

# Public International Law- A Discipline Of Crisis Or A Crisis Of Discipline?

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*Abstract: The research work primarily deals with the relation between the discipline of Public International Law and crisis. Our approach to the project is based on the general prospect of Public International Law according to its records being specified and highlighted only in times of crisis. Our research covers in depth analysis of crisis and international law, connecting the dots to form a valid legal reason and also have our say in describing the nature of Public International Law. This work serves as a future reference with in depth analysis for a more concept based explanation on the legal side of International law and crisis.*

## I. INTRODUCTION

Public International Law is a discipline which is composed of the laws, rules, and principles of general application that deal with the conduct of nation states and international organisations among themselves as well as the relationships between nation states and international organisations with persons, whether natural or juridical. Public International Law is sometimes called the law of nations or just simply International Law. Ever since its inception, the very scope of application for Public International law has been dependent on crisis, be it a poverty crisis, economic crisis, war crisis or human rights violation crisis. The constant relying on crisis has led to questions over its nature- whether it is a discipline of crisis or a crisis of discipline.

The nature of Public International Law has been widely discussed, where several advocates and speakers have debated on its scope of application and definition in terms of crisis.

Through our project our aim is to address the widely discussed debate about the nature of Public International Law and our objective being to present all our research materials in an orderly manner to support our own view of Public International Law being a discipline of crisis. We will also give an emphasis on the nature being that of a crisis of discipline as International law aids in defining a crisis to an extent and establish the necessary facts required to support our

view, with the scope that we can justify and establish our view towards Public International Law being a discipline of crisis.

## II. RESEARCH QUESTIONS

### A. PATRIOT ACT- IS IT A VIOLATION OF INTERNATIONAL HUMAN RIGHTS OR JUSTIFIED AS A LAW FOR PROTECTION OF STATE

#### a. BACKGROUND OF THE PATRIOT ACT

After the 9/11 attacks, in which more than 3000 Americans lost their lives, the Attorney General of USA John Ashcroft proposed changes in the law to improve combat against terrorism. The law known as the Patriot Act, was proposed before the US Congress and was passed on the request of former President George W. Bush. Several proposals were initially objected by the US Congress due to its violation of Civil Liberties, but the events of 9/11 changed the entire stand of the Congress. The USA Patriot Act stands for Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism. The act made changes to certain key acts such as the Foreign Intelligence Surveillance Act 1978, the Electronic Communication Privacy Act 1986, the Money Laundering Control Act 1986, the Bank

Secrecy Act and the Immigration and Nationality Act. It was passed at the US Senate by a margin of 98-1 and was passed at a margin of 357 to 66 by the US House of Representatives. The Act was brought into force on the 26<sup>th</sup> of October 2001, after being signed and approved by President George W Bush and was described as providing new tools for combatting against a present threat unlike no other that the nation of USA has ever faced. The Bush administration had also expressed that the civil liberties guaranteed by the US Constitution would not be violated in any means.

#### b. TITLES OF PATRIOT ACT AND ITS PROVISIONS

The Patriot Act consists of 342 pages and is made up of ten titles with each title having its own provisions for operation and application.

##### Title 1: Enhancing Domestic Security against Terrorism

The Patriot Act defines Domestic Terrorism as any act within the United States which prove danger to human life and is intended to intimidate the population, government policies and the operation of the government by means of force. The US Government authorized measures and new methods to improve the ability of domestic security to handle terrorism. Title 1 consists of six sections:

##### Section 101: Counterterrorism Fund

Section 102: Sense of Congress condemning discrimination against Arab and Muslim Americans

Section 103: Increased funding for the technical support centre at the FBI

Section 104: Requests for military assistance to enforce prohibition in certain emergencies

Section 105: Expansion of National Electronic Crime Task Force initiative

##### Section 106: Presidential authority.

The provisions made under Title 1 were:-

- ✓ The establishment of a counter terrorism fund by the Treasury of the United States without any fiscal limits under Sec 101.
- ✓ Funding for terrorist screening centres which will be operated and administered by the FBI
- ✓ The availability of the army to provide assistance in situations related to weapons of mass destruction upon the request of the Attorney General under Sec 104
- ✓ The protection and safety of Civil rights and Civil liberties of all Arab and Muslim Americans, under the US Constitution as per Sec 102.
- ✓ The establishment of a National Electronic Crime Task Force based on the New York Electronic Crimes Task Force model, to prevent, detect and investigate any form of electronic crimes, including potential terrorist threats and attacks.

