

**An Examination of the Legality of the North Atlantic Treaty Organisation's
Use of Force in Kosovo
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The seventy-eight day bombing campaign launched by the North Atlantic Treaty Organisation (NATO) against the Federal Republic of Yugoslavia (FRY) in March of 1999 was unique in two respects. First, it was a collective action by the world's richest and most powerful states. Second, the states involved in the bombing campaign made little effort to justify their actions under the legal categories available in international law.¹ As such, NATO's action poses significant and as yet largely unanswered legal questions regarding the use of force internationally.² It also brings to the fore the longstanding legal, political and moral debate surrounding the doctrine of humanitarian intervention as it pertains to the use of force internationally.³

This paper will examine whether NATO's use of force in Kosovo was legal according to international law as it existed at the time of the bombings. Specifically, it will examine the Kosovo campaign within the context of the general prohibition on the use of force which is present in both treaty and customary international law. The paper will also consider the possibility that NATO's intervention in Kosovo can be justified on the basis of a right of humanitarian intervention. Finally, it will examine the impact that the Kosovo campaign has had on the development of customary law and briefly outline some of the possible consequences for international law as a whole.

According to official NATO statements: "NATO intervened in Kosovo to halt a humanitarian catastrophe and restore stability in a strategic region lying between Alliance member states."⁴ Public statements by individual NATO members reinforce this

¹ David Wippman, "Kosovo and the Limits of International Law," (2001) 25(1) Fordham International Law Journal p. 132.

² Joyner, D.H., "The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm" (2002) 13 European Journal of International Law 597Joyner p. 1.

³ <http://www.ploughshares.ca/content/MONITOR/mond00a.html>

⁴ <http://www.nato.int/kosovo/kosovo.htm>

position. In 1999, President Bill Clinton addressed Kosovo Force (KFOR) troops in Macedonia. In what has been termed the 'Clinton Doctrine' he stated:

It is not free of danger, it will not be free of difficulty. There will be some days you wish you were somewhere else. But never forget if we can do this here, and if we can say to the people of the world, whether you live in Africa or Central Europe or any other place, if somebody comes after innocent civilians and tries to kill them en masse because of their race or ethnic background or their religion, and it's within our power to stop it, we will stop it.⁵

The Netherlands stated that “the terrible, unceasing tragedy in Kosovo left no other choice,” while Italy argued that it had been constrained to intervene “to avoid genocide; the use of force had been inevitable.”⁶ These statements indicate that NATO members took action in Kosovo because they refused to stand idly by and watch yet another campaign of ethnic cleansing.⁷ Despite this convincing moral argument, on the basis of international law it is difficult to argue that NATO's actions in Kosovo were in fact legal.

At present, the status of international law is such that there exists a general prohibition on the use of force internationally. The primary source of this general prohibition is the Charter of the United Nations (UN) but it is also a part of customary international law. The preamble of the UN Charter states that the purpose of the UN is “to save succeeding generations from the scourge of war” by maintaining international peace and security and ensuring “that armed force shall not be used save in the common interest.” Article 2 (4) of the UN Charter states that: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or

⁵ Joyner p. 3.

⁶ Cassese, A., “*Ex iniuria ius oritur*: Are we Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?” (1999) 10 *European Journal of International Law* 23. p. 1.

⁷ *Ibid.* p.1.

political independence of any state,” while Article 2 (7) reaffirms the sovereignty and territorial integrity of the nation state. Furthermore, the United Nations Declaration on Friendly Relations, which can be seen as an expression of the status of international law, asserts that “no state or group of states has the right to intervene directly or indirectly for any reason whatever in internal or external affairs of any other state.” Finally, the International Court of Justice (ICJ), in its determinations of *The Corfu Channel Case (1949)* and the *Case Concerning Military and Paramilitary Activities with and against Nicaragua*, has confirmed the existence of the principle of a general prohibition on the use of force internationally. This prohibition is also generally considered a rule of *jus cogens*, that is a peremptory norm of international law from which no subject of international law may derogate.

