

# EVALUATION OF NATO INTERVENTION IN KOSOVO BY CRITERIA OF RESPONSIBILITY TO PROTECT



Mustafa Burak ŞENER\*

ORCID ID: 0000-0002-6527-4649

Geliş Tarihi / Received: 22.06.2021 - Kabul Tarihi / Accepted: 15.08.2021

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## Abstract

During the breakup process of the Socialist Federal Republic of Yugoslavia (FRY), the bloody war started first in Croatia and then in Bosnia (1992-1995), then spread to Kosovo. By 1998, a civil war broke out in Kosovo between the Albanian militia forces, the Kosovo Liberation Army, and the Serbian army, police, and militia forces under the identity of Yugoslavia. As a result of the failure of the mediating efforts by the international organizations, the North Atlantic Treaty Organization (NATO) had commenced military intervention on March 24, 1999, to stop the increasing civilian deaths and increasing attacks. This intervention of NATO has sparked discussions in both political and academic dimensions but is defined by the Independent International Commission on Kosovo (IICK) as “illegal but legitimate”. Following the NATO intervention, which has been under discussion since the day it was made, the concept of Responsibility to Protect has been accomplished in 2001 with the report prepared by the International Commission for Intervention and State Sovereignty (ICISS). According to the Responsibility to Protect report, it has set six criteria for a military intervention to be considered legitimate. The report also mentioned that NATO’s intervention in Kosovo contributed to the birth of this concept. In the literature, many scholars claim that is to justify NATO’s intervention in Kosovo. However, the question here is whether NATO’s intervention in Kosovo is in line with the criteria in the report and is legitimate. In this study, Kosovo intervention is evaluated on the Criteria of Responsibility to Protect, which legitimizes military intervention, and examined how appropriate the intervention is to the principles.

**Key Words:** Kosovo, Responsibility to Protect, Humanitarian intervention, NATO, Legitimacy.

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\* M.A., Ph.D. Student, Eötvös Loránd University, Budapest-Hungary,  
buraksener1626@gmail.com

# NATO'NUN KOSOVA'YA MÜDAHALESİNİN KORUMA SORUMLULUĞU KRİTERLERİNE GÖRE DEĞERLENDİRİLMESİ



## Özet

Yugoslavya Sosyalist Federal Cumhuriyeti'nin (YSFC) dağılma sürecinde önce Hırvatistan'da ardından Bosna'da (1992-1995) başlayan kanlı savaş daha sonrasında Kosova'ya yayıldı. 1998 yılına gelindiğinde, Kosova'da Arnavut milis güçleri, Kosova Kurtuluş Ordusu ve Yugoslavya kimliği altındaki Sırp ordusu, polisi ve milis güçleri arasında bir iç savaş çıktı. Uluslararası kuruluşların arabuluculuk çabalarının başarısızlığı sonucunda Kuzey Atlantik Antlaşması Örgütü (NATO), artan sivil ölümleri ve artan saldırıları durdurmak için 24 Mart 1999'da askeri müdahaleye başladı. NATO'nun bu müdahalesi hem siyasi hem de akademik boyutlarda tartışmalara yol açtı, ancak Kosova'ya ilişkin Bağımsız Uluslararası Komisyon tarafından "yasadışı ama meşru" olarak tanımlandı. Yapıldığı günden bu yana tartışılan NATO müdahalesinin ardından 2001 yılında Uluslararası Müdahale ve Devlet Egemenliği Komisyonu (ICISS) tarafından hazırlanan raporla Koruma Sorumluluğu kavramı hayata geçirildi. Koruma Sorumluluğu raporuna göre, askeri bir müdahalenin meşru kabul edilmesi için altı kriter belirlenmiştir. Raporda ayrıca NATO'nun Kosova'ya müdahalesinin bu kavramın doğmasına katkıda bulunduğu belirtilmiştir. Literatürde birçok araştırmacı bunun NATO'nun Kosova'ya müdahalesini haklı göstermek için olduğunu iddia etmektedir. Ancak buradaki sorun NATO'nun Kosova'ya müdahalesinin rapordaki kriterlere uygun ve meşru olup olmadığıdır. Bu çalışmada, Kosova müdahalesi, askeri müdahaleyi meşru kılan Koruma Sorumluluğu kriterleri üzerinden değerlendirilecek ve müdahalenin bu ilkelere ne kadar uygun olduğu incelenecektir.

**Anahtar Kelimeler:** Kosova, Koruma Sorumluluğu, İnsani Müdahale, NATO, Meşruiyet.

## I. Introduction

The principle of non-interference with state sovereignty has been modernized with the Peace of Westphalia, and the understanding that state sovereignty includes the power to kill within the sovereign territories has prevailed until the post-cold war period. Although the 1945 UN Charter is sensitive to human rights, it could not go beyond reflecting the traditional view. As stated in Article 2 (7), “*Nothing should authorize intervention in matters essentially within the domestic jurisdiction of any state.*” While the founders of the UN focused on and took measures against the threats of the states to wage war against each other, no detailed attention was paid to the violence that could occur within the sovereign state (Evans, 2008: 16). Only in exceptional cases, the UN founders permit interference against state sovereignty. The UN Security Council may decide to use force against the state that considers threatening to peace and security. As stated in the 41<sup>st</sup> and 42<sup>nd</sup> articles of the UN Charter, the Security Council may take a military intervention decision in order to ensure security and peace (Orallı, 2014: 117). Nevertheless, the issue of which actions constitute the use of force is also an unregulated issue. It is incumbent upon the Security Council to determine which actions constitute the threat of force. However, it is not clear what criteria the Security Council takes in making this determination (Taşdemir, 2006: 107).

