it was necessary to calculate the opportunity cost associated with intervening than to let the ethnic cleansing go by its own pace. It is crucial to note that when NATO’s bombing campaign started in March 1999, there were as many as, “over 260 000 Internally Displaced Persons (IDP) within Kosovo, over 100 000 IDPs or refugees in the region, and asylum seekers outside the region” ” (Locopino et al, 2001. *A population-Based Assessment*

of Human Rights Abuses Committed Against Ethnic Albanian Refugees From Kosovo. [Online]. Available at:

<http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.91.12.2013> [Accessed: 21 February 2013]. The 1998 Serb atrocities resulted in “mass deportation of more than 800 000 ethnic Albanians from their homeland and the displacement of almost all of the 500 000 to 600 000 individuals who remained in Kosovo (Ibid).

To add, finding of large quantities of dead bodies in mass graves by the investigating committee established by the International Criminal Tribunal for Yugoslavia (ICTY) also shows that there may have been cases of serious human violations in FRY before the march 1999 bombing campaign. For example, Thussu (2000: 350) states that by November 1999, “2 100 bodies had been exhumed ... although it was not clear how many of these had been killed in fighting between the Yugoslav army and the KLA”. With such a background of human rights violation, authors like Roberts (1999: 113) reached the conclusion that if ever human rights violations should be discussed with regard to the case of FRY, it should be centered on the violations that took place before the intervention by NATO. The death of people during the bombing campaign to such authors was, “worth paying for the sake of liberation from Serb rule” (Ibid). The death of people resulting from the NATO bombing can therefore be argued to have been purely incidental and justified under the prevailing situation in the former Federal Republic of Yugoslavia. The deaths were therefore “incidental and proportional to the end desired” (Interview with Dr M. Chinyanganya, Zimbabwe National Defence College, Harare, 8 February 2013).

From this point, it can be argued that, although the humanitarian military intervention can be argued to have involved the violation of human rights, the fact that the intervention takes a military form shows that civilian casualties cannot, technically be avoided completely (Ibid). It is therefore so crucial to note that there is need, in any such case, by any such military force to, do consider the military advantage associated with the intervention.

4.3. International Organisations in Armed Conflicts.

The International Committee of the Red Cross (ICRC) as the founding organisation of the IHL is one of the international organisations that have worked tirelessly in helping to reduce the impact of military intervention on the victim population. Brunner (2005: 10) notes that helping the IDPs is one of the ICRC's major residual responsibilities. In the case of FRY, the ICRC has embarked on a number of programmes and activities before, during and after the March 24 – June 09 1999 NATO bombings in the country. With more than 25% of the population having been living under the poverty level line by 1999 in FRY (Ibid 05), the impact of the NATO bombing in this regard was so severe. It can be argued that the situation obviously worsened as the 1999 NATO bombings did destroy the economy and the industries which were left struggling by the repeated UN economic sanctions of the 1990s. The situation become stiffer over the IDPs who found it difficult to access government assistance such as unemployment benefits especially at this point of time when the majority of them did not poses the documentation needed for eligibility.

In response to this situation, the ICRC replied with a number of economic programs whose main aim was to help the IDP in a difficult economic environment which included such categories as the children, women and the minority groups (Brunner 2005: 10). One of the methods of intervention taken by the ICRC was the Cash Assistant Programme (CAP). The aim of the programme was mainly to assist the IDPs from Kosovo who were living in destitution with an official monthly income below the Minimum Social Security Level (MSSL) (Ibid 14). With this programme, the ICRC, in partnership with the Ministry of Labour and Social Affairs (MoLSA) and the Commissariat for Refugees (CfR) managed to assist a total of 7 500 families in Serbia and Montenegro (Ibid 16).

The ICRC also took the micro-economic initiatives description path to reducing the effects of the conflict to the victim population. The aim of this description was, according to Brunner (2005: 15) to explore alternatives to food aid as a form of assistance to IDPs by providing sustainable forms of economic support. The first of this type was the grant programs. The main focus of this programme was to provide necessary resources required by a person of specific skills, profession, education and geographical location to use his abilities for a sustainable income. A total of 3 279 households did benefit from this programme in Serbia and Montenegro by 2004 (Brunner 2005: 16). The micro-credit programme was the other micro-economic initiative used by the ICRC. The

fund was a loan scheme which targeted the interprenual IDPs. The programme benefited a total of 416 IDP households between 2001 and 2004 in Montenegro and Serbia (Ibid 16). The third was the vocational training programme which was funded by the ICRC and facilitated through the “people’s universities” and the various institutions of higher learning (Ibid 15).