##### Title 2: Surveillance Procedures

The second title of the Patriot Act covers the area of Surveillance and modified the existing surveillance procedures which were in place in the US before the 9/11 attacks. Its main purpose was to keep a watch on suspected terrorist activities, suspects of cyber abuse and foreign powers who were involved or engaged in illegal activities. The title amended the Federal Criminal Code and authorized the interception of oral, electronic and wire communication for the purpose of

production as evidence related to terrorist activities and cyber fraud and abuse. Title 2 consists of 25 sections:-

Section 201: Authority to intercept wire, oral and electronic communication related to terrorism

Section 202: Authority to intercept wire, oral and electronic communication related to computer fraud

Section 203: Authority to share criminal investigation information

Section 204: Clarifications of intelligence exceptions from limitations on interception of wire, oral and electronic communication

Section 205: Employment of transistors by the FBI

Section 206: Roving Surveillance authority under the Foreign Intelligence Surveillance Act, 1978

Section 207: Duration of surveillance of non US citizens who are agents of a foreign power

Section 208: Designation of Judges

Section 209: Seizure of voice-mail messages

Section 210: Scope of subpoenas for records of electronic surveillance

Section 211: Clarification of Scope

Section 212: Emergency disclosure of electronic information for protection of life

Section 213: Authority for delaying notice of the execution of a warrant

Section 214: Trap and trace authority under FISA

Section 215: Access to records and other items under the FISA

Section 216: Modification of authorities relating to trap and trace devices

Section 217: Interception of computer trespasser communication

Section 218: Foreign Intelligence Information

Section 219: Single jurisdiction search warrant for terrorism

Section 220: Nationwide service of search warrants

Section 221: Trade Sanctions

Section 222: Assistance to law agencies

Section 223: Civil liability for unauthorized disclosures

Section 224: Sunset

Section 225: Immunity for compliance with FISA wiretap

The US Government granted several provisions under Title 2 with the key one's being:-

The FBI and NSA could intercept any means of communication related to terrorism under Sec 201 of the Title

- ✓ It allowed wiretapping of packet switched networks, including access to emails, messages, mobile communication and call records

- ✓ Under Sec 213 of the Title, the FBI, NSA and security authorities had the right for sneak and peek warrants where the notification of warrants were delayed and the authorities had the right to search without any warrants.

- ✓ The Sunset provision under Sec 224, played a huge role in the Title and the Patriot Act as a whole. Under the Sunset provision several sections under Title 2 of the Act would get terminated after 31<sup>st</sup> of December 2005, and only matters which were under investigation before the mentioned date were given exceptions.

Title 3: Anti Money laundering to Prevent Terrorism

The sole purpose of the Title is to prevent, detect and prosecute any form of money laundering and financing of terrorism. It was formed to increase the strength and capabilities of the USA to deal with money laundering. The title was divided into three sub-titles to deal with different issues under Money Laundering. Subtitle A was formed to counter International Money Laundering and bring up measures to deal with the issue. Under sub title A there are a total of 20 sections, with each section designed and defined to fulfil its purpose. The most significant sections under Sub title A are:

Section 312: Special due diligence for correspondent accounts and private banking accounts.

Section 313: Prohibition of the United States correspondent accounts with foreign shell banks

Section 319: Forfeit of funds in the United States inter bank accounts

Under Sub-title B, the aim was to make amends to the Bank Secrecy Act and enforce further improvements. The amendments to the act modified and revised the requirements for civil liability immunity in which the civilians were supposed to voluntarily disclose their financial institutions and records related to suspicious activities. The sections under sub title B mainly covered strategies (Section 354) and program (Section 352) to counter money laundering. The Title also increased the banks safety and security measures in order to identify and report any suspicious activities related to money laundering (Section 355-Section 359)

Sub-title C of the Title was framed for Currency crimes and Protection. Under this Sub-title, 7 Sections were penned down:-

Section 371: Bulk cash smuggling into or out of the US

Section 372: Forfeit in currency reporting cases

Section 373: Illegal money transmitting business

Section 374: Counterfeiting domestic currency

Section 375: Counterfeiting foreign currency

Section 376: Laundering the proceeds of terrorism

Section 377: Extraterritorial jurisdiction

- ✓ The Title as a whole provides several provisions and amendments to the existing acts in order to prevent money laundering and financing of terrorism. The provisions provided under the title are:
- ✓ The US Treasury was given the responsibility to formulate regulations for having secure information sharing between financial institutions.
- ✓ The banks were authorized to carry out an extensive study on their investment companies.
- ✓ The US Treasury had the authority to block mergers between banks that had a bad history of preventing money laundering.
- ✓ Restrictions of account holders of foreign banks which did not have a physical presence in the US and their operations were restricted.
- ✓ The US treasury were to establish a system which would help banks verify the identity of account holders linked to organizations.