In addition, the fact that five permanent countries in the Security Council have veto power causes blockages in the UN peacekeeping mission. While this deadlock continues in the UN Security Council, the sovereign state is free to act as it wishes (Ng, 2019: 7). During the Cold War, the frequent use of veto power in the Security Council severely restricted its power to intervene to ensure peace and security. Between 1945 and 1989, permanent members exercised their veto rights 192 times (Blätter and Williams, 2011: 305). Since the end of the Cold War, nearly 180 countries have demanded a change of veto power and reform the UN structure accordingly, yet Security Council members have not fulfilled these demands to protect their self-interests (Ng, 2019: 1,8). On the other hand, the international community started to become more sensitive due to the changes in political and moral norms after the end of the Cold War in the 1990s (Pattison, 2010: 1).

With the arrival of 1990, not only wars between states but also civil war and civil disorder have become an international security problem. However, during this period, due to the habits brought by the right not to intervene in the state authority, the incidents that took place in Somalia in 1993, Rwanda

in 1994, and Srebrenica in 1995 were incomplete and insufficient. Afterward, the North Atlantic Treaty Organization (NATO) intervention in Kosovo in 1999 without authorization of the Security Council brought about a deep legitimacy debate in the international agenda (Evans, 2008: 17-18). Once after the intervention, the Independent International Commission on Kosovo (IICK) undertook a comprehensive assessment of the intervention and crux of the conflict. Consequently, it is stated by the Commission the intervention was against the international law but deduced that the intervention was 'illegal but legitimate' (Hehir, 2008: 47-48).

Since the concept of Responsibility to Protect (RtoP) did not accomplish during the intervention, it was not possible for the international community to base the intervention on this concept. Nonetheless, the lack of a clear legal basis for the intervention has greatly influenced the emergence of the concept of RtoP. As the RtoP report indicated, NATO's intervention in Kosovo contributed to the emergence of the report (RtoP, 2001: VII). As for, the aim of this study is to analyze how well the intervention itself is compatible with RtoP principles.

## **II. The Evolution of the Responsibility to Protect**

The crisis in Kosovo has dominated the international political agenda and has been a significant subject of debate. In this regard, international law and UN procedures have been strikingly questioned in particular because of the ineffectiveness of the UN system in Somalia, Rwanda, and Srebrenica, and strong movement for human rights has been increased that demands pro-active humanitarianism (Hehir, 2008: 48; Evans, 2004: 78).

In response to rising pro-active human rights demands, Kofi Annan submitted petitions to the UN General Assembly in 1999 and 2000 to build consensus on how to approach the international community against human rights violations. Therewithal, in his speech at the 54<sup>th</sup> session of the UN General Assembly in September 1999, also repeated in his 2000 Millennium report, Kofi Annan directed a striking and resounding question on this issue; *"...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?"* (RtoP, 2001: VII; Annan, 2000: 47-48). In fact, the example given by Kofi Annan in Rwanda and Srebrenica is an intimation to the criticism of the Kosovo intervention (Cazala, 2018: 69).

In order to seek an answer to the question left unanswered by the Secretary-General, the Canadian government has established an independent commission of international experts under the leadership of former Australian Foreign Minister Gareth Evans and UN high-level official Algerian diplomat Mohammed Sahnoun. The report published by The International Commission on Intervention and State Sovereignty (ICISS) in December 2001 developed a new perspective on the dilemma of humanitarian intervention and state sovereignty and proposed a new definition for the concept of sovereignty. Accordingly, state sovereignty is not transferred, but it brings along some responsibilities. These responsibilities are divided into two as internal and external responsibilities. Internal responsibility is defined as the protection of the fundamental rights of individuals living within the borders of each state, while external responsibility is defined as the responsibility of states to international organizations in fulfilling the responsibility to their citizens. Accordingly, state authorities are responsible for their actions to the international community through the UN (RtoP, 2001: 13; Cazala, 2018: 69).

The Commission expressed that the concept of Responsibility to Protect is much more than military intervention. It strengthened Responsibility to Protect principles with the principles of “responsibility to prevent”, “responsibility to react”, and “responsibility to rebuild”. Accordingly, “responsibility to prevent” for preventing human rights violations entails the “responsibility to react” for the international community to react against human rights violations, and the “responsibility to rebuild” for the international community after the intervention. These responsibilities were stated as a responsibility to be fulfilled by states and the international community rather than the right to intervene (RtoP, 2001: 17; Evan, 2008: 19). In addition, the Commission has established six criteria for the fulfillment of these responsibilities and the legitimacy of military intervention. These six criteria are listed as the just cause, proportionate means, last resort, reasonable prospects, right intention, and legitimate authority (Pattison, 2010: 33). Hereunder, for the intervention to be considered legitimate, the interventionists must meet all these criteria. Even if it does not meet only one of these criteria, it is a justification for the intervention not to be considered legitimate (Ibid, 34).