4.4. Conclusion

The findings contained in this chapter shows that OAF and the subsequent peace-keeping forces in FRY caused a number of socio-economic and political challenges on the part of the citizens of the former FRY. The increased crime rate particularly in human trafficking shows that human security, a crucial aspect of international peace and security, was jeopardised a lot. The chapter shows however that on human rights violations, the operation’s effect was proportional considering the rate at which the Albanians were being persecuted by the Serbian authorities a decade before the operation. On the part of international organisation, the chapter shows that the ICRC played a very crucial role in neutralising the situation by assisting mainly the IDPs. To this end, it can be concluded that these organisations are so much fundamental to complement to efforts by governments to reduce the threat of military interventions on human safety.

5.0 CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1. Introduction

Having looked at various aspects of the International Humanitarian Law (IHL) with particular attention to the conduct of North Atlantic Treaty Organisation (NATO) forces in the Federal Republic of Yugoslavia (FRY), the researcher reached a conclusion based on the findings obtained. The conclusion which is based upon the research findings shows the position of the research with regard to the hypothesis that IHL is compromised in times of military intervention. More to this, this chapter provides an outline of the recommendations which this researcher found to be of value with regard to issues of military intervention in light of the IHL which is the law aiming at protecting the civilians in times of international military conflicts. The main recommendations outlined in this chapter include the issue of resorting to peaceful settlement of conflicts, the centralisation of the authorisation powers for military intervention to the UNSC, ratification by nation states the provisions of the Additional Protocol 1 to the 1949 Geneva Protocols, the issue of regulating the circumstances under which some devastating weapons such as the Depleted Uranium and the Cluster bombs can be used, the formulation of more detailed laws governing the conduct of forces involved in humanitarian interventions and establishment of stricter methods of dealing with the violators of the principles of distinction and discrimination.

5.2. Conclusion

In a nutshell, it can be concluded that there are a number of ways that can be used by the international community to make sure military forces taking part in humanitarian military interventions do abide with the provisions of IHL. Although there are a wide range of such bilateral and multilateral treaties and conventions on the laws and rules regulating the conduct of the military forces in such military intercourse, the provisions of the 1949 Geneva Conventions and the Additional Protocol 1 to the 1949 Geneva Convention is, and should be recognised as the umbrella treaty that covers the majority if not all of the provisions of the Geneva and Hague laws on armed conflicts.

With regard to the conduct of military forces in cases of Military interventions, a lot can be said about the conduct of NATO forces in FRY. It can be noted that although NATO forces entered into FRY to stop human rights violations, the conduct of NATO clearly shows that the force failed greatly to observe the principles of IHL. The death of more than 500 civilian in a military action that claimed none on the part of the attacking NATO force lead to the conclusion that NATO did not take seriously the principles of distinction and proportionality to guide them in choosing the means and methods on the attack. The weapons used such as the cluster bombs and the manner in which they were used all clearly shows that NATO forces ended up aiming at winning the war regardless of the humanitarian consequences such move would have.

Although the intervention by NATO was expected to be a blessing on the part of the suffering Albanian civilians who were said to be suffering in the hands of the FRY authorities the consequences of this intervention prove to be of an adverse effect than that desired. It can be concluded that the interventions worsened the situation of the civilian population in FRY than it did to the military resources rendering the NATO strategy a punishment and decapitation one whose effects were felt by the civilian population and the political leadership. The large number of refugees recorded from FRY following the NATO bombing campaign shows that the country becomes highly unfriendly following the NATO bombing campaign. On the part of human rights, the situation in FRY can be argued to have become serious following the NATO bombing and the deployment of the United Nations (UN) peace keeping force after the passing of United Nations Security Council Resolution (UNSCR) 1244 of June 1999. Cases of human trafficking increased rapidly only to make the zone a centre of criminal activities. The destruction of social amenities and civilian infrastructure such as bridges, roads, radio and television stations as well as hospitals all compromised the life of the people of FRY. More to this, the fact that the NATO forces attacked a wide range of objects including industrial objects means that the economic situation of FRY was jeopardised by this operation only to raise the unemployment and poverty rates of the country in question. NATO bombings in this regard cannot be concluded to have been a successful one if measured against the standards of humanitarian law.

With regard to future similar operations, it can be concluded that a lot need to be done as a way of ensuring that the military interventions do not aim at sparing the military force at the expense of the civilian population. A wide range of recommendations including but not limited to those

incorporated in this paper should be taken into consideration to ensure that humanitarian military interventions are carried with greater efficacy.