Title 4: Border Protection

This title was intended to provide and increase the protection of US Borders. The title was split into three sub-titles. Sub title A dealt with increasing the protection of the

Northern Border which was a suspected terrorist entry point. Sub title B was framed to improve provisions for immigration and sub title C was formed for the Preservation of Immigration benefits for the victims of terrorism.

Sub-title A authorized the Attorney General of USA to increase Immigration and Naturalisation security (INS) personnel in order to meet the security needs of the Northern Border.

Under Section 402 of sub title A, the Attorney General was authorized to increase the number of Border Patrol Guards, Custom Service officials and INS officials. The provisions under Sec 402 also allotted over \$50 million for improving and increasing border monitoring technology and equipment.

Section 403 of sub title A provides the Border Patrol agencies, INS officials and State agencies with access to FBI's most wanted files in order to determine if a visa applicant had any previous criminal records and also provides confidentiality of information within the State agencies.

Sub-title B of the title provided for Enhanced Immigration Procedures in which the US laws immigration laws are updated to be well equipped to deport any person who is associated with terrorism in any form. Section 411 of the title provides the US government to detain and deport any individual who:-

- ✓ Is associated with any party which endorses terrorism
- ✓ Has used position and influence for aiding terrorist activities
- ✓ Is associated with a terrorist organization which intends to engage in threatening activities
- ✓ Gathers information for possible terrorist targets and activities.

Sub title C of the title provides for Immigration benefits for victims of terrorism. This subtitle provides special immigration benefits for victims of terrorist attacks. After the 9/11 attacks several immigrants and non-residents were affected, due to which the government included several important provisions under subtitle C of Title 4 of the Patriot Act. The provisions included:-

- ✓ An immigrant or non resident who was directly affected by the attack would be granted permanent resident status and employment by the government under Section 422 of the Title
- ✓ Prohibits benefits for terrorists and their family members under Section 427. The Attorney General reserved the power to detain and deport any family member related to terrorists and also decline shelter.

The other titles of the Patriot Act constitute of:-

Title 5: Removing obstacles for tackling terrorism

Title 6: Victims and families of victims of terrorism

Title 7: Increased information sharing for critical infrastructure protection

Title 8: Terrorism Criminal Law

Title 9: Improved Intelligence

Title 10: Miscellaneous

While all the remaining titles have their respective provisions, Title 10 has the most relevant provisions which are in line with the objective of the research. The provisions include:-

- ✓ Review of the Department of Justice under Section 1001

- ✓ Sense of Congress to condemn discrimination against Arabs, Muslims and South Asian Americans under Section 1002
- ✓ Authorization of funds for the DEA under Section 1007
- ✓ Critical Infrastructure Protection under Section 1016.

*c. CRITICISM OF TITLES ACCORDING TO ICCPR, EHRC AND UNHRC*

The United Nations had declared Universal Human Rights in its General Assembly on 10<sup>th</sup> December 1948 and created the United Nations Human Rights Council on 15<sup>th</sup> March 2006 at the General Assembly by resolution 60/251 and it was formed as an Inter government organisation comprising of 47 member nations. The UNHRC is a part of the United Nations and its core purpose is to safeguard and uphold Universal Human rights for all individuals and to address situations involving human rights violation. The council works with all its member nations under the Universal Periodic Review system, while assessing the human rights issues and status in the member nations. It is aided by the Advisory Committee which serves as the thinking organ of the council and is responsible for advising the council on human rights issues and situations. The Complaint Procedure is another useful organ which is responsible for bringing issues of human rights violation to the council through individuals and organisations.

The ICCPR or the International Covenant on Civil and Political Rights is a treaty which was adopted by the United Nations General Assembly on 16<sup>th</sup> December 1966 and brought into force on 23<sup>rd</sup> March 1976. The members of the ICCPR treaty agreed to recognize, provide and respect civil and political rights of every individual which included freedom of speech, right to life, freedom of religion and right to assembly and contest fair trials. The ICCPR falls under the International Human Rights Bill and is monitored by the UN Human Rights Committee which is a separate organ of the UN and differs from the UNHRC in its functioning.