Accordingly, the Kosovo intervention is considered “illegal but legitimate” by the interventionists and contributed to the creation of the RtoP report, this study examines how the intervention is compatible with the RtoP report and its “legitimacy” principle. First, the process leading up to the NATO intervention will be analyzed for a better understanding of the study. Accordingly,

the six criteria which are needed for the legitimacy of military intervention will be examined. Finally, it will be specified whether the intervention can be considered legitimate based on the concept of Responsibility to Protect.

### **III. The Process Leading up to the NATO Intervention: A brief overview**

The dispute between Albanians and Serbs comes from the fact that both sides want to claim on Kosovo and send the other out of it. This dispute is also the source of the cycle of revenge that began after the first side to take its opportunity to attack. Serbs, who see Kosovo as the “cradle of Serbian civilization”, claim that they came in the 6<sup>th</sup> and 7<sup>th</sup> centuries and Albanians later (Judah, 2008: 19, 31; Bideleux and Jeffries, 2007: 514). Albanians, on the other hand, consider themselves one of the oldest settling nations in the Balkans. They claim that Kosovo is theirs and that Serbs should leave Kosovo (Bideleux and Jeffries, 1998: 6-42).

These hostile relations between the two communities continued until Yugoslavia’s form of governance became a federal republic in 1945. Under Tito’s leadership, he moved on to the Federal Republic of Yugoslavia (FRY) on 29 November 1945. In the 1960s, under increasing pressure from Kosovars, Tito implemented a policy of reconciliation rather than a policy of pressure on Kosovo (Woehrel, 1999: 4). Therefore, there was no crisis that could lead to a civil war, even though tense relations continued until Tito’s death in 1980. Therewithal, after Tito’s death, the rise of Milosevic in the political arena, and the Serbian police majority in Kosovo, has resulted in Serbs with state power returning to their advantageous positions. Albanian uprisings, which escalated following the abolition of Kosovo’s autonomy in 1990, have been harshly suppressed by the police and sometimes the military (Ramet, 2002: 317; Bideleux and Jeffries, 2007: 532).

The actions that took place in Kosovo during the Tito era were aimed more at gaining rights within Yugoslavia. After Tito’s death, Kosovo Albanians realized that they could not claim any more rights (Savaş, 2001: 102). Therefore, participation in Kosovo Liberation Army, founded in 1993, increased (Vickers, 1998: 278). As the target of the attacks by Albanian militias turned to civilians, it encountered interventions by Serbian police and the Yugoslav army, and clashes began. This whole cycle of revenge started the war in June 1998 when Yugoslav armies entered Kosovo (Yalim, 2019: 121).

Upon the increasing violence of the war, the words of US Presidents Bill Clinton and Albright, who made it clear on March 19<sup>th</sup> that the Srebrenica genocide would not be allowed to take place again, were now a precursor to the future of intervention (Ramet, 2002: 327). Milosevic was already waiting for the attack and was bringing more Serbian volunteers into his military forces. According to the United Nations Security Council reports, the number of displaced Albanians, which by then had been 250,000, continued to rise as fighting intensified (Judah, 2008: 87). On March 24, 1999, after Richard Holbrooke, who was appointed by US President Clinton, failed to get results from his last attempt to persuade Milosevic to come to an agreement, an attack team of nineteen members of NATO has begun bombing FRY (Ramet, 2002: 327).

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In addition, in the interview with Aidan Hehir, the scholar evaluated the process briefly that leading the Kosovo War and finally NATO intervention, *“Essentially it can be broken down into the following: in 1990 the Kosovo Albanians declared Kosovo to be independent in response to Milosevic rescinding the province’s autonomous status as established by the 1974 Constitution. The declaration was ignored by the international community. In December 1991, the outgoing US President Bush issued the “Christmas warning” to Milosevic, which stated that the US would intervene if the government in Belgrade used force in Kosovo. This amounted to very little in practice, and up to 1995, Kosovo was again basically ignored. At the Dayton conference in 1995, the US brokered a deal to bring peace to the Balkans, especially Bosnia. The agreement made no mention of Kosovo. This suggested to some Kosovo Albanians that the pacifist policies pursued by Ibrahim Rugova were futile and force was required. Thereafter the KLA began to attack Yugoslav forces in Kosovo. This led to a steady increase in the violence in Kosovo as Milosevic’s forces responded in a very heavy-handed fashion. By 1998 the situation had deteriorated significantly; in October of that year, Holbrooke brokered a deal between the KLA and Milosevic; the KLA essentially used the deal and the ceasefire to regroup and began to violate some of the provisions therein. Milosevic again responded in a very heavy-handed fashion culminating in the Racak massacre of January 1999. This led to renewed international interest and the convening of the talks at Rambouillet. These talks failed when Milosevic refused to sign, but the Albanians did. Thereafter NATO launched air-strikes in March 1999”* (A. Hehir, personal communication, December 3, 2020).