5.3. Recommendations

5.3.1 Peaceful Settlement.

International Law (IL) provides for a wide range of peaceful means of settling international disputes which is one of the major recommendations that can be forwarded by this researcher. Chapter VI of the UN charter provides for the peaceful settlement of international disputes. Article 33(1) of the UN charter provides that,

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

This article shows that there is a lot that can be done by nations failing to reach an agreement than to resort to war. Use of force is therefore, as noticed by Kyle (2012: 07), “an indicative of the sad failure of non-violent strategies to attract the attention of states, the case with which states violates the charter’s prohibition against the use of force”. From this point of view, it can be argued that states should stick to the provisions of UN charter Article 2(4) which obliges member states to, “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations”. Abiding to such provisions can, it can be argued, be a guarantee of the safety of humanity regardless of the chances that mankind may have in terms of protection from the laws regulating the conduct of military hostilities.

Although the aim of military intervention is to protect the civilian population who are found at danger under various circumstances, the law regulating the conduct of such hostilities cannot give the civilian population a firm guarantee of their safety as this is dependent upon a number of factors which include among other things, the choice of strategy opted for by the forces involved.

For example, a party to such a military hostility may opt for the punishment strategy whose aim is to target civilian population as a way of forcing the adversary to surrender (Allan and Vincent 2010: 09). In this regard, it should be noted that the strategies provided for on article four and article 42 of the UN charter should always be considered as really the last option considering the words of wisdom from Clausewitz that, “war is a costly means of resolving conflicts” (Ibid. 06).

The concept of military intervention and the modern Responsibility to Protect doctrine makes the military interference for the purpose of “humanitarian” assistance to sound justified. The latter makes reference to issues as genocide and serious war crimes as a gate pass for military intervention. Chapter VII of the UN charter with specific reference to article 42 gives a picture that justifies military intervention as it points out that,

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

With these and other justifications, the military intervention has proved in many cases including the one used in this case, that the purpose of the soldiers fighting in such cases changes from its central objective as winning becomes the objective at the expense of the humanitarian concern (Kyle 2012: 08). Resorting to the use of force is, for these and many other reasons, discouraged as this researcher feels that there is every benefit in using the peaceful methods to peace settlement than to resort to the use of force.

5.3.2 United Nations Security Council (UNSC) Authorisation of Use of Force

The present researcher also recommends for the authorisation for the use of force by the UNSC and is therefore against the decentralisation of such power to allied forces or regional organisations. This argument is based upon a number of factors including the idea that these allied forces or regional organisation have, in most cases, failed to consider the principles of the *Jus ad bellum* which may be the reason why they fail again to uphold the subsequent *Jus in bellum* which is the issue at hand.

Considering the case of the bombing of the FRY by the NATO force between March and June of 1999, it can be argued that the forces that went on for this particular bombing campaign had their selfish interest which they sake to achieve beyond humanitarian concern. Borch (2003: 65) argues that, “when diplomatic efforts advanced by Germany, France, and Italy did not lead to a negotiated settlement with the president of the FRY, Slobodan Milosevic, the United States and its NATO allies decided that only military action would stop the aggression”. Although the legality of NATO intervention does not lie within the parameters of this research’s knot, the researcher argues that the legality of this intervention plays an important role on the methods of fighting employed during the conduct of the military hostility. Issues to do with distinction as provided for in article 51(8) of the 1977 protocol 1 additional to the 1949 Geneva conventions seem to have become a very big problem during the military intervention by NATO mainly because the NATO forces were at times not agreeing on what they considered to be military targets. For example, the bombing of the RTS on the 23rd of April 1999 by NATO force followed the issuing of highly contradicting positions by different NATO officials with regard to the legality of this object as a military target. The contradicting statements by such people as Commodore Wilby, General Jean Pierra and Jamie Shear prior to this attack can be argued to have brought confusion among the civilians and the Serbian government leading to the death of many as a result of this attack (AI 2000: 44).

From this, it can be argued that had the UNSC passed a resolution before this attack, the issues of distinction might have been discussed from a legal point of view with the humanitarian concern only to reduce the death toll in form of collateral damage. The use of controversial weapons such as depleted uranium and cluster bombs in populated areas might not have been witnessed if the UN force was involved in this military intervention. Although chapter VIII of the UN charter recognises and authorises regional arrangements to implement UN decisions, it is very important to note that failure by these regional organisations to take a word from the UNSC will forever lead to such cases of untold suffering of the civilian population and the mass violation of the IHL. For instance, Wippman (2001: 145) notes that in the case of Sierra Leone and Liberia in which the Economic Community of West African States (ECOWAS) intervened in a more related way like that of NATO in FRY 1999, the group’s Cease-fire Monitoring Group (ECOMOG) ran into serious problems and was itself responsible for grave human rights abuse. The researcher

therefore recommends that the UNSC be the sole authority with regard to the decision to all issues of military interventions.