The ECHR, European Convention of Human Rights, was drafted and opened for signature on 4<sup>th</sup> November 1950 in Rome and was brought into force in the year 1953. The ECHR was formed after the declaration of Human Rights by the UN in the year 1948 and was the first instrument which brought the acts mentioned in the Universal Declaration of Human Rights into force. The committee has been responsible for spreading awareness and developing human rights all over Europe. The committee also established the European Court of Human Rights where it hears cases related to violation of human rights according to the Civil and Political liberties and rights mentioned in its protocol. The court can pass judgements and also provide advisory opinions. The judgements passed by the court is monitored by the Committee of Ministers of the Council of Europe who ensure that the judgement passed is properly executed, particularly in judgements related to compensation.

The USA Patriot Act, was brought into force as a result of the 9/11 attacks and it amended several existing laws, in order to bring in tougher methods and means to counter terrorism. Six weeks after the attack when the Act came into force, it made provisions to wiretap American citizens, collect and

access business records without notification and also carry out searches on suspected properties and people without any official warrants.

Title 2 of the Act was created for the purpose of increasing surveillance on domestic and foreign citizens who were suspected of taking part in terrorism activities. According to provisions under Section 201, Section 202, Section 206 and Section 207 of Title 2, the security agencies could gain access to and intercept wire, oral and electronic communication which included emails and phone conversations. The very first criticism towards the Act was made by the Electronic Privacy Information centre, who argued that email id's, web addresses and social networking accounts should not be considered for wiretapping and surveillance processes as it violated the privacy of the citizens. Under the provisions of the Universal Human Rights declaration by the UN and Article 17 of the ICCPR, no human should be subjected to unlawful interference with his privacy, family, home or correspondence, the provisions under Title 2 of the Patriot Act violates the very rights and freedom which is guaranteed to every human being on the planet. According to several congressmen, several amendments were recommended which were not implemented before the Act was passed. The Civil Liberties Union of USA had also criticised several titles of the Act, stating that the law had not put a check on civil liberty abuses, endangered privacy and discouraged free speech which is an important provision under the American Constitution and the Universal Human Rights.

Another criticism towards the act was made by Judge Ann Aiken who had contested to strike down the sneak and peek provision of the title on 26<sup>th</sup> September 2007, stating that it violated provisions under the 4<sup>th</sup> Amendment of the American Constitution, Article 9(1) of the ICCPR and Article 5 of the ECHR which provided for Right to life and liberty for all citizens, prohibits unreasonable searches and prevented illegal detention and arrest against the provision of law.

The most violating provision of the Patriot Act was under Title 4 which was made with the intention to strengthen immigration laws. Under subtitle B of the Title where family members of people associated with terrorism were expelled from the country without any proper reason and was justified as a matter of national security under the provisions of the law. This particular action is in violation of Article 13 of the ICCPR which stated that a foreign person lawfully in the territory of a State can be expelled only after a proper decision is reached in accordance to law and a proper reason should be presented for the expulsion which would be reviewed by a competent authority. Xenophobia was another action which was inbred due to the Patriot Act. American citizens would discriminate against Arab and Muslim American citizens and even Sikh Americans. The Human Rights Declaration, the ICCPR and the ECHR all jointly condemn discrimination against human beings on the basis of race, colour, caste, creed and gender.

*d. PATRIOT SUNSET ACT 2011*

President Barack Obama signed into law a four-year extension of post-Sept 11 powers to search records and conduct roving wiretaps in pursuit of terrorists. The Senate

voted 72-23 for the legislation to renew three terrorism-fighting authorities. The House passed the measure 250-153 on an evening vote. The sunset act as a whole is inadequate as a substantive reform to surveillance policy as it does little to prevent the national-security state from collecting huge amounts of information with inadequate oversight, including much of the data that it collected under the expired Patriot Act provisions. The measure would add four years to the legal life of roving wiretaps, authorized for a person rather than a communications line or device and court-ordered searches of business records and also provide surveillance of non-American suspects defined as lone wolf without any existing or confirmed ties to terrorist groups.