## **IV. Evaluation of the Intervention by Criteria of Responsibility to Protect**

### **A. Just Cause**

In the past, proposals for action for human security purposes have been made for a wide variety of causes, including a wide range of conditions and in response to them. The Commission's opinion is that there should be few exceptions from the policy of non-intervention. Military action for human security reasons must be treated as an unprecedented and unusual measure, and severe and irrecoverable injury to human beings must exist or be imminently likely to exist in order to be justified. Accordingly, the Commission considered it a just cause for military intervention in cases of loss of life and ethnic cleansing on a large scale. The Commission described the "large scale" of these violations as "threshold criteria" for the military intervention (R2P, 2001: 31-32).

The reason why the only large scale of ethnic cleansing and deaths are considered just causes for intervention under the report is to ensure that military intervention will take place as a last resort and in very crucial situations. However, the issue of how large ethnic cleansing should be or how many people should die is not fully defined. This is because if the lower limit is placed, people are subjected to a great ethnic cleansing or killed; however, since the lower limit cannot be reached, the international community will not have the authority to react and will be considered to have no just cause to intervene (Evans, 2004: 85). Also, it should be stated that in circumstances of human rights abuses such as systemic racial discrimination or political injustice that fell short of outright killing or ethnic cleansing, the Commission did not stipulate as to the "just cause" threshold. In this regard, such violations may be involved in a variety of sanctions, including political, economic, or military sanctions, but these are not cases that justify military action to protect people (Ibid).

Accordingly, in order to determine whether there is a just cause principle in Kosovo, loss of life and ethnic cleansing on a large scale must be required, as the Commission stated in the report. According to Becker, ethnic cleansing is defined as "*the elimination of an unwanted group from society, as through genocide or forced migration*" (as cited in Humayun, Becker, 2018: 65). Accordingly, genocide and forced migration cases in Kosovo need to be examined.

The process of ending Kosovo's autonomous status in 1989 and subsequent mass dismissal of Kosovo Albanians were forced Albanians to immigrate out of the region (Abrahams, 2001: 27-29). In this regard, as a result of political pressures and economic and social insecurities, Albanians who make up the majority in Kosovo were aimed to leave the region. As a matter of fact, it was stated that 400.000 Kosovo Albanians had left the region by 1993 (The Independent International Commission on Kosovo, 2000: 47).

Afterward, the conflict dimension of the Kosovo crisis peaked in February 1998, when fighting between Serbian security forces and Kosovo Liberation Army militants became more concentrated. During this period, both sides of the conflict took actions that led to human rights violations. More than 300.000 people have been displaced in Kosovo as of September 1998 due to the impact of the conflict and human rights violations (Morris, 1999: 14). Furthermore, the killing of forty-five civilian Albanians by Serbian forces in Racak in mid-January 1999 has caused Western states to take action on more effective measures to end the conflict (Bellamy, 2002: 14).

Finally, according to the report of *Under Orders: War Crimes in Kosovo* that collaborates with the Science and Human Rights Program of the American Association for the Advancement of Science (AAAS) and utilize above 600 interviews of Human Rights Watch for the war crimes, the policy of murder, devastation, and "ethnic cleansing" by the Serbian and Yugoslav regimes was planned and well-coordinated (Abrahams, 2001: XX). Considering all these circumstances, it can be referred that the international community has the right to criteria of "just cause". As a matter of fact, when asked in the interview whether the international community had therefore fulfilled NATO's "just cause" principle, Alexander J. Bellamy stated, "*I'd say NATO had a just cause – to prevent and ethnic reverse cleansing,*" while Aidan Hehir stated, "*The cause was clearly just; the Kosovo Albanians had suffered terribly for many years and were subjected to a brutally oppressive regime*" (A.J. Bellamy, personal communication, December 7, 2020; A. Hehir, personal communication, December 3, 2020). Thereby, two academics, who are well-known with the RtoP studies, mentioned that NATO intervention was in line with the "just cause" principle of the report.

### **B. Proportionate Means**

According to the criterion of proportionate means specified in the report; interventionists should use force most effectively and quickly, using as little

force as possible, without going outside of the international law, and caring about the human dimension of intervention. Therefore, the duration and intensity of the operation should be determined in such a way that civilians are not affected and the political structure of the target state is not interfered with. On the other hand, all principles of international humanitarian law must be observed during the intervention. As there are a specific reason and purpose of the intervention, its scope should be limited to this without reaching the entire state dimension. Since the operation involves such a limited target and event, its standards must also be higher (RtoP: 2002: 37).

When assessing whether the Kosovo intervention is proportionate means; the first matter that needs to be emphasized is that NATO planes flying from an altitude of 15,000 feet killed civilians. More than 500 civilians died in Serbia, Kosovo, Montenegro, and Vojvodina due to the direct impact of the bombardment. In addition, the first three weeks were bombardment, which failed to weaken Serbian forces, on the contrary, inflaming Serbs' feelings of vengeance; indirectly killed 400 Albanian civilians. Besides, according to the NATO records, one million people were forced to leave Kosovo (Human Rights Watch, 2000: 5-23; Cohn, 2002: 80, 81, 95). Moreover, the bombing of Serbian Television RTS and the Chinese embassy, which NATO claimed to be an accident, increased civilian casualties and caused into question the principle of proportionality of the intervention (Human Rights Watch, 2000: 24; Cohn, 2002: 100). Besides, uranium, and marble bombs, which were forbidden to use, were used during the bombing. It is estimated that birth defects increased by 250% due to chemical weapons used by NATO. It is believed that the cancer rate has doubled. Therewithal, the bombing of chemical, petrochemical, oil, and gas refineries caused great pollution in the big cities, and it affected the population's health on a large scale (Human Rights Watch, 2000: 57; Cohn, 2002: 101-102).