There are, however, two exceptions to the general prohibition on the use of force. They too are a part of both treaty and customary law and must be considered when examining the Kosovo bombings. First, the right of self-defence is clearly articulated in Article 51 of the UN Charter. Article 51 states that:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Second, pursuant to Article 39 and 42 of the Charter the use of force when authorised by the Security Council is considered a legal use of force. Articles 39 and 42 give the Security Council explicit power to determine the existence of a threat to international peace and security and empower it to decide what measures shall be taken to maintain or restore international peace and security. Although these exceptions to the

general prohibition may be somewhat controversial in their application, they are the only two exceptions to the prohibition on the use of force which are accepted by the international community as a whole. As such, UN member states have clearly delegated the primary and authoritative role in the resolution of disputes to the United Nations Security Council.⁸

The supreme authority of the Security Council in matters regarding the use of force also extends to incorporate regional organisations. Article 33 of the Charter establishes a role for regional organisations in the maintenance of peace and security by allowing parties to a dispute to resort to regional organisations in order to seek a peaceful settlement provided that these actions are consistent with the purposes of the UN Charter. It is important to note however, that an intervention by a regional organisation is generally seen to require Chapter VII authority from the United Nations Security Council before it can proceed.

Application of the rules discussed above suggests that NATO's actions in March of 1999 were clearly illegal. The bombing of Kosovo constituted a breach of Article 2 (4) and Article 2 (7) in that it was a use of force against the territorial integrity and political independence of the FRY. Furthermore, NATO's actions cannot be justified on the basis of an accepted exception to the use of force internationally. NATO was not acting in self-defence and it did not have the prior express authorisation of the UN Security Council under Chapter VII of the Charter. On this basis alone NATO's intervention in Kosovo should be classified as illegal under international law.

⁸ Joyner p. 3.

The intervention in Kosovo was undertaken by the world's richest and most powerful states, as such it is difficult to simply dismiss the action as "a transient breach of international law or the aberrant action of a single state that carries little or no precedential value."⁹ A closer examination of NATO's action reveals that there are a number of factors that could potentially mitigate any legal condemnation of NATO's intervention.¹⁰

The first such argument can be made on the basis of implied authority. The Security Council in its resolutions of 23 September 1998 and 24 October 1999 affirmed "that the unresolved situation in Kosovo, Federal Republic of Yugoslavia, constitutes a continuing threat to peace and security in the region."¹¹ It endorsed the agreements signed in Belgrade on 16 October 1998 between the FRY and the Organisation for Security and Cooperation in Europe (OSCE) and on 15 October 1998 between the FRY and NATO concerning the verification of compliance by the FRY and all others in Kosovo. Furthermore, the Security Council demanded the full and prompt implementation of these agreements by the FRY.

Second, NATO only took action after Belgrade repeatedly refused to comply with the pertinent Security Council resolutions and only after extensive diplomatic efforts had failed. Third, FRY actions shortly before the bombing presented NATO with at least the possibility of major "humanitarian catastrophe." Security Council Resolutions 1199 and 1203 explicitly recognised this concern stating that it was: "Deeply alarmed and concerned at the continuing grave humanitarian situation throughout Kosovo and the impending humanitarian catastrophe, and re-emphasis[ed] the need to prevent this from

⁹ Wippman p. 130.

¹⁰ Ibid. p131-134.

happening.”¹² Fourth, NATO’s plan was not narrowly self-interested. It did not intend to impose a friendly regime, obtain control over resources, or otherwise pursue any selfish aims. As such, the breach of territorial integrity and political independence of the FRY can be seen as temporary in nature.

Finally, NATO’s action commanded broad support in the international community. This is evidenced by the reaction to a draft Security Council resolution supported by China, Namibia, and Russia that condemned the NATO bombing. The draft was voted down twelve votes to three and has been interpreted as overwhelming support for NATO actions. In addition, Security Council Resolution 1244 supported the political settlement that was reached after the bombing campaign and it allowed NATO troops to form the core of the international peacekeeping mission to Kosovo. This suggests that NATO received if not implicit approval from the Security Council then at the very least approval after-the-fact.¹³

However, even taken collectively, these factors do not bring NATO’s actions within the formal law of the UN Charter.¹⁴ Furthermore, although these arguments are compelling, it is possible to offer a counter-argument to each one of them. With regards to implied authority, acceptance of the political result of the bombing does not necessarily constitute legal acceptance of the means by which the result was achieved. In terms of an intervention to end a ‘humanitarian catastrophe’, high altitude bombing, which reduces the risk of military casualties at the expense of increasing the risk to civilians, is at odds with NATO’s stated humanitarian aim. In addition, regardless of its

¹¹ Security Council Resolution (SCR) 1199 & 1203

¹² SCR 1199 and 1203

¹³ Wippman p. 134.