*e. VIEWS ON PATRIOT ACT*

The Patriot Act was brought in as a result of the devastating 9/11 terror attacks on US soil. It can be said that the act was brought in as an emergency to battle the rising crisis of terrorism and its expanding network. While the US Congress unanimously agreed to bring the act into force, several recommended amendments were not put into place and the act as a whole was brought into force with certain controversial provisions which at the time was defined as equipping America with tools to battle and eradicate terrorism. The advocates and attorneys of the Patriot Act had rallied to include sunset provisions for Title 2 with regards to surveillance as it violated privacy and civil liberties and rights. The actions which were taken as a result of the act were highly controversial as the war against terrorism included the US invasion of Iraq, which left the country damaged and even included detention and imprisonment of several terror suspects without any substantial evidence. Prison camps such as the Guantanamo Bay camp and the Abu Gharib prison were used to interrogate terror suspects using the means of torture which is clearly against the spirit of International Human Rights.

Even after the expiration of provisions in the Patriot Act after 31<sup>st</sup> December 2005, the Sunset Provisions which was signed into force by the Obama administration in 2011 allowed security agencies to conduct roving wiretaps, and conduct surveillance on suspected terrorists and even lone wolf agents who were not linked directly to any terror organisation. The data leaked by Snowden through his wiki leaks site had also established and brought into light how the NSA and FBI agencies were storing and accessing every data of US citizens, hence violating their privacy

Only after the violation of International Human Rights in the name of National Security was brought into light, several International Law advocates, organizations, unions and associations raised their voices against it. Keeping all the substantial evidence and materials in mind it is fair to determine that Public International Law is a discipline which is applied and brought into force and recognition only in times of crisis which poses a threat to human rights and world peace which in this case was the violation of International Human Rights.

**B. WAS THE ACT OF NATO IN BY PASSING UN SECURITY COUNCIL JUSTIFIED IN KOSOVO CRISIS?**

*a. BACKGROUND AND HISTORY OF KOSOVO CRISIS*

Kosovo is the disputed borderland between Serbia and Albania. About 90 per cent of its two million inhabitants are Kosovo Albanians (Kosovars). Albanians are supposedly descended from the ancient Dardanians (Illyrians) who allegedly inhabited the western Balkans long before Slavs arrived in the sixth to eighth centuries AD.

In the mid 1990's Serbs had managed to take over most of the Kosovo's major control from them such as their school, major infrastructure, radio and television stations, libraries, theaters, museums etc.

"Kosovo Crisis" without mentioning the particular date can be interpreted as any of the crisis faced since; it has been very unfortunate in facing problems. But the main crisis that presently has become a main study for international lawyers is the conflict in 1989-99.

This conflict was between the ethnic Albanian and ethnic Serbs and the government of Yugoslavia in Kosovo. NATO resolved this conflict and its intervention became the topic of discussion in the international law.

In 1989 Ibrahim Rugova, leader of the ethnic Albanians in the Serbian province of Kosovo, initiated a policy of nonviolent protest against the abrogation of the province's constitutional autonomy by Slobodan Milošević, then president of the Serbian republic. Milošević and members of the Serbian minority of Kosovo had long objected to the fact that Muslim Albanians were in demographic control of an area held sacred to the Serbs. (Kosovo was the seat of the Serbian Orthodox Church as well as the site of the Turkish defeat of the Serbs in 1389 and the Serbian victory over the Turks in 1912.) Tensions increased between the two ethnic groups, and the international community's refusal to address the issue lent support to Rugova's more radical opponents, who argued that their demands could not be secured through peaceful means. The Kosovo Liberation Army (KLA) emerged in 1996, and its sporadic attacks on Serbian police and politicians steadily escalated over the next two years.

The Federal Republic of Yugoslavia (FRY) (an entity created after the break up of the former Yugoslavia comprising Serbia and Montenegro) took action against moves by Albanian Kosovars. With increasing reports that President Slobodan Milosevic of the FRY was forcing ethnic Albanians to leave Kosovo in large numbers through violence and threats of violence, and after failed negotiations with the FRY and the Kosovo Liberation Army, the United States persuaded the regional defense alliance, NATO, to mount a lengthy program of air strikes against the FRY.

On March 24 NATO began air strikes against Serbian military targets. The "Operation Allied Force" was initiated without the consultation of the United Nations Security Council whereas, Chapter VII of UNC clearly states, action with respect to threats to the peace, breaches of the peace and acts of aggression. NATO had managed to cause great destruction since, it continued for 2 and a half months. They caused damage to the environment, used depleted uranium

projectiles and cluster bombs. The death toll was documented as around 500 civilians death in 90 separate incidents.