On the other hand, the view that intervention does not contradict the principle of proportionality also prevails. Accordingly, it is argued that the intervention is not directly contrary to the principle of proportionality, since NATO's goal in the intervention is not to kill more civilians, but to prevent civilian deaths (Heinze, 2004: 552, 553). In this context, it is claimed that NATO has achieved far more than the damage done during aerial bombardment. It resulted in the rescue of many more civilians from civilian deaths caused by shelling (Kwan, 2016: 13, 14). In addition, it is referred that airstrike was a quick option and that flying planes from an altitude of 15,000 feet during the bombing were necessary to protect them from the Serbian air defense

system. Accordingly, although the intervention prevented a small number of civilian deaths, it prevented ethnic cleansing, which could have severe consequences (Barkawi, 2000: 308, 309). Based on these reasons, there is also the opinion that the intervention was proportional or partially proportional (Xhaferaj, 2013: 77; Günal, 2010: 153).

Indeed, there is no consensus in the literature on whether the proportional means criterion agrees with the NATO intervention. While some scholars claim that civilian casualties are likely due to the nature of the military intervention and the intervention was proportional, others argue that the intervention does not match the criterion of proportionality determined by the report. Accordingly, to the question of whether the intervention was proportionate or not, Alexander J. Bellamy stated that the intervention is in line with the proportionality criterion with the following words, "*I can say that NATO's aims are limited and proportional.*" On the other hand, according to Aidan Hehir the intervention did not meet the criterion of proportional means; he noted that NATO committed violations of the law of war during the intervention, and although this intervention stopped the persecution of Kosovo Albanians, the way they did so exposed people to increased danger (A.J. Bellamy, personal communication, December 7, 2020 - A. Hehir, personal communication, December 3, 2020).

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In the opinion of the author, considering the Commission's statements on proportionate means, in which it observed fundamentally human rights, it is not possible to mention that the intervention is fully compatible with the principle of proportionate means.

### C. Last Resort

According to this criterion, the sanctions that can be imposed before military intervention must be applied. This should not be understood as an obligation to try all sanctions individually since, under all conditions, the international community may not have time to implement all sanctions individually. Nonetheless, under all conditions, there must be reasonable grounds to believe that even though the measure had been applied, it would not have accomplished (RtoP, 2002: 36).

The issue of whether NATO intervention was the last resort is examined, it is seen that both the international community and the UN tried to reach an agreement with Milosevic from the start of the conflict until 24 March 1999, when the intervention began.

To start with, the United States (US) started economic sanctions for human rights abuses and disorder in FRY in 1991 to stop the war in Croatia. Meanwhile, this was initially seen by the European Community (EC) as FRY's internal issue but calls for reform were being made. Afterward, because of FRY's failure of reforms and the continuation of heavy human rights, economic sanctions were decided by the EC in 1991 (Bellamy, 2002: 20-22). In the following period, in the process leading up to the 1998-1999 war, the international community repeatedly called the parties to meet and continued their mediation efforts to prevent the tension between Kosovo and Serbia (Ibid, 37-66). Nevertheless, gross human rights violations particularly have increased significantly in the 1998-1999 Kosovo war. Additionally, previous sanctions are important for the principle of "responsibility to prevent". Because FRY's stance during the civil turmoil was a precursor to its actions in the 1998-1999 Kosovo War. As Timothy Garton-Ash stated, "*anyone who was in Kosovo, as I was, in the winter of 1998-1999 could see that there was a humanitarian disaster*" (as cited in Hehir, Garton-Ash 2008: 85).

During the 1998-1999 Kosovo War, the growing interest of the international community was directly proportional to the human rights violation in Kosovo (Bellamy, 2002: 68). As a result of these human rights violations, on October 16, 1998, Richard Holbrooke reached an agreement with Slobodan Milosevic that authorized the deployment of the Kosovo Verification Mission of the Organization for Security and Co-operation in Europe (OSCE) (Ibid, 69). However, the atmosphere was tensed because of the attacks of the Kosovo Liberation Army against civilians. In the process, Milosevic refused Holbrooke's and the EU's mediation requests (Ibid: 71, 75, 111). Also, in 1998, United Nations Security Council (UNSC) expressed its concern with its decisions. Accordingly, UNSC resolutions 1160 (UN, 1998a), 1199 (UN, 1998b), 1203 (UN, 1998c) could not prevent human rights violations in Kosovo.

As a breaking moment in this process, the Serbs' attack to the village of Racak ended the ceasefire from October 1998. In its report dated January 15, 1999, the OSCE Kosovo Verification Mission held Federal Yugoslav Republic soldiers and Serbian Special police responsible for the massacre that killed 45 Albanians in the village of Racak (United Nations, 1999).