¹⁴ Ibid. p. 134.

temporary nature, any use of force against the territorial integrity and political independence of a state has generally been interpreted as a breach of Article 2 (4). Finally, it is difficult to argue that NATO was acting with universal support when two permanent members of the Security Council (Russia and China) objected to their actions and introduced a resolution to condemn it. This is further reinforced by the fact that the reason NATO did not seek Chapter VII authority from the Security Council is that it believed that a veto by Russia would prevent the granting of such authority. Thus, the factors that are often cited to legitimise NATO's actions are, upon further examination, quite weak.

The prohibition on the use of force present in both treaty and customary international law seems to indicate that the NATO bombings in Kosovo were illegal. However, given the stated aims of NATO's intervention, it might be argued that its actions were legal on humanitarian grounds. In order to make such a claim it must first be proven that such a right of humanitarian intervention existed at the time of the NATO bombing of Kosovo.

The first possible source of a right of humanitarian intervention is international treaty law. To be legal, an intervention on humanitarian grounds must be shown not to violate Article 2 (4). This can be done either by arguing that a genuinely humanitarian intervention would not be a use of force 'against the territorial integrity or political independence' of the target state, or that it would not be inconsistent with the Purposes of the United Nations Charter.¹⁵

¹⁵ Simon Chesterman, "The Scourge of War: Humanitarian Intervention and the Prohibition on the Use of Force in the UN Charter," Chapter 2, *Just War or Just Peace? : Humanitarian Intervention and International Law*, (Oxford: Oxford UP, 2002) p. 48.

The Charter is a multilateral treaty subject to the Vienna Convention on the Law of Treaties which is now frequently applied by the ICJ. The Convention on the Law of Treaties provides that: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”¹⁶ It may be possible to interpret Article 2 (4) in two ways. First, it could be argued that, as a result of its wording, Article 2 (4) prohibits only the use of force against the territorial integrity or political independence of a nation state. Based on this interpretation, any use of force that does not compromise the territorial integrity or political independence of a nation state might be permitted. The second interpretation is one in which the definition of ‘force’ is expansive and therefore precludes all uses of force internationally not just those against the territorial integrity and political sovereignty of a state.

Numerous statements by the General Assembly and the ICJ concerning the meaning of non-intervention, and the practice of the Security Council which has declared unauthorised force illegal despite its temporary nature, suggest that the second interpretation of Article 2 (4) is the one accepted in international law. Therefore, Article 2 (4) should be read to prohibit all use of force not just that which is against the territorial independence and political sovereignty of a state. As such, the suggestion put forth by Oscar Schachter in 1984 that “a war waged in a good cause would violate neither the territorial integrity nor political independence of the target state,” in fact runs contrary to the internationally accepted interpretation of Article 2 (4).¹⁷

¹⁶ Chesterman p. 48.

¹⁷ Ibid. p. 48.

A second argument regarding the potential existence of a right of humanitarian intervention in treaty law is the suggestion that it is not inconsistent “with the Purposes of the United Nations.” It has been argued that in the Charter, the promotion of human rights is as important a purpose as the control of international conflict and thus humanitarian intervention should not be considered a violation of Article 2 (4).¹⁸ This is based on an interpretation of Article 2 (4) that regards the use of the words ‘or in any *other*’ to suggest an inclusive meaning. Such an interpretation would lead to the conclusion that the appropriate reading of Article 2 (4) is that “any threat or use of force that is not directed against the territorial integrity or political independence of a state but is inconsistent with Article 1 of the Charter is *also* illegal.”¹⁹ This interpretation has been used to justify a right of humanitarian intervention. However, according to author Simon Chesterman it is highly questionable that the drafters of the Charter regarded human rights as of equal importance to peace. In addition, the first purpose of Article 1 is to maintain peace and security through the removal of threats to the peace and the settlement of disputes. International co-operation and the promotion of respect for human rights is listed as the third purpose of Article 1 and Chesterman concludes that interpretation of Article 2 (4) to include a right of humanitarian intervention is incorrect.