5.3.3 Ratification of Geneva Conventions and the Additional Protocol.

The researcher also makes recommendation on the aspect of legal frameworks that guide military interventions. Although there are a number of international conventions as well as bilateral and multilateral treaties providing for the laws regulating the conduct of war, it is fundamental to note that the 1977 additional protocol 1 is the chief on the list. During Operation Allied Force (OAF), it is very difficult to identify the standard of in IL which was observed or respected by the member states participating in this bombing campaign (AI 2000: 12). The adherence to the laws of Geneva by the members of the NATO forces become highly questionable as it appear that the main members of the force did not share a common treaty obligation. For example, United States of America (USA), whose aircraft flew nearly 80 per cent of NATO strike-attack sorties during the campaign had not ratified Protocol I, neither had France nor Turkey (Ibid). From this point of view, it can be argued that the death of the civilian population was exaggerated by the problem that some of these nations did not recognize the provisions of the Additional protocol 1 of 1977. Voon (2001: 1113) alludes that NATO must learn from the civilian losses that it imposed in the Kosovo conflict by ensuring that, “all of its member states accede to the Additional Protocol 1”. For this reason, the researcher found it working to recommend for the UN to work hard, through its specialized agencies as well as independent international organizations to lobby for the ratification of the laws regulating the conduct of hostilities not only by NATO members but by all other nations of the world. This, the researcher believe; will enhance the upholding of such rules, laws and regulations in times of military conflicts.

5.3.4 International Law on Armed Conflicts and Specific Weapons.

It is also recommended that the international community should come up with specific laws to govern the conduct of forces involved in humanitarian military intervention so as to minimize or

even prevent the death of civilian population as it is required by Article 57 of Additional Protocol 1 of 1977 to the 1949 Geneva Convention. In this regard, such laws may work to serve the civilian population by specifying on the choice of means and methods of attack as provided for in additional protocol 1 to the 1949 Geneva Convention. Some of the weapons used by NATO in its bombing campaign such as cluster bombs and depleted uranium manifest the need for the development of laws regulating the conduct of war in this regard. Although the use of such weapons as the cluster bombs is not prohibited under IL of armed conflicts, the manner in which they are used should be more specific as failure to do so may compromise the success of such interventions. For example, AI (2000: 50) notes that the attack of 7 May 1999 by NATO targeted an airfield which was “close to residential buildings” only to expose the civilian population to the cluster bombs used.

Considering that the use of cluster bombs is not prohibited under international law governing the conduct of military intercourse, it can be recommended that the use of such weapons be done after providing all feasible precautionary measures as provided for in article 57 of the 1977 additional protocol 1 to the 1949 Geneva Convention by giving an effective warning before launching such an attack. A key informant respondent to this research argued that there is no evidence to show that NATO forces used excessive forces. The number of people dying as a result of the “improper” use of such weapons as the cluster bombs during military attacks should however be monitored greatly. In the case of the 1999 NATO bombing campaign, it can be argued that the death of people in Nis was worsened by the failure, on the part of NATO to give effective warning to the civilians who could have obtained their protection in time. Conditions should therefore be laid more specifically for the use of such weapons so that parties to a conflict can decide on whether to use the weapons and abide by the set standards or avoid using them.

5.3.5 Observation of International Law.

Furthermore, a lot need to be done with regard to the aspect of observing the laws available to govern international military action. For example, it is so disappointing to note that UK, regardless of it having ascended to the 1977 Additional Protocol 1 to the 1949 Geneva Convention continued to drop RBL 755 cluster bombs for nearly a month regardless of the

condemnation of the condition under which the weapon was being used (AI 2000: 52). Such an act by the Royal Air Force (RAF) gives another revelation that the problem may not be limited to the unavailability of the law governing the conduct of forces in military interventions by the failure by the respective parties to observe the laws governing the conduct of such hostilities as it is provided in Article 57 (2)(b) of Additional Protocol 1 of 1977 to the 1949 Geneva Convention that, “an attack shall be cancelled or suspended if it becomes apparent that the objective is not military one or is subject to special protection or that the attack may be expected to cause incidental loss”. Such actions by the parties to international treaties and agreements regulating the conduct of war such as the 1949 Geneva Conventions and the 1977 Additional Protocols shows the great need for development of effective monitoring on the part of implementation. Offenders in this regard should therefore never be let off the hook as this may have a ripple effect and compromise the future military interventions.