Finally, the negotiators agreed on one more push to make an agreement in the aftermath of Racak. In the town of Rambouillet in Paris, Serbs and Albanians were called upon to meet. According to the Rambouillet talks, Kosovo would become an autonomous part of Serbia, and the region would

be secured by NATO, and the KLA would be disarmed. At the end of the talks, which began in February 1999, while Kosovo Albanians agreed to sign the Treaty of Rambouillet, the Serbs refused, and thereupon, NATO implemented its decision to intervene (Judah, 2008: 84-85).

According to the two personal communications regarding the last resort criterion of the intervention, while Aidan Hehir indicated, *“it very much depends on what the goal was. If it was to stop violence in Kosovo, then I think more diplomatic effort could have secured that (but Kosovo remaining part of a Milosevic led Yugoslavia would have been very difficult to sell to the Kosovo Albanians who justifiably wanted their own state). But if the intention was to remove Kosovo from Belgrade’s control and establish a NATO base in the Balkans, then clearly all the diplomatic avenues had been closed off”*, Alexander J. Bellamy stressed *“with the collapse of talks and resumption of ethnic cleansing there were few viable alternatives to force – besides standing aside and allowing the FRY to prevail”* (A.J. Bellamy, personal communication, December 7, 2020; A. Hehir, personal communication, December 3, 2020).

Although there are number of opinions in the literature that claim intervention does not accord with the principle of last resort, the report stated that all possible sanctions do not have to be imposed one by one and do not need to wait until the last moment. Hereunder, it is necessary to point out that the report was created in a humanistic manner. It was clear at the time that the massacre could not be stopped by sanctions when the Yugoslav government’s actions were considered. Therewithal, the international community has imposed the necessary sanctions and has not been obtained a result. Therefore, it can be understood that the intervention meets the principle of last resort.

#### **D. Reasonable Prospects**

According to this criterion, before the intervention of wide-scale death and ethnic cleansing within a state, it should be measured whether success can be achieved if the intervention takes place. An intervention in which the situation after the intervention is likely to worsen from the situation before the intervention and which is predicted to be unsuccessful is not considered legitimate. In other words, if there is no chance of success, there is absolutely no such thing as interference for human rights violation. Since the goal of intervention is a limited military operation aimed at the target than the all-out war (RtoP, 2002: 37). In order to examine whether the intervention is

compatible with this principle, it is necessary to analyze NATO's operational force and touch upon how-well planned the operation.

First, it must be emphasized that among the NATO members, there was consensus on the idea that force must be used. In October 1998, this consensus was activated with the NATO Council's resolution to approve the Activation Order (Bellamy, 2002: 96).

While the use of only air operations in the intervention seemed to be a factor that reduced the chances of success, it was easier to convince the NATO members and the American public opinion to the air operation only. In addition, a limited air operation would not cause the deaths that a ground operation could cause (Ibid: 157-159). As it is known, the USA had to withdraw due to the public reaction as a result of its military losses in Somalia, 1991. Therefore, in terms of the stability of the intervention, an air offensive is a factor that increases the chances of success compared to a ground offensive.

Despite the sympathy of many countries from the Non-Aligned movement to Milosevic, the international community was in NATO's favor due to gross human rights violations of FRY. In addition, the people of Kosovo supported the intervention. This situation significantly increased the chances of success (Bellamy, 2002: 167; Judah, 2008: 86).

Although Milosevic expects Russian support against the NATO alliance, which is made up of the world's most powerful states, the Federal Republic of Yugoslavia's heavy human rights abuses has reduced that the possibility of Russia's reprimand to NATO. FRY insufficient air power against the bombardment indicated that the course of the war would be in favor of NATO (Bellamy, 2002: 179; Judah, 2008: 85).

Two interviews were done on this issue, and both scholars confirmed that NATO meets the Reasonable Prospects criterion. In this respect, Aidan Hehir evaluated by saying, "*NATO was always going to prevail over the Yugoslav army so long as they ensured none of their own personnel were killed, thereby preventing a 'let's retreat' Somalia like scenario*", while Alexander J. Bellamy stated that "*Clear that NATO could expect to win given the balance of forces*" (A.J. Bellamy, personal communication, December 7, 2020; A. Hehir, personal communication, December 3, 2020).

### **E. Legitimate Authority**

According to this criterion, the legal legitimacy criterion of intervention must be based on justified authority. Accordingly, the intervention must obtain

UNSC approval before it is carried out. The report stated that its aim was not to find alternatives to the Security Council but to enable it to work more effectively (RtoP, 2002: XII). According to the report, although it sympathizes with other solutions in the event of a deadlock in the Security Council, in the 2005 World Summit Outcome, it is stated that the legitimacy of the use of force can only be provided by the Security Council (RtoP, 2002: XIII; United Nations, 2005: 30). Thus, Kosovo intervention cannot be considered legitimate, according to a resolution taken at the 2005 United Nations General Summit, as lack of the Security Council authority for the intervention.

On the other hand, according to the report, the second source of authority indicated after the UNSC is the United Nations General Assembly. In this respect, in case the UNSC's authorization does not take place, the issue is discussed in the General Assembly in the "Emergency Special Session" and as part of the "Uniting for Peace". Due to the lack of authority of the UN General Assembly to order intervention, the outcome there will not be binding, however, since this decision was taken with a majority of 2/3, it is thought that a resolution that has received such large number of acceptances from UN members will set an example for the UNSC (RtoP, 2002: 53).