It may also be possible to interpret article 2 (4) as not precluding unilateral action as a form of self-help justified in customary international law, when the collective security regime envisaged by the Charter fails to address a crisis. Such an argument posits that this right of ‘self-help’ is not prohibited by Article 2 (4).²⁰ Determinations of the ICJ, however, suggest that this is not the appropriate interpretation. When, in 1946,

¹⁸ Ibid. p. 52

¹⁹ Ibid. p. 52.

two British warships were damaged by mines in Albanian territorial waters in the North Corfu Channel the United Kingdom (UK) quickly carried out a minesweeping operation against the clearly expressed wishes of the Albanian government. Albania made a counterclaim against the UK alleging that the intervention was a violation of its sovereignty. In its defence, the UK argued that its intervention, which enabled an aggrieved state to secure evidence in the territory of another state in order to submit it to an international tribunal, was a special application of the theory of intervention. However, the determination of the court was regarded as an ‘emphatic rejection’ of the right of intervention and any ambiguity regarding this decision was resolved in the *Nicaragua* case which supported a general principle of non-intervention. Furthermore, the UK’s argument that its minesweeping operation was a matter of self-protection or self-help was rejected by the court on the basis that respect for the territorial sovereignty of states is an essential foundation of international relations.

Another possible argument for the right of humanitarian intervention is that the prohibition on intervention expressed in Article 2(4) is linked directly to the collective security arrangements in the UN Charter. The Vienna Convention on the Law of Treaties and the modern doctrine of *rebus sic stantibus* provides a right to suspend, terminate or withdraw from a treaty when the relevant circumstances surrounding a treaty change. However, in order for the doctrine of *rebus sic stantibus* to apply the circumstances in question must constitute an essential basis for the consent of the parties and the effect of the change must radically transform the extent of the obligations still to be performed under the treaty. It seems inconceivable that an ‘essential basis’ of the consent of the member states of the United Nations was an expectation that domestic affairs would be

²⁰ Ibid. p. 53.

subject to intervention by the United Nations or any other body.²¹ It is even more unlikely given that such a meaning would result in the possible suspension, termination or withdrawal from the UN Charter which is the basis of the international system.

An examination of the relevant treaties leads to the conclusion that the right of humanitarian intervention does not exist as a matter of treaty law. However, it is possible that such a right emerged as a matter of customary international law. Customary international law together with treaty law comprises the bulk of what constitutes international law. Unlike treaties which are contractual in nature and generally written instruments, customary international law is composed of state practice and *opinio juris*. It is through analysis of the duration and character of these two elements that rules of customary international law eventually develop and become accepted by the international community as binding law. Before a principle may become a candidate for recognition as customary international law both elements must be satisfied.²²

Modification of the Charter obligations under Article 2 (4) could occur either as a result of subsequent practice of the parties or by the emergence of a new norm of customary international law. There is at least one instance where UN provisions appear to have been affected by UN practice. Article 27 (3) provides that decisions of the Security Council on non-procedural matters “shall be made by an affirmative vote of nine members *including the concurring votes of the permanent members.*” On 29 April 1946, the USSR abstained from a vote and the resolution was nevertheless considered adopted. Such abstentions have become an increasingly common feature of Security Council procedure, and the issue was directly confronted in the *Namibia* advisory opinion in

²¹ Ibid. p. 57.

²² Joyner p. 5.

1971. In that case, South Africa argued that the Security Council resolution requesting the advisory opinion of the Court was invalid due to the fact that two of the permanent members had abstained from voting. Despite this fact, the Court rejected this submission on the basis that there was ‘abundant evidence’ that beginning in 1965 members of the Security Council had consistently and uniformly interpreted the practice of voluntary abstention as not constituting a bar to the adoption of resolutions. It added that an amendment to Article 27 had been “generally accepted by members of the UN and evidences a general practice of that Organisation.”²³ Therefore, although the issue is somewhat contentious it is possible to amend the Charter through state practice. As such, it is also possible that state practice has led to the emergence of a right of humanitarian intervention in customary international law.

