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The NATO War of 1999 and the Impotence of International Law

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By Dr. Hans Köchler
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Abstract

The unilateral use of force by NATO member states against the Federal Republic of Yugoslavia in 1999 has made obvious the flaws of the United Nations system of collective security and has demonstrated the unenforceability of the ban on the use of force in contemporary international law. The concept of "humanitarian intervention" has been proven to be legally invalid, essentially serving as an ideological tool to justify acts for which it is impossible to obtain Security Council authorization.

The absence of a balance of power – after the collapse of the bipolar system of the Cold War – has made the Security Council's decision-making procedures ineffective, inviting the most powerful actor to circumvent the world organization in the very task that defines its raison d'être, namely the preservation of peace. The dysfunctionality of the Council in the Yugoslavia/Kosovo conflict was further aggravated by a systemic flaw in the UN Charter, namely the provisions of Article 27(3) allowing a permanent member to act as judex in causa sua / "judge in his own cause," and to block any collective enforcement action against its own acts of aggression.

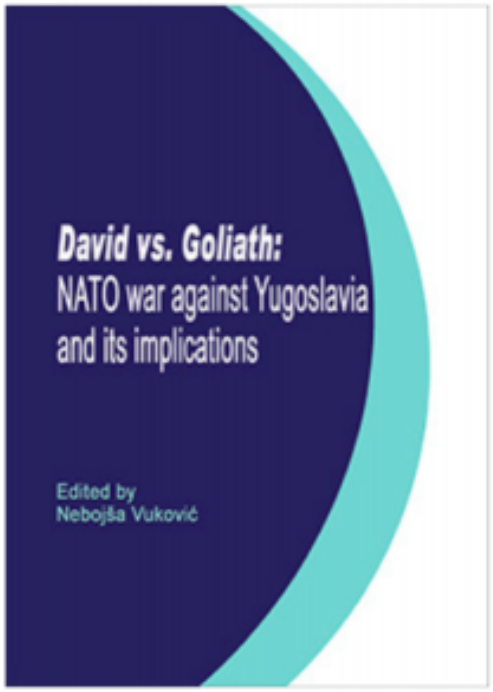
In terms of international criminal law, the NATO war of 1999 has further exposed the problems of judicial procedures based on Chapter VII resolutions of the Security Council. The (legally invalid) creation of an ad hoc court by virtue of a coercive measure of the Council has meant a politicization of proceedings and a practice of double standards, effectively determined by the most powerful states in the Council at the time. No investigation was ever opened over the war crimes committed by NATO forces in the course of the 1999 war (over which the Yugoslavia Tribunal of the Security Council clearly had jurisdiction).

In regard to (state) accountability for acts of aggression as well as (personal) responsibility for the commission of international crimes, the lesson from the NATO war of 1999 is twofold: (a) that international law under the UN system of collective security is impotent, and (b) a unipolar power constellation frequently invites acts of self-help and encourages a policy of faits accomplis. This can only be challenged if a credible balance of power emerges at the global level. In the present constellation, the absence of checks and balances – in terms of the constitutional set-up of the UN as well as of realpolitik – has led to a state of disorder that goes well beyond regional conflicts, and has made the notion of the "international rule

of law" an abstract ideal.

I

What distinguishes a legal from a moral norm is the former's enforceability. According to Kelsen, law is a coercive normative order1 where violations are sanctioned by virtue of the state's monopoly of force.2 Only the latter, practiced in the framework of an elaborate separation of powers, ensures the "rule of law" and, subsequently, stability of a political order. It makes the difference between a legitimate state, deserving international recognition on the basis of sovereign equality,3 and a "failed" state.



