

# Nato in Kosovo:

## operation allied force viewed from the core principles of *jus in bello*

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### **Abstract**

*This paper reviews NATO's Operation Allied Force conducted in Kosovo in 1999 based on the principles of International Humanitarian Law, namely those of distinction, proportionality, precaution and limitations on the type of weapons to be used within military operations. This document is distributed in two main parts. The first one describes NATO's constitutive treaty by making emphasis in what are considered its most prominent articles followed by a presentation of the four principles of jus in bello, mentioned previously. The second part deals with the description of four air incidents within the Operation aiming at the violation of International Humanitarian Law along with scholars opinions regarding the subject matter of discussion as well as the International Criminal Tribunal for the Former Yugoslavia (ICTY) final decision not to initiate investigations.*

*This paper is the result of research made through different International Law Journals and news from NATO's official webpage. Finally, it is worth mentioning that it is not pretended to criticize neither the arguments presented by scholars opposing NATO's intervention nor the decision at which the ICTY arrived, the aim is to present a case which still has not had consensus among International Law analysts but that can help in understanding jus in bello in International Relations.*

### **Introduction**

The North Atlantic Treaty Organization (NATO) is an Alliance of 28 countries from North America and Europe entrusted "to fulfilling the goals of the North Atlantic Treaty signed on 4 April 1949".<sup>1</sup> This organization holds among its main purposes to "safeguard the freedom and security of its member countries"<sup>2</sup> and the values of democracy, individual liberty, the rule of law and the peaceful resolution of dis-

1. North Atlantic Treaty Organization, "What is NATO?" Web site North Atlantic Treaty Organization [on line], available in: [http://www.nato.int/cps/en/natolive/what\\_is\\_nato.htm](http://www.nato.int/cps/en/natolive/what_is_nato.htm), accessed: 5 april 2010.

2. *Ibíd.*

putes through both political and military means. Throughout its enlargements NATO has been cataloged as one of the most successful and perdurable military alliances in the history of International Relations, nevertheless, “[f]rom March 24 to June 10, 1999, the North Atlantic Treaty Organization (...) engaged in a bombing campaign against the Federal Republic of Yugoslavia (“FRY”) in response to the atrocities committed by Serbian forces against the ethnic Albanian population in Kosovo. Code-named “Operation Allied Force,” the campaign resulted in the deaths of approximately 500 innocent civilians while injuring more than 800 others”.<sup>3</sup>

Although this was meant to be a humanitarian intervention, given the way in which the operations were conducted and its results in terms of casualties, some scholars argued that NATO had committed war crimes and that it should be judged before the International Criminal Tribunal for the Former Yugoslavia (ICTY) which had jurisdiction in this particular case. In this context, the purpose of this paper is to analyze the arguments which indicate that such war crimes did occur given that “[t]he core rules of international humanitarian law [which] consist of the principles of distinction, proportionality, and precaution in the attack, as well as the idea of limiting the use of certain types of weapons”<sup>4</sup> were violated.

This paper is distributed in two main parts. The first one (1) makes a brief introduction on NATO and describes its constitutive treaty by making emphasis in what are considered its most important articles (1.1), then within the frame of *jus in bello* the four main principles of International Humanitarian Law, mentioned above, are presented and described (1.2). The second part (2) focuses on NATO’s “Operation Allied Force” by describing four particular air bombings that, arguably, violate the mentioned principles (2.1), and finally a brief analysis is made based on the arguments posed by different scholars as well as the ones presented by the ICTY (2.2).