During this period, Canada proposed, the problem could be taken to the UN General Assembly, and a "Uniting for Peace" decision could be taken, as was the case in 1950. However, the United States and then the United Kingdom rejected this plan. Because there was a possibility that the Non-Aligned Movement states, Russia and China, and their satellite states might not agree to the intervention in FRY in the General Assembly (Manulak, 2009: 569).

In case the UN General Assembly also does not promote intervention, regional organizations have the authority to intervene. Since it is the neighbors of that state that suffers the most from conflicts, deaths, and ethnic cleansing within a state, the report leaves the authority to intervene to the regional states there. In addition, the area of responsibility of regional organizations' borders is framed as the boundaries of the organization. Nonetheless, giving an example from the NATO, it states that an intervention within its borders that can only be made to a non-member state is a much more complex situation, and in this case, does not clearly state whether the intervention can be considered legitimate (RtoP, 2002: 53-54).

Finally, the report stated that when faced with a situation in which the UNSC, the General Assembly, or regional organizations do not intervene,

the intervention of the ad hoc coalition or individual states is very difficult to be accepted by the international community (Ibid, 54).

Regarding Kosovo intervention, the report emphasized that it would be preferable to conduct the intervention under the authority of the Security Council or the General Assembly (Ibid). Considering all this, Kosovo intervention without the authority of both the Security Council and the General Assembly does not accord with the criterion of legal legitimate. Although there are sources in the literature that argue the UNSC's decisions on Kosovo give the authority to intervene, the Security Council resolutions do not authorize intervention. In resolution 1203, the Security Council stated that the unresolved situation in Kosovo poses a constant threat to peace and security in the region and stated that it supports the agreements that Yugoslavia has made with NATO and the OSCE to monitor the implementation of resolution 1199. In this regard, no authority was given to NATO or other states (Ertuğrul, 2016: 455).

In an interview with two well-known academics in the field, they stated that NATO did not meet the legitimate authority criterion. Accordingly, the question of the legitimate authority of NATO, Alexander J. Bellamy responded, *"This is the most difficult area since the intervention was not authorized by the UN and so lacked legal legitimacy"*, while Aidan Hehir stated, *"NATO did not have Security Council authorization. It was very clearly illegal. But as the Independent International Commission on Kosovo stated later it was "illegal but legitimate". This highlights the problem with the right authority principle – and the just war framework more generally – insofar as it shows that this is an inherently subjective determination."* (A. J. Bellamy, personal communication, December 7, 2020; A. Hehir, personal communication, December 3, 2020).

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## F. Right Intention

According to this criterion, the purpose of military intervention in order to be a legitimate humanitarian intervention must be only to stop or prevent people from suffering. If there are purposes such as changing borders, supporting one of the conflicting parties, overthrowing a regime, occupying a piece of land, that intervention cannot be considered legitimate. However, in the case of no choice but to occupy land in order to intervene, the goal should not be a permanent occupation, and when the hostilities between the conflicting parties are over, the territory must be left to the sovereign owner or, if this is not possible, to the UN interim administration (RtoP, 2002: 35).

Whereas it is not possible to reach a clear decision as to whether the right intention is the same as the stated intention, the report also formed the sub-principles of this criterion. The first is the principle of joint intervention since when a single state intervenes, it is likely to intervene in its interests. The second is that the people, who were intervened to prevent them from being harmed, also must be willing to this intervention. In addition, interventionist states may intend to stop problems such as refugee influx, terrorism, pandemic in the country to be intervened. These intentions for interveners are accepted in case it is secondary intent after the intention of stopping people's suffering and protecting their lives (Ibid, 36).

On the other hand, although the right intention criterion is similar to the just cause criterion in terms of goals, there are differences between them. In this context, having a just cause is not a situation that legitimizes war. In an intervention performed according to the just cause, the primary motivation should be due to the condition based on the just cause. For example, in the face of genocide taking place in a country, it gives rise to a justified reason. Accordingly, the primary motivation of interventionists must be to stop this genocide in order to provide the right intention criterion (Steinhoff, 2007: 25). Therefore, when there is a just cause, but the interventionist's primary motivation is other reasons, the intervention is deprived of the principle of right intention (Steinhoff, 2014: 33).

In the Kosovo intervention, it is not possible to know whether one of the states has any motivation other than to end the crime against humanity in Kosovo in a unanimous decision taken by NATO members. Nevertheless, the absence of oil in Kosovo and the non-claims of the intervening states on Kosovo's territory are in line with the right intention criterion of the report (Havel, 1999: 4-6).

Also, it can be referred that geopolitical concerns triggered the intervention. Indeed, the statements of US President Bill Clinton and British Prime Minister Tony Blair supported this argument. Right before the intervention, Clinton stated, "*It is also important to America's national interests*", while Tony Blair indicated, "*There are strategic interests for the whole of Europe at stake*" (CNN, 1999. Transcript; the Guardian, 1999. Blair). However, according to the report, if the main intention is to stop genocide and the widespread deaths, it does not prejudice the criterion of right intention to have goals such as preventing the refugee influx (RtoP, 2002: 36). Accordingly, Clinton and Blair declared in their pre-intervention speech that their

ultimate goal was to stop human rights violations and that they also wished to prevent the flow of migrants to the NATO members.