Since the establishment of the system of rules and regulations referred to as "international law," the status of these norms has been in question. Unlike norms at the domestic level, international legal norms lack unified enforcement mechanisms, the distinguishing criterion between law and mere morality. This is particularly serious in regard to the fundamental principle governing relations between sovereign states, namely the prohibition of the use of force.4Tantamount to the abrogation of the jus ad bellum – that was traditionally considered as prerogative of sovereign rule, the prohibition was first enshrined in a normative framework in the Briand-Kellogg Pact of 19285 and has subsequently become an integral part of the United Nations Charter.6 It is this norm, however, that in the history of the United Nations Organization has often proved unenforceable, and especially in cases that involved those countries, which, according to the UN Charter, have a "primary responsibility for the maintenance of international peace and security."7 The NATO war of 1999 against the Federal Republic of Yugoslavia is a case in point. In order to understand the gravity of this unilateral use of force and its implications for the international rule of law in general, one must be aware of the global constellation and the discourse on world order at the time.

When the Cold War between the United States and the Soviet Union, with the unavoidable proxy wars in its wake, had come to a close with the disintegration of the Socialist bloc, hopes were raised by the self-declared winner of that power struggle of a new golden era of peace – "where the rule of law, not the law of the jungle, governs the conduct of nations."8

Following the UN Security Council's authorization of coercive measures against the Iraqi invasion of Kuwait in 1990/1991 (that resulted in the restoration of Kuwaiti sovereignty), international commentators saw the world organization's role as guarantor of collective security suddenly restored after decades of paralysis due to the superpower veto. The newfound unanimity and co-operation among the Council's permanent members was praised as foundation of a stable and just "New World Order."9 However, the expectations were rather quickly proven illusory since unanimity among the permanent members was the result of the dominant position of only one member state. In the absence of a balance of power, only a few states did dare to object, or resist, the Security Council's most powerful member.10 Unavoidably, the unipolar constellation invited abuses of power and – where Security Council authorization could not be obtained – unilateral action. The perpetuation of the punitive sanctions against Iraq (that amounted to collective punishment and a gross violation of the human rights of almost the entire population)11 was one such abuse made possible because of the veto provision of Article 27(3) of the UN Charter.12 The series of unilateral, arbitrary military actions by the United States, alone or with her allies, in the years after the Cold War13 is proof of the subversive, namely "self-serving," effect of the veto, and particularly so in a unipolar constellation: no coercive measures can ever be undertaken against a permanent member if that state violates the norm of the non-use of force. According to the wording of the last sentence of Article 27, Paragraph 3, a party to a dispute is not obliged to abstain from voting on that very dispute. Consequently, a permanent member can veto any coercive action or condemnation of its own acts of aggression.14 It is no surprise that this statutory provision has been an effective guarantee of impunity and, thus, an invitation to arbitrary uses of force that are solely determined by considerations of national interest, and not by respect for international legality.

II

In the new constellation that resulted from the collapse of the bipolar balance of power, the war against Yugoslavia (over the Kosovo issue) in 1999 has been the decisive event that laid bare the weakness of the UN system of collective security and, structurally related to it, the impotence of international law in the existing statutory framework. The unprecedented unilateral use of force by the member states of the North Atlantic Treaty Organization has demonstrated that, under the present statutory conditions, the most serious violations of international law, namely acts of aggression, can be carried out with impunity if backed by at least one permanent member of the Security Council. However, the non-enforceability of the ban on the use of force does not make a war of aggression legal. The procedural impossibility to restrain a permanent member in the use of military force (or, for that matter, also in the application of other coercive measures such as sanctions) has been a predicament of the United Nations Organization since the very beginning, but has become more consequential in the absence of a balance of power, i.e. in a situation where there is no effective deterrence from the part of other major players.15