Eventually the bombing came to an end with a resolution that was adopted by the Security Council, reaffirming the right of all refugees and displaced persons to return to their homes in safety by condemning all acts of violence.

According to Article 51 of the UNC, nobody shall inherent the right of individual or collective self defense if an armed attack occurs against a member of UN, until the Security Council has taken measures necessary to maintain international peace and security

*b. WHAT IS NATO, ITS PURPOSE AND ITS MEMBERS*

The North Atlantic Treaty Organization (NATO), also called the North Atlantic Alliance, is an intergovernmental military alliance based on the North Atlantic Treaty, which was signed on 4 April 1949. The organization constitutes a system of collective defense whereby its member states agree to mutual defense in response to an attack by any external party. NATO's headquarters are located in Haren, Brussels, Belgium, where the Supreme Allied Commander also resides.

NATO is an alliance of countries from Europe and North America. It provides a unique link between these two continents for consultation and cooperation in the field of defense and security, and the conduct of multinational crisis-management operations.

NATO's essential purpose is to safeguard the freedom and security of its members through political and military means.

**POLITICAL** - NATO promotes democratic values and encourages consultation and cooperation on defense and security issues to build trust and, in the long run, prevent conflict.

**MILITARY** - NATO is committed to the peaceful resolution of disputes. If diplomatic efforts fail, it has the military capacity needed to undertake crisis-management operations. These are carried out under Article 5 of the Washington Treaty - NATO's founding treaty - or under a UN mandate, alone or in cooperation with other countries and international organizations.

NATO currently has 28 members and its membership is open to "any other European state in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic are"

*c. UN SECURITY COUNCIL-PURPOSE, PERMANENT MEMBERS, GENERAL SECRETARY AT THE TIME OF KOSOVO CRISIS*

Under the Charter, the Security Council has primary responsibility for the maintenance of international peace and security. It has 15 Members, and each Member has one vote. Out of the 15 members, 5 are permanent member i.e. China, France, Russian Federation, the United Kingdom, and the United States,

The Security Council takes the lead in determining the existence of a threat to the peace or act of aggression. It calls upon the parties to a dispute to settle it by peaceful means and

recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security.

The Security Council also recommends to the General Assembly the appointment of the Secretary-General and the admission of new Members to the United Nations. And, together with the General Assembly, it elects the judges of the International Court of Justice.

On 10 June the UN Security Council passed a resolution (UNSCR 1244) welcoming the acceptance by the Federal Republic of Yugoslavia of the principles on a political solution to the Kosovo crisis, including an immediate end to violence and a rapid withdrawal of its military, police and paramilitary forces. The Resolution, adopted by a vote of 14 in favour and none against, with one abstention (China), announced the Security Council's decision to deploy international civil and security presences in Kosovo, under United Nations auspices.

The Security Council authorized Member States and relevant international organizations to establish the international security presence, and decided that its responsibilities would include deterring renewed hostilities, demilitarizing the KLA and establishing a secure environment for the return of refugees and in which the international civil presence could operate. The Security Council also authorized the UN Secretary-General to establish the international civil presence and requested him to appoint a Special Representative to control its implementation.

*d. NATO'S INVOLVEMENT IN KOSOVO CRISIS*

On March 24 NATO began air strikes against Serbian military targets. The "Operation Allied Force" was initiated without the consultation of the United Nations Security Council whereas, Chapter VII of UNC clearly states, action with respect to threats to the peace, breaches of the peace and acts of aggression. NATO had managed to cause great destruction since, it continued for 2 and half months. They caused damage to the environment, used depleted uranium projectiles and cluster bombs. The death toll was documented as around 500 civilians death in 90 separate incidents.

The North Atlantic Council, meeting at Foreign Minister level, set out NATO's two major objectives with respect to the crisis in Kosovo, namely:

- ✓ to help to achieve a peaceful resolution of the crisis by contributing to the response of the international community;
- ✓ to promote stability and security in neighbouring countries with particular emphasis on Albania and the former Yugoslav Republic of Macedonia.