5.2.6. Training.

As a way of helping the humanitarian situation in cases of military intervention, there is great need for training on the part of the military forces who will be involved in such interventions. Nation states or international organisations taking part in such intervention should do more to educate the forces of the provisions of the international agreements and protocols on IHL (Interview with Dr M. Chicyanganya at Zimbabwe National Defence College, Harare, 8 February 2013). On the same token, the humanitarian situation can be improved if the local community is educated on human rights, reporting structures and channels of communication. This can be done by ensuring that communication channels are clearly spelt and media coverage is effective (Interview with Mr C. Chrispen, Harare, 15 February 2013). It can be argued that by training the soldiers participating in military intervention, some uninformed decisions are avoided and the effect is that the levels of violations of the law of humanity will be reduced.

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APPENDICES

Appendix One

List of key informant respondents

Name of respondent	Organisation	Contact details
Dr M. Chinyanganya	Zimbabwe National Deffence College (Lecturer International Peace and Security studies.)	263 712 801 961
Livingstone Mhonda	Fountain of Life tertiary college (Deputy principal)	livingstonemhonda@gmail.com 263 775 856 279
Lusuwe Sikhumbuzo	Fountain of Life tertiary college (Administrator)	slusuwe@yahoo.com 263 775 076 108
Ephias Kadhani	Zimbabwe Republic Police-Harare province (Assistant Inspector)	ephiaskadhani@gmail.com 263 773 578 536
Edson Zvavahera	Zimbabwe Republic Police-Harare province (Provincial secretary)	263 775 064 065
Chiro Chrispen	Fountain of Life tertiary college (Principal)	263 773 242 105
Trymore Mukaza	University of Zimbabwe (Bachelor of Arts Student)	
Bruce Chivanda	University of Zimbabwe (Political Science student)	263 773 043 592

Appendix Two

Key informant questionnaire

Research by Mr Pedzisai Sixpence on the topic: An assessment of the Effectiveness of International Humanitarian Law in Cases of Military Intervention: The Case of the Federal Republic of Yugoslavia (UN Resolution 1244). The researcher would want to see the extent to which the military intervention by NATO in the former Federal Republic of Yugoslavia was done within the guidelines of the laws regulating the conduct of war whose aim is to minimise the damage suffered by the non combatants, the wounded and the prisoners of war. To be considered again is the extent to which the international community have managed to deal with the perpetrators of war crimes.

The research is being carried out in partial fulfilment of the degree of MIR MSc in International Relations with the University of Zimbabwe, department of Political and Administrative Studies (POLAD). The information to be obtained will therefore be used for purely academic purposes. The researcher would want to thank you in anticipation for your objective contribution to this study.

Respondent's consent (signature).....

Name of respondent.....

Highest level of education attained

Age/Sex.....

Name of organisation.....

Position.....

Period of service.....

Contact (Number/email).....

1. In what ways does your academic, professional or working experience link you to issues of International Peace and Security and or International Humanitarian Law?
2. Have you ever heard of the UN resolution 1244 and the military intervention by NATO in the former Federal Republic of Yugoslavia in 1990? (tick appropriate)

YES

NO
3. What are the methods and ways which can be used by the international community to ensure that the authorised forces in a military intervention do abide with International Humanitarian Law?
4. Which of these ways referred to above are you aware of having been used in the 1999 intervention in Kosovo?
5. To what extent do you think the NATO forces in FRY managed to abide by the following principles of IHL in Kosovo?
 - Specific methods of warfare
 - Weapons
 - Distinction
 - Treatment of Civilians and persons Hors de Combat
 - Specifically protected persons and objects?
6. Are you aware of any international organisations that took part during the military intervention of Kosovo? Can you identify them and show how these organisations helped in enhancing the humanitarian situation in FRY during and after the presents of the NATO forces.

7. What do you think were the main challenges faced by these organisations in executing their mandate in FRY?
8. Can you comment on the effectiveness of the International Judiciary system in dealing with the war crimes committed during the military intervention in Kosovo?
- 9.a What do you think are the main challenges being faced by the international court system?
- b. What suggestions can be made to solve these challenges?
10. What do you think can be done in future to make sure that military interventions are conducted in a manner that does not violate the objectives of IHL?