The Kosovo intervention of NATO was blatantly illegal (1) in its very factand (2) in its conduct. As the Security Council did not authorize the use of force, the war of 1999 constituted an act of aggression, i.e. a serious breach of a peremptory norm of general international law.16 In terms of its conduct, the war involved numerous violations of international humanitarian law, which also raises the issue of personal criminal responsibility. Even the "Independent International Commission on Kosovo," established by the government of Sweden in August 1999 and consisting of experts mainly from NATO

countries, could not deny, in its final report, that the massive use of force against the Federal Republic of Yugoslavia "was illegal because it did not receive prior approval from the United Nations Security Council."17 In view of the intrinsic illegality in terms of general international law, the Commission felt the need to make the point of morality, stating that "the NATO military intervention was illegal but legitimate."18 This was also the approach of those who – under pressure to justify, or "legitimize" post festum, a blatantly illegal act – developed a doctrine of "humanitarian intervention." However, unlike the seemingly more cautious Commission, the advocates of humanitarian intervention in most cases would also insist on the "legality," under contemporary international law, of such an undertaking.19 In this regard, the Commission regretted the "growing gap between legality and legitimacy that always arises in cases of humanitarian intervention,"20 suggesting so-called "threshold" and "contextual principles" on which to base a decision on whether to militarily intervene or not if the Security Council does not endorse the use of force in a particular case of humanitarian emergency.21

In the decision to launch "Operation Allied Force" against the Federal Republic of Yugoslavia, on 24 March 1999, NATO did not only breach Article 2(4) of the United Nations Charter, but violate basic provisions of its own charter, the North Atlantic Treaty of 1949. Ignoring the Treaty's – explicit and unambiguous – provisions regarding collective security and the use of force, the organization put itself above the authority of the UN Security Council. The Treaty clearly sets out the mandate of NATO in subordination to the United Nations' system of collective security. While the Preamble "reaffirms" the "faith" of NATO members "in the purposes and principles of the Charter of the United Nations," and Article 1 explicitly uses the wording of Article 2(4) of the UN Charter, Article 7 of the Treaty specifically affirms "the primary responsibility of the Security Council for the maintenance of international peace and security." Article 5 explicitly defines the mission of NATO within the framework of individual and collective self-defence according to Article 51 of the UN Charter. The Treaty does not contemplate any other use of armed force outside the scope of self-defence, and further obliges the organization to report all measures taken on the basis of collective self-defence "immediately" to the Security Council (Article 5, second paragraph), emulating the wording of Article 51 of the UN Charter also in this regard. It is evident that the offensive action against Yugoslavia in 1999 stands in sharp contrast with the defensive statutory mission of the organization; it can in no way be legitimized by reference to the North Atlantic Treaty.

NATO, thus, had to find a way to "circumvent" its own statute, though this could do nothing to "legalize" a patently illegal conduct. One month into the bombing campaign, the NATO member states met, in the framework of the North Atlantic Council, in Washington DC to commemorate the 40th anniversary of the North Atlantic Treaty. They adopted a new "Strategic Concept"22 by which they effectively broke with the defence doctrine of the North Atlantic Treaty. Solemnly invoking "common values of democracy, human rights and the rule of law,"23 the member states proclaim "a broad approach to security (…) in addition to the indispensable defense dimension"24 and subsequently introduce the notion of "non-Article 5 crisis response operations."25 They make clear that this "broad approach" includes armed action not only in cases of an attack on any of its members, but also to deal with, or avert, "other risks."26 The "management of crises through military operations,"27 as post-Cold War NATO- parlance goes, may also be carried out "beyond the Allies' territory."28 Nothing could be further away from the doctrine of collective self-defence on which NATO was established, including the prohibition of the unilateral use of force. The self-righteous attitude, indeed an almost imperial claim to power by NATO states as arbiters

of global standards, apart from and above the United Nations, is also obvious in the Washington Declaration of 23 April 1999, adopted by the Heads of State and Government.29 In Paragraph 7 of their Declaration, they emphatically state: “We remain determined to stand firm against those who violate human rights, wage war and conquer territory.” The Statement on their ongoing military operations in Yugoslavia,30 issued on the same date, is an even blunter testimony of NATO’s patronizing approach vis-à-vis the international community and of the organization’s tendency to bend international law to serve an agenda of power politics. In Paragraph 1, the Heads of State and Government assert: “The crisis in Kosovo represents a fundamental challenge to the values for which NATO has stood since its foundation: democracy, human rights and the rule of law.” Trying to circumvent the illegality of their military action, they further state that “NATO’s military action against the Federal Republic of Yugoslavia (FRY) supports the aims of the international community (…): a peaceful, multi-ethnic and democratic Kosovo where all its people can live in security and enjoy universal human rights and freedoms on an equal basis.” (Paragraph 2) In view of the violence the NATO intervention actually triggered on the ground,31 and of the repeated serious and systematic violations of international humanitarian law by NATO forces, the cynicism of this Statement could not have been greater.