On 10 June 1999, after an air campaign lasting seventy-seven days, NATO Secretary General Javier Solana announced that he had instructed General Wesley Clark, Supreme Allied Commander Europe, temporarily to suspend NATO's air operations against Yugoslavia. This decision was taken after consultations with the North Atlantic Council and confirmation from General Clark that the full withdrawal of Yugoslav forces from Kosovo had begun. The NATO Secretary General announced that he had written to the Secretary-General of the United Nations, Mr. Kofi Annan, and

to the President of the United Nations Security Council, informing them of these developments. The Secretary General of NATO urged all parties to the conflict to seize the opportunity for peace and called on them to comply with their obligations under the agreements, which had now been concluded, and under all relevant UN Security Council resolutions. Operation Allied Force, was the largest attack ever undertaken by the alliance.

It was also the first time that NATO used military force without the approval of the UN Security Council and against a sovereign nation that did not pose a real threat to any member of the alliance. Nineteen NATO member states participated to some degree in the military campaign against the Federal Republic of Yugoslavia. In the course of the campaign, NATO launched 2,300 missiles at 990 targets and dropped 14,000 bombs, including depleted uranium bombs and cluster munitions.

*e. CEASEFIRE AND UN'S STAND TOWARDS THE CRISIS AND ACTIONS TAKEN*

Yugoslavia declared an immediate ceasefire in Kosovo on Tuesday after 13 straight nights of air strikes, but NATO powers swiftly rejected the offer as "insufficient".

The offer was Belgrade's first concrete political initiative since the start of the NATO bombing campaign against Yugoslavia on March 24.

The ceasefire appeal had come forward because NATO had caused a threat announcing that their next attack would be even more ferocious.

Describing the fighting that had gone on in Kosovo in the Spring of 1999, Kofi Anan, the Secretary General of the U.N. said it was "characterized by the disproportionate use of force, including mortar and tank fire, by the Yugoslav authorities in response to persistent attacks and provocations by the Kosovo Albanian paramilitaries."

By the end of 1998 more than 300,000 Kosovars had already fled their homes, the various cease-fire agreements were systematically being flouted and negotiations were stalled.

*f. NATO'S JUSTIFICATION*

Intervention by NATO in the Kosovo crisis has been a discussion amongst all international lawyers while some suggest that this intervention was right while some suggest it was wrong. Lawyers tend to like a world of clarity, where an action can be distinctly categorized as legal or illegal.

NATO's argument over the legitimacy of its bombing was made clear when NATO described the conditions in Kosovo as posing a risk to regional stability. As such, NATO and certain governments asserted they had a legitimate interest in developments in Kosovo, due to their impact on the stability of the whole region, which, they claimed, is a legitimate concern of the Organization.

Some international lawyers read the NATO intervention in Kosovo as strong support for a principle of humanitarian intervention. At last it seems that there is evidence of state practice and *opinio juris* for a principle of custom that intervention is permissible where massive human rights

violations take place. It points to a way around the problems of the veto of the permanent members of the Security Council.

NATO's intent and motive were to counter the ongoing repression of the Kosovars. NATO leaders and others repeatedly offered the humanitarian rationale.

*g. CURRENT STATE OF KOSOVO ACCORDING TO ICJ*

When Kosovo declared its independence, several countries including Serbia and Russia had contested against the decision while claiming that it violated the very basic foundation of International Law. As a result, the UN General Assembly had requested the ICJ to form an advisory committee in order to give its opinion on whether International Law was violated by the 2008 Kosovo declaration of Independence. On the 22<sup>nd</sup> of July 2010, the ICJ advisory committee declared its opinion in which by a vote of 10 to 4 it was declared that the Assembly of Kosovo had not violated any provisions or foundations of International Law and neither did it violate the UN Security Council Resolution 1244. In the current state, the Republic of Kosovo is recognised by most of the NATO, EU and OCED countries.

*h. ANALYSIS ON NATO'S JUSTIFICATION*

International lawyers to describe the NATO intervention in Kosovo as though it were an uncontroversial and factual description often use the epithet 'humanitarian'. The idea seems to be that it must be humanitarian because there were no obvious economic or strategic stakes in Kosovo. The nature of the intervention, however, raises questions about its humanitarian character. The NATO bombing campaign was conducted at high altitude to prevent NATO casualties.

The discussion revolves around whether NATO was at wrong or not at wrong by not consulting UNSC before the bombing.

The political reality was that Russia, as a permanent member of the Security Council, was likely to use its veto power against any Security Council action. Even with the matter reaching the Security Council, one of the two (Russia or China) were to use their veto power and the matter would not go ahead in any way and there would be no such say.

NATO conducted air strikes and this was to protect the human rights of millions but they could have probably resorted to another way since due to such actions taken by them, there were also thousands of innocent people and citizens who lost their lives.