However, there are many arguments in the literature that NATO's sole purpose is geopolitical interests. Accordingly, the US desired to strengthen its hegemony in Europe and wanted to shape the map of Europe in this direction (Hadjimichalis, 2000: 177). In fact, right-wing writers in British newspapers such as *The Times* and *The Spectator* described NATO's Kosovo initiative as liberal imperialism. Leftist commentators such as Peter Gowan have also used the term liberal imperialism, arguing that NATO's intervention in Kosovo has nothing to do with humanitarian reasons but is entirely about Western geopolitical interests in the region (Günel, 2010: 153).

Besides, there are claims that the bombing of NATO's Chinese embassy was not an accident. It is claimed that this is a message to China, which opposes armed intervention, as to who the superpower is (Hadjimichalis, 2000: 178-179). In addition, NATO's lack of such compensation to the families of civilian Albanians, while it went to rescue while paying compensation to civilians and their families who were injured and killed in the bombing of the Chinese embassy, causes into question the humanitarian of the interventionists' intentions (Dumbaugh, 2000: 1).

Furthermore, NATO, which maintains that FRY's territorial integrity and political independence should not be touched before the intervention, should have been hand over to local authorities the provisional government to be formed in Kosovo under UNSC Resolution 1244. However, its effectiveness in Kosovo's independence in 2008 had a negative consequence for the criterion of the right intention. When it was considered within the framework of the right intention criterion, it was necessary that the intention of the intervention was to stop the ethnic cleansing of people and that the provisional government established within the framework of peacebuilding would hand over the established civil system to local authorities (RtoP, 2020: 39). In this context, it can be referred that even though the intervention started with the right intent criterion, it was not maintained in accordance with the right intention criterion. Considering all this, it can be stated that NATO's intervention in Kosovo is not compatible with the criterion of the right intention of the report.

Nevertheless, there are different opinions by scholars on this criterion, which is controversial in the literature. Accordingly, in two different interviews, scholars have different views. In this regard, Aidan Hehir indicated,

*“The main aim was not to stop the suffering of the Kosovo Albanians, it was for geopolitical reasons. Many – including President Clinton – acknowledged this at the time. This doesn’t mean it was the wrong thing to do of course, but the idea that the West was suddenly desperate to help Kosovo Albanians is not credible”,* while Alexander J. Bellamy stressed *“it was acting with right intent – to right a wrong being committed in Kosovo”* (A.J. Bellamy, personal communication, December 7, 2020; A. Hehir, personal communication, December 3, 2020).

## V. Conclusion

-56- The concept of the sanctity of state sovereignty, adopted with the Peace of Westphalia, had continued for centuries. So much so that after two great world wars, the founders of the United Nations accepted the sanctity of state sovereignty by maintaining the understanding of the Treaty of Westphalia in order to prevent wars among sovereign states.

However, many human rights violations continued to occur during the Cold War due to arbitrary veto decisions by permanent members of the UN. This led to the questioning of the system with the end of the Cold War in 1990, and in this respect, awareness of human rights in the world became important. In addition, the genocides that took place in Somalia, Rwanda, Srebrenica between 1990 and 2000, due to the weakness of the system, have been another element that further increases awareness of human rights. Finally, the gross human rights violations in Kosovo, which resulted in the NATO intervention in 1998-1999, resulted in the evolution of a new understanding of international law called Responsibility to Protect. In this regard, a commission called ICISS, which was established by the Canadian government with the call of the UN Secretary-General of the period, Kofi Annan, brought a new perspective to the issue of state sovereignty and humanitarian intervention in international relations with the report called “Responsibility to Protect”.

According to this report, the international community had responsibility for gross human rights violations and considered it legitimate to intervene on state sovereignty in the case of severe human rights violations. In addition, six criteria are specified as just cause, proportionate means, last resort, reasonable prospects, right intention, and legitimate authority in order to initiate military intervention. As the report noted, the biggest impact on the birth of the “Responsibility to Protect” was the NATO intervention in Kosovo without the ratification of the United Nations Security Council.

As it is known, since the report was in the process of doctrine during the intervention, NATO did not have a chance to base its intervention on the principle of Responsibility to Protect. Accordingly, after intervention, IICK evaluated NATO's intervention as 'illegal but legitimate'. Generally, the understanding of 'illegal but legitimate' prevailed in the international community.

After the intervention, it was claimed that NATO's intervention was legitimate and that there was a new understanding in the face of such violations and that the intervention would be easier thanks to the Responsibility to Protect report. In this context, this study examined how NATO's response is aligned with the Responsibility to Protect. Because, according to the report, it is not possible for the intervention to be considered legitimate unless all the six criteria are met.

Accordingly, it is possible to mention that the intervention is compatible with just cause, last resort, and reasonable prospects criteria. However, it cannot be mentioned that it is fully compatible with the concepts of proportionate means, right intention, and right authority, which are controversial in international literature. Therefore, in the light of this information, NATO's intervention in Kosovo cannot be considered legitimate when evaluated based on the Responsibility to Protect report.

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