Neither the eulogies of human rights and the rule of law nor the euphemism of “crisis response operations” in the organization’s new Strategic Concept could do away with the outright contradiction of this approach, and the military action justified by reference to it, to the norms of international law as they are presently in force – and underlie NATO’s very constitution. In the words of Bruno Simma: “If the Washington Treaty [North Atlantic Treaty] has a hard legal core which even the most dynamic and innovative (re-)interpretation cannot erode, it is NATO’s subordination to the principles of the UN Charter.”32

Similarly, the theories advanced to make “humanitarian intervention” a legally sound concept have led nowhere.33 The later redrafting of the notion under the label of “Responsibility to Protect” (R2P)34 could not change either the predicament of an approach that confuses the levels of legality and morality and cannot explain on what basis the fundamental human right to life can be sacrificed for an “ideal” the definition of which may depend on the ideological worldview of the intervening state(s).35 This dilemma has been particularly obvious in the Kosovo war of 1999 where the humanitarian paradigm was not only used by NATO, but formed the basis of arguments of many activists and scholars who saw in this military operation the “most important precedent supporting the legitimacy of unilateral humanitarian intervention.”36 Some even hinted at a development towards a customary rule of humanitarian intervention.37 The debate was legally rather imprecise, often ignoring procedural requirements of the law (under the UN Charter) in favor of vague commitments to not precisely defined values (whose perception – particularly in terms of democracy – may to a considerable extent depend on the ideological position of an actor or commentator). However, avoiding the technicalities of the law and resorting to “pure” morality in a military confrontation that was shaped by power politics and national interests on all sides was ultimately a (naïve) denial of reality. In his plea for a humanitarian justification of the 1999 war, Fernando R. Tesón even speaks of the “relative purity” of the intervention, meaning NATO’s bombing campaign to which he refers as “the Kosovo incident.”38 Similarly, Vaclav Havel, then President of the Czech Republic, embarked on the road to moral idealization of the force of arms, avoiding sober legal scrutiny and ignoring the facts of realpolitik: “This is probably the first war ever fought that is not being fought in the name of interests, but in the name of certain principles and values. If it is possible to say about a war that it is ethical, or that it is fought for ethical reasons, it is true of this war.”39

In a more sober assessment, Adam Roberts however observed that “Operation Applied Force will contribute to a trend towards seeing certain humanitarian and legal norms inescapably bound up with conceptions of national interest.”40

An imprecise humanitarian approach as in the case of the Kosovo war, confusing law and (power) politics, indeed risks – under the disguise of a just war doctrine – the undoing of a major achievement of modern international law, namely the abrogation of the jus ad bellum.41 So far, the debates and controversies over the NATO intervention against Yugoslavia have not produced any sound and legally consistent arguments for replacing the United Nations’ doctrine of non-intervention, which has been the cornerstone of peaceful co-existence among states since the end of World War II.42