For understanding of NATO's resort to war, the most important period is the months leading up to the decision. Of course, what NATO knew about that period is a matter of critical significance for any serious attempt to evaluate the decision to bomb Yugoslavia without Security Council authorization. Several NATO governments put forward an argument that military intervention against another state could be justified in cases of overwhelming humanitarian necessity. The main basis for such an argument is general international law, but there may also be some element of reliance on the UN Charter or on Security Council resolutions. The relevant period begins in December, with the breakdown of the cease-

fire that had permitted the return of many people displaced by the fighting. Throughout these months, the monitors report “humanitarian agencies in general have unhindered access to all areas of Kosovo,” with occasional harassment from Serb security forces and KLA paramilitaries, so the information may be presumed to be fairly comprehensive.

Since the UNC clearly mentions in its Chapter VII that no member shall take action in respect of threats on its own without the consultation of the Security Council.

We all know that international law is still not fully developed and it is still developing therefore the articles of the United Nations Charter are binding over any international treaty and any international actor. If such an action is taken in consideration without keeping the general international law in mind then probably the actions NATO could be justified since it was done in good motive but not by going against the legal procedure.

### III. NATURE OF PUBLIC INTERNATIONAL LAW

#### A. AS A DISCIPLINE OF CRISIS

Public International Law was brought up as a concept in the 17<sup>th</sup> century after the Peace Treaty of Westphalia. Since then, the concept of International Law has developed over the years with the evolution of the ‘Nation State’ to the formation and broadening of international law through the United Nations charter, International Court of Justice and the Roman Statute which eventually formed the International Criminal Court.

The importance of International Law was emphasized after the first World War which was treated as a major crisis, which disrupted world peace and humanity as a whole. The League of Nations was formed as a result of this crisis with the aim of maintaining world peace. During this period the Treaty of Versailles was also signed which made Germany and its allies responsible for the war.

In a world where there are several situations of poverty, hunger, women abuse and even human rights violations, the discipline of International Law is only highlighted during times of severe crisis. The Kosovo crisis is one such situation where International Law was only highlighted as a means to tackle the crisis after the US led NATO forces decided to interfere in the war and at the same time several human rights violations and increasing poverty in the state of Kosovo was not highlighted as urgent crisis. The current economic condition of Kosovo justifies the claim as the European Union has listed the economic as a poor one due to high unemployment and a struggle to recover from the damages caused due to the war. Keeping the Kosovo crisis in mind it can be justified that Public International Law is a discipline of crisis, which is applied and highlighted by international law advocates in times of crisis.

#### B. AS A CRISIS OF DISCIPLINE

In the above statements we established that International Law thrives on crisis for its existence. But as a whole the term crisis also depends upon the discipline of International Law

for its recognition. After the breakout of World War 2, the League of Nations failed in its primary objective of upholding world peace and had collapsed. The crisis of World War 2 was not seen as a major threat in its initial stages when Germany under the leadership of Adolf Hitler, had started violating its peace treaties with neighbouring countries of Poland, Austria, Netherlands and Belgium. When Germany had invaded and captured France, the crisis of World War 2 started getting its recognition as a major global threat under International Law. The United States started recognising the war as a major crisis after the attack on Pearl Harbour carried out by the Japanese. When the war ended in 1945, the Allied nations consisting of US, UK, France, China and Russia (formerly known as USSR in 1945) signed the UN Charter and brought the United Nations into force, whose responsibility was to maintain and uphold International Law.

Another reference of International law being a crisis of discipline can be said in terms of terrorism, where the rising crisis of terrorism was not seen as a major crisis until the 9/11 attacks carried out in the US by Al-Qaeda terrorists. Since the attack the UN and other International organisations responsible for upholding International Law recognised the crisis of terrorism as a rising global threat to international peace and humanity.

### IV. CONCLUSION

The references made in regards to the nature of Public International Law clearly establish a dual nature towards the discipline. While the materials supporting each nature is highly debatable, it can be observed through our extensive research work that Public International Law thrives in times of crisis as it gets all the tools and opportunities required for its application- from human rights violations to the growing threat of terrorism and even the current on-going refugee crisis in Syria. Public International law as a discipline depends upon crisis for its enforcement and recognition globally. It can be safe to conclude that the nature leans towards Public International Law being a discipline of crisis, as a crisis can also be defined by domestic law and if there were no such thing as a crisis then the scope of application for Public International Law would be limited and diminished over time.

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