The general prohibition on the use of force, however is generally considered *jus cogens*. Article 64 of the Vienna Conventions states that if a new peremptory norm of general international law emerges, any existing treaty that is in conflict with that norm becomes void and terminates. This should be read in conjunction with Article 53 which provides that a treaty is void at the time of its conclusion if, at the time of its conclusion it conflicts with a peremptory norm. This is important for two reasons. First, the emergence of a norm of *jus cogens* voids a treaty which could not sensibly apply to the UN Charter.²⁴ Secondly, the Vienna Convention makes it clear that one norm of *jus cogens* can only be modified by another such norm. As there is considerable support for

²³ Chesterman p. 59.

²⁴ Ibid. p. 59.

the view that prohibition of force is such a norm, this would raise the threshold for evidence of a countervailing norm.²⁵

Since the institution of the UN Charter there have been a number of instances where military force has been used to intervene in the affairs of states arguably for humanitarian purposes even without the approval of the Security Council. During the Cold War States have accepted or at least ignored isolated instances of military intervention with predominantly humanitarian outcomes. More recently, the international community has become increasingly tolerant of military intervention without Security Council authorisation if the decision-making is multilateral and the purpose is genuinely humanitarian.²⁶

Has this state practice led to the development of a right of humanitarian intervention in customary international law which allows military intervention in the affairs of other states for the purpose of protecting individuals from continuing grave violations of fundamental human rights?²⁷ The possible emergence of a customary law right of intervention was examined by the ICJ in the *Nicaragua* case and its position at that time was clearly inconsistent with the existence of such a right. It ruled that the US could form its own opinions regarding Nicaragua's respect for human rights however, "the use of force could not be the appropriate method to monitor or ensure such respect."²⁸

Moreover, governments may state publicly that these interventions are based solely on humanitarian grounds yet very few countries have justified their interventions

²⁵ Chesterman p. 6.

²⁶ Wippman p. 36.

²⁷ Joyner p. 4.

²⁸ Chesterman p. 62.

on the basis of an independent doctrine of humanitarian intervention as exists in customary international law. In his examinations of alleged examples supporting the customary international law right of intervention Chesterman²⁹ suggests that “state practice discloses at most three ‘best cases’ of humanitarian intervention, but even these lack the necessary *opinio juris* that might transform the exception into the rule.”³⁰

This makes it difficult to conclude that states intervened in the domestic affairs of another state out of a sense of legal obligation. In the absence of the belief by these states that they were intervening as a result of a legal obligation to do so, it is impossible to establish *opinio juris* which is required for the establishment of the right of intervention in customary international law.

Similarly, the NATO governments failed to support their assertions of humanitarian intervention in that they did not make significant reference to prior state practice or to the long tradition of academic writing on humanitarian intervention.³¹ This suggests that the majority of NATO states did not believe that a right of humanitarian intervention existed at the time of the Kosovo campaign. Therefore, although it may seem to be an endorsement of a legal right of humanitarian intervention on the surface, the precedential and obligatory weight of these statements is compromised significantly by a lack of evidence of *opinio juris*.³²

²⁹ Chesterman in his article “The Scourge of War” examined various incidents which were marshalled as examples of humanitarian interventions and evaluated them on their value as *opinio juris* and state practice for the emergence of customary international law. He cites only three examples of interventions (East Pakistan 1971, Uganda 1978-9, and Kampuchea 1978-9) that are regarded favourably by the international community. However, none of these cases used humanitarian concerns as the justification for the use of military force. P. 84.

³⁰ Chesterman p. 87.

³¹ The Belgian government was the sole NATO member to justify its actions on the basis of humanitarian intervention.

³² Joyner p. 6.

The final argument that might make the intervention in Kosovo legal is that customary law does not necessarily require a consistent repetition over time for a new rule to take shape. There may be instances where a single episode of some magnitude, combined with the appropriate reaction of other states may suffice to bring about the formation of a rule.³³ However, it is much easier to make the claim that one action might create a law in an area where international law is not clearly stated. In the case of Kosovo the rights and obligations under discussion are real and concrete. The action in question affects a very well-defined area of international law. It involves the right of sovereign states to the exclusive jurisdiction over their territory and the obligation of states to respect sovereignty as well as the obligation of member states to refrain from using force without the authorisation of the Security Council pursuant to Article 51.