Apart from the intrinsic illegality of the NATO intervention – as a war of aggression, the actual conduct involved a series of grave breaches of international humanitarian law that, in many instances, may amount to war crimes. This particularly relates to deliberate attacks on civilians or civilian installations such as infrastructure and industrial plants, or the use of cluster bombs and depleted uranium ammunition.43 These acts did indeed give rise to questions as to personal responsibility under the norms of international criminal law. Again, as in the case of general international law, those provisions have proven unenforceable under the existing conditions within the United Nations. Although the “International Criminal Tribunal for the former Yugoslavia” (ICTY), established by the Security Council in 1993,44 had (territorial as well as temporal) jurisdiction in the case, no formal investigation was ever undertaken by the Prosecutor. In her memoir, the then Prosecutor, Carla del Ponte, writes that she intended to open an investigation regarding the NATO campaign in 1999.45 She admits, however, and in no uncertain terms, that her efforts were “ultimately overshadowed by a sense of futility,” and confesses: “I understood that I had collided with the edge of the political universe in which the tribunal was allowed to function. (…) And my advisors warned me that investigating NATO would be impossible.”46 In spite of the statutory independence of the Prosecutor in the conduct of his/her mandate,47 and the undisputed statutory jurisdiction of the Court in this case, the international crimes allegedly committed in the course of the NATO campaign were never even formally investigated by the very Court the United Nations Security Council had set up for that purpose.48 Again, also at the level of criminal justice, the NATO war against Yugoslavia has proven the impotence of international law. As in the case of impunity for aggressive war, if conducted by a permanent member of the Security Council, it is the absence of a balance of power within the United Nations that has paralyzed a supposedly independent court and subverted the very idea of justice.

III

The illegal use of force by NATO, not restrained by UN mechanisms of “collective security,” resulted in a reversal of political order in the Province of Kosovo and Metohija. Security Council resolution 1244 (1999)49 served as a kind of “legalization,” post festum, of the “régime change” brought about by aggressive war. The so-called “Rambouillet Agreement”50 that preceded the military attack amounted to an ultimatum, i.e. a threat of the use of force in violation of the UN Charter . As Christopher Layne succinctly put it: “At Rambouillet the Yugoslavians were ‘negotiating’ with a gun to their head.”51 Drafted by NATO states, but never ratified by the Federal Republic of Yugoslavia or Serbia, it was meant to introduce new constitutional arrangements for Kosovo. This “agreement” was in

fact a colonial diktat by which NATO put itself above the authority of the United Nations. This is obvious in the arrogant wording of Chapter 7, Article I/1/a: “The United Nations Security Council is invited to pass a resolution under Chapter VII of the Charter endorsing and adopting the arrangements set forth in this Chapter, including the establishment of a multinational military implementation force in Kosovo. The Parties invite NATO to constitute and lead a military force to help ensure compliance with the provisions of this Chapter.” It is obvious that this was also a diktat upon the United Nations, which again has made clear that the Security Council can only exercise its mandate if there is a balance of power among its permanent members. In this context, resolution 1244 (1999) was a capitulation of the Security Council vis-à-vis NATO as an offensive military alliance – an outright declaration of bankruptcy of the UN system of collective security under Chapter VII of the Charter. The subsequent secession of the territory of Kosovo and Metohija from Serbia in 200852 was not only in violation of the constitution of the Republic of Serbia,53 but a clear breach of international law – since it was proclaimed by functionaries (members of the “Assembly of Kosovo”) who had come to power as result of an illegal foreign intervention.54 The right to self- determination is indeed of dubious nature when it is exercised “on the bayonets” of an aggressor force.

After the collapse of the bipolar balance of power at the beginning of the 1990s, the intervention of NATO had not only a destabilizing impact on international order, but it effectively undermined the United Nations Organization in the exercise of its mandate of collective security. This unilateral use of force – not challenged, or reigned in, by the international community – was followed by a series of similar actions by the United States and her allies, as in the case of the invasion and occupation of Iraq in 2003 or the intervention in the Syrian civil war in the years after 2011. These actions have further undermined the authority of the UN Security Council, which also became apparent when the US with other NATO countries overstepped the mandate under resolution 1973 (2011) of the Security Council to bring about régime change in the Libyan Arab Jamahiriya.55

In conclusion, the 1999 NATO bombing campaign has highlighted the ineffectiveness, in fact impotence, of international law in the absence of a balance of power. This gives rise to the question as to the nature of the international legal order within the framework of the United Nations Organization. How can arbitrariness and unilateral action be avoided in a system that lacks basic checks and balances, which are indispensable for the rule of law? How can the norm prohibiting the international use of force be upheld when the “enforcers” of the law are de facto exempt from its application? The impunity with which NATO states were able to act against the Federal Republic of Yugoslavia has laid open a structural problem in the makeup of the United Nations Organization: namely a normative inconsistency in the Charter.56 The norms of the non-use of force (Article 2[4]) and those regulating the decision- making procedures in the Security Council (Article 27[3]) are incompatible. The privilege of any permanent member to veto57 coercive measures against an illegal use of force by itself or one of its allies58 has opened the door to self- serving interventions of great powers whenever they feel strong enough.

The lesson learned from the NATO war of 1999 is that “international law” lacks the quality of law as long as there exist no uniform procedures of enforcement under the UN Charter. As a reform of the Charter cannot realistically be expected (because of the very veto of the privileged members),59only a balance of power – where major players deter each other from violating the law – may guarantee respect of the basic norms of general international

law, first and foremost the prohibition of the unilateral use of force. As long as these conditions of realpolitik are not in place, interested parties may always see the NATO war of 1999 as a precedent for future unilateral action.

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Prof. Dr. Hans Köchler is President of International Progress Organization.

Notes

1. Hans Kelsen, Reine Rechtslehre [1934]. Ed. M. Jestaedt. Tübingen/Vienna: Mohr Siebeck / Verlag Österreich, 2017, Chapter I/6/c: Das Recht als normative Zwangsordnung, pp. 94ff.

2. On that notion (monopoly of force / Gewaltmonopol) see also Max Weber, Wirtschaft und Gesellschaft: Grundriß der verstehenden Soziologie [1921/22]. Ed. Johannes Winckelmann. 5th, rev. edition. Tübingen: Mohr, 2009, § 17 ("Politischer Verband, Hierokratischer Verband").3. Article 2(1) UN Charter.

4. Article 2(4) UN Charter.

5. Treaty between the United States and other Powers providing for the renunciation of war as an instrument of national policy. Signed at Paris, 27 August 1928, entered into force on 24 July 1929.

6. "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state …" (Article 2[4]).

7. Article 24(1) UN Charter.

8. President George H. W. Bush, "Address to the Nation Announcing Allied Military Action in the Persian Gulf, January 16, 1991," in: Public Papers of the Presidents of the United States: George H. W. Bush (1991, Book I). Doc. AE 2.114. U.S. Government Publishing Office: Washington DC, p. 44.9. For details see Hans Köchler, Democracy and the New World Order. Studies in International Relations, Vol. XIX. Vienna: International Progress Organization, 1993.

10. Concerning the Gulf War resolutions of 1990/1991 see the testimony of Erskine Childers, a former United Nations senior civil servant, who spoke of the "use of bribery and extortion to silence" by Western powers with the purpose to induce certain decisions in the Security Council: "The Demand for Equity and Equality: The North- South Divide in the United Nations," in: Hans Köchler (ed.), The United Nations and International Democracy. Vienna: Jamahir Society for Culture and Philosophy, 1995, p. 32.

11. For a general assessment, see Peter Wallensteen, Carina Staibano, and Mikael Eriksson, The 2004 Roundtable on UN Sanctions against Iraq: Lessons Learned. Uppsala: Uppsala University / Department of Peace and Conflict Research, 2005, esp. Chapter 6.

12. The sanctions initially imposed in 1990 to force Iraq to withdraw from Kuwait could not be lifted because of the veto. They were only lifted after the United States had invaded and occupied the country in 2003.

13. For details see Barry M. Blechman and Tamara Cofman Witte, “Defining Moment: The Threat and Use of Force in American Foreign Policy Since 1989,” in: International Conflict Resolution After the Cold War. National Research Council. Washington, DC: The National Academies Press, 2000, pp. 90-122.