These laws are clearly articulated in treaty law, and as mentioned previously, can be considered an international norm. In addition, the failure of NATO states to justify their actions on humanitarian grounds before the ICJ undermines the legal argument that NATO, through its actions created a right of humanitarian intervention. In addition, NATO was not acting with the universal support of UN members. Objections by two of the permanent members of the Security Council Russia and China are difficult to overlook . Simply stated, the matter is simply too controversial to warrant the contention that the evolution of international law in this area may result from a single episode however significant in its magnitude and regardless of the involvement of many states and the reaction of others.³⁴

³³ Cassese p. 6.

³⁴ Ibid. p. 6.

The legal scholars consulted appear to agree that unilateral or unauthorised intervention by a state or group of states on humanitarian grounds is currently illegal. As such, there is no existent principle of humanitarian intervention in customary international law by which NATO countries could credibly legitimise their intrusion into the sovereignty of the FRY.³⁵ It is not however impossible that a customary rule permitting unauthorised intervention could develop in the future. Author, Antonio Cassese has argued that the NATO action in Kosovo could be a step towards the development of such a customary rule. Cassese states:

This particular instance of breach of international law may gradually lead to the crystallisation of a general rule of international law authorising armed countermeasures for the exclusive purpose of putting an end to large-scale atrocities amounting to crimes against humanity and constituting a threat to the peace.

According to Cassese *opinio necessitatis* was forcefully and loudly proclaimed by the states engaging in the military action in that many indicated that they acted out of a sense of impelling moral and human necessity shared by other states. He argues that this sense of moral obligation or *opinio necessitatis* could constitute the required psychological element for the formation of a customary law except that it did not yet possess "the requisite elements of generality and non-opposition." What is not yet clear is whether a sense of moral obligation can be equated with a sense of legal obligation (*opinio juris*). Therefore, although it is premature to maintain that such a customary rule has emerged, repetition of such actions under the same conditions and exigencies might be enough to create an international right of humanitarian intervention.

³⁵ Joyner p. 7.

If indeed such an evolution in customary international law were underway what impact would it have on international law? Presently, a clear rule of law governs what can be considered the most important area of international relations.³⁶ Unlike treaties which are contractual written instruments, customary international law is a very dynamic source of law. It is created by the acts and intentions of states and is thus in a relatively constant state of flux with the continual possibility of change from a variety of sources. *Opinio juris* is definitionally unsure and often very difficult to apply. Even when the definition of its terms is agreed upon nations are not the final arbiters of what is or is not customary international law.

Absent codification by treaty, the only means of concretely establishing rules of customary international law is by the rendering of an opinion in an adjudication before an international court. As adjudication is generally rare, customary international laws suffers from ambiguity because it often lacks sure existence and is interpretively unclear in many instances. Therefore, any element of the international legal regime that is governed by customary international law is therefore compromised by the inherent uncertainty of the form of law upon which it is predicated. Without a clear and mutually acknowledged system of objective rules to govern the international use of force the entire system of ordered international interactions which international law has traditionally sought to provide becomes moot in its ineffectiveness to provide for the most basic protection of human life, freedom and prosperity.³⁷

In other areas of law the potential problems emanating from such ambiguity are not as extreme as in the case of the governance of the use of force. Reliance on

³⁶ Ibid. p. 9.

³⁷ Ibid. p. 9.

customary international law as a basis for the legal governance of international uses of force carries with it profound disadvantages in clarity and susceptibility to abuses as compared to governance by treaty especially a treaty with the most universal acknowledgement and general prohibitory structure of the UN.³⁸ This may be why NATO states such as the Federal Republic of Germany clearly expressed that although the action was warranted they did not wish their actions in Kosovo to set a precedent in international law.³⁹

The 1999 NATO bombing of Kosovo created serious challenges for the international community. Nowhere is this more apparent than in the field of international law. Although an examination of the customary and treaty law surrounding both the use of force and the right of humanitarian intervention indicates that NATO's use of force in Kosovo was illegal, it seems likely that this action will continue to have future repercussions. In particular, NATO's actions may have a significant impact on the potential development of customary law in a crucial area of international law, namely the prohibition on the use of force internationally. Should the right of humanitarian intervention develop into customary international law it will no doubt have a profound impact on the international system. As such, the ramifications of NATO's actions are perhaps yet to be seen.

³⁸ Ibid. p. 9.

³⁸ Cassse p. 2.