14. For details, see the author’s analysis, The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction and its Consequences on International Relations. Studies in International Relations, Vol. XVII. Vienna: International Progress Organization, 1991, chapter V/b: “The specific abuse of the veto for reasons of power politics / Circumventing the abstention clause,” pp. 29ff.

15. On the dilemma of power politics in the UN system see also Hans Köchler, “The United Nations Organization and Global Power Politics: The Antagonism between Power and Law and the Future of World Order,” in: Chinese Journal of International Law, Vol. 5, Issue 2, 1 January 2006, pp. 323-340.

16. On the definition of the concept of aggression, cf. S. Sayapin, The Crime of Aggression in International Criminal Law. Historical Development, Comparative Analysis and Present State. The Hague: Springer / T.M.C. Asser Press, 2014, pp. 98ff.

17. Independent International Commission on Kosovo, The Kosovo Report: Conflict – International Response – Lessons Learned. Oxford: Oxford University Press, 2000, p. 4.18. Loc. cit.

19. On the problematic legal nature of the notion of “humanitarian intervention” cf. also the author’s analysis: The Concept of Humanitarian Intervention in the Context of Modern Power Politics: Is the Revival of the Doctrine of “Just War” Compatible with the International Rule of Law? Studies in International Relations, Vol. XXVI. Vienna: International Progress Organization, 2001. – For en evaluation of the concept in connection with the NATO intervention see, inter alia, Aidan Hehir, “NATO’s ‘Humanitarian Intervention’ in Kosovo: Legal Precedent or Aberration?” in: Journal of Human Rights, Volume 8, Issue 3 (2009), pp. 245-264.

20. Op. cit., p. 291.

21. Op. cit., pp. 292-294.

22. The Alliance’s Strategic Concept approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C. on 23rd and 24th April 1999. North Atlantic Treaty Organization, Press Release NAC-S(99) 65, issued on 24 Apr. 1999, at https://www.nato.int/cps/en/natohq/official_texts_27433.htm.

23. Paragraph 6 of The Alliance’s Strategic Concept.24. Paragraph 25.

25. Paragraph 31.

26. Paragraph 24.27. Paragraph 49.

28. Paragraph 52.

29. The Washington Declaration Signed and issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C. on 23rd and 24th April 1999. NATO, Press Release NAC-S(99)63, 23 Apr. 1999, at https://www.nato.int/docu/pr/1999/p99-063e.htm.

30. Statement on Kosovo. Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington, D.C. on 23rd and 24th April 1999. NATO Summit, Press Release S-1(99)62, 23 April 1999.

31. Cf. the assessment by Lord Carrington, former Secretary-General of NATO: The bombing "made things very much worse. (...) I think what Nato did by bombing Serbia actually precipitated the exodus of the Kosovo Albanians into Macedonia and Montenegro. I think the bombing did cause ethnic cleansing." (The Guardian, 27 August 1999) See also The Kosovo Report, loc. cit., pp. 88ff.

32. "NATO, the UN and the Use of Force: Legal Aspects," in: European Journal of International Law, Vol. 10 (1999), p. 1.

33. For details, see the author's analysis, The Concept of Humanitarian Intervention in the Context of Modern Power Politics.

34. The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty. Ottawa: International Development Research Centre, 2001. The Commission was founded under the authority of the Government of Canada.

35. For a critical assessment of the notion see also Mary Ellen O'Connell, "Responsibility to Peace: A Critique of R2P," in: Journal of Intervention and Statebuilding, Vol. 4 (2010), pp. 39-52.

36. Fernando R. Tesón, "Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention," in: Amsterdam Law Forum, Vol. 1, No. 2 (2009), pp. 42-48; p. 42.

37. E.g. Antonio Cassese, "Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?" in:European Journal of International Law, Vol. 10 (1999), pp. 23-30.

38. Op. cit., p. 43.39. Address by Vaclav Havel, President of the Czech Republic, to the Senate and the House of Commons of the Parliament of Canada. Parliament Hill, Ottawa, 29 April 1999, at http://old.hrad.cz/president/Havel/speeches/1999/2904_uk.html.

40. Adam Roberts, "NATO's 'Humanitarian War' over Kosovo," in: Survival, Vol. 41, No. 3, Autumn 1999, p. 120.

41. Hans Köchler, "The Concept of Humanitarian Intervention ...," Chapter IV, pp. 37ff.

42. For an early critical assessment of the notion of humanitarian intervention see also H. Scott Fairley, "State Actors, Humanitarian Intervention and International Law: Reopening Pandora's Box," in: Georgia Journal of Comparative Law, Vol. 10 (Winter 1980), pp. 29-63.

43. For details of the civilian toll see the report of Human Rights Watch: The Crisis in Kosovo, at https://www.hrw.org/reports/2000/nato/Natbm200-01.htm.44. Resolution 827 (1993), adopted on 25 May 1993. – We do not address here the question of the legality of the Tribunal. For details of the Security Council practice of establishing ad hoc tribunals see the author's analysis: Global Justice or Global Revenge? International Criminal Justice at the Crossroads. Philosophical Reflections on the Principles of the International Legal Order Published on the Occasion of the Thirtieth Anniversary of the Foundation of the International Progress Organization. SpringerScience. Vienna/New York: Springer, 2003, pp. 166ff ("Ad hoc tribunals established by the Security Council").45. Carla del Ponte with Chuck

Sudetic, Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity: A Memoir. New York: Other Press, 2009, pp. 58ff.

46. Op. cit., p. 60.47. Article 16 of the Statute of the ICTY, Paragraph 2: "The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source."

48. On the problematic role of the UN Security Council in this regard cf. also the

author's analysis: The Security Council as Administrator of Justice? Studies in International Relations, Vol. XXXII. Vienna: International Progress Organization, 2011.49. "On the situation relating Kosovo." Adopted by the Security Council (with 14 votes to none against, and the abstention of China) at its 4011th meeting, on 10 June 1999.50. Interim Agreement for Peace and Self-Government in Kosovo, 23 February 1999 (never signed by the Federal Republic of Yugoslavia). Text released by the U.S. Department of State: https://1997- 2001.state.gov/regions/eur/ksvo_rambouillet_text.html.51. Ted Galen Carpenter (ed.), NATO's Empty Victory: A Postmortem on the Balkan War. Washington DC: Cato Institute, 2000, p. 16.

52. "Declaration of Independence" of 17 February 2008, proclaimed by the "Assembly of Kosovo," the parliamentary body established as part of the United Nations Interim Administration that came into being after NATO had succeeded in forcefully removing the existing governmental authority in Kosovo.53. For details see the chapter, "Self-determination and the law of force: The case of Kosovo," in the author's article, "Normative Inconsistencies in the State System with Special Emphasis on International Law," in: Dušan Proroković (ed.), Kosovo: Sui Generis or Precedent in International Relations. Belgrade: Institute of International Politics and Economics, 2018, pp. 108-136.54. Köchler, loc. cit.

55. For details see "Memorandum on Security Council Resolution 1973 (2011)," in: Hans Köchler, Force or Dialogue: Conflicting Paradigms of World Order. New Delhi: Manak, 2015, pp. 380-385.

56. See the author's analysis, "Normative Inconsistencies in the State System with Special Emphasis on International Law," in: The Global Community – Yearbook of International Law and Jurisprudence 2016. Ed. Giuliana Ziccardi Capaldo. Oxford: Oxford University Press, 2017, pp. 175-190.57. On the position of the veto in the normative framework of the Charter see also the author's analysis: The Voting Procedure in the United Nations Security Council.
58. "Normative Inconsistencies in the State System with Special Emphasis on International Law," loc. cit., p. 180.59. According to Article 108 of the Charter, any amendment requires the consent of the permanent members.

Articles by: Dr. Hans Köchler