## 1. NATO and the core rules of International Humanitarian Law

Several criticisms related to NATO as a pro-democracy organization have put its reputation in question. Some authors agree that NATO’s *raison d’être* is mutual confidence and that as such its purposes encompass topics beyond national security interest. The debate has different and equally valid arguments, some of them; for example, argue that since “[s]everal of its members have at different times in history



3. Anne-Sophie Massa, “NATO’s Intervention in Kosovo and the Decision of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia Not to Investigate: An Abusive Exercise of Prosecutorial Discretion?” *Berkeley Journal of International Law*, vol.24, num. 2, June 2006, p. 611

4. *Ibid.*, p. 621.

been non-democratic states”<sup>5</sup>, the question as to when did NATO get its democratic identity shows that the organization has been “clearly inconsistent over time in terms of the importance it attributes to democratic principles”.<sup>6</sup>

On the other hand, others say that if a military alliance is “an organization that is set up with the sole aim of protecting the member states from a clearly identified external threat, and that is held together chiefly as a result of a common perception of such a threat, then it seems plausible that NATO has ambitions to, and perceives itself as, something more; and there is some evidence to support the idea that the ‘new NATO’ has sought to forge a basis of legitimacy for itself, and a definition of its own purpose, that are somehow linked to the idea of democratic governance”.<sup>7</sup>

Other authors remain more neutral and state that even if “NATO is certainly not the direct causal mechanism for democratization and democratic survival (...) official and unofficial NATO alliance ties facilitate an underlying process that helps reduce external threat, (...) [and] [t]his underlying process increases the probability of democratic transition or consolidation by aiding the settlement of the territorial disagreements that have such a deleterious effect on the state”.<sup>8</sup> Nonetheless, to avoid taking sides, the following section will focus only on NATO’s constitutive treaty. Afterwards, the core rules of International Humanitarian Law will be briefly described based on analysis made by Anne-Sophie Massa, PhD candidate at the Criminal Law Department from Faculty of Law at Maastricht University.

## 1.1. The North Atlantic Treaty of April the 4th, 1949

“(...) the North Atlantic Treaty, as well as numerous subsequent documents and declarations from NATO, emphasize the importance of democratic principles. Thus, in the preamble to the treaty it is stated that the parties are ‘determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law’.<sup>9</sup> Principles of the UN Charter are commonly mentioned in the NATO treaty, consequently the parties are committed to act in accordance with them, as cited in Article 1, “[t]he Parties undertake (...) to settle any international dispute in which they may be involved by peaceful means (...) and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.”<sup>10</sup>

5. Helene Sjørnsen, “On the Identity of NATO”, *International Affairs*, vol. 80 num. 4, p.695.

6. *Ibid.*, p. 695.

7. *Ibid.*, p.693.

8. Douglas M Gibler and Jamil A. Sewell, “External Threat and Democracy: The Role of NATO Revisited”, *Journal of Peace Research*, vol. 43, num. 4, July 2006, p. 416.

9. Helene Sjørnsen, *Op. cit.*, p.691.

10. The North Atlantic Treaty, 4 April 1949.

“While for most Europeans Article 5 [mentioned below] was NATO’s premier attraction, the North American members were more interested in Article 2, which called for the strengthening of free institutions and the promotion of political stability and material wellbeing through international trade and economic cooperation”.<sup>11</sup>

The military aspect of the treaty can be perceived from Article 3, which calls for each party to “maintain and develop [its] individual and collective capacity to resist armed attack”.<sup>12</sup> Also, Article 4 states the opportunity for parties to call for consultations whenever, in their opinion, “the territorial integrity, political independence or security of any of the Parties is threatened”.<sup>13</sup> But “[t]he North Atlantic Treaty’s critical component is Article 5, in which the signatories agree that “an armed attack against one or more of them in Europe or North America shall be considered an attack against them all,” and pledge to assist one another “by taking forthwith, individually and in concert with the other Parties, such action as [each signatory] deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area”.<sup>14</sup> This article also states that the arm attack as well as the measures taken to respond it should be immediately reported to the Security Council and that the actions taken to respond to the mentioned attack will cease when the Council has taken measures to restore order.

In this sense, Article 6 defines what for NATO constitutes an armed attack and Article 7 clarifies that the treaty does not affect in any way the obligations and rights under the UN Charter and that it does not intend to modify the role of the Security Council as the grantor of peace and security. Furthermore, Article 9 establishes a Council in which each party shall have representation, a Council able to meet “promptly at any time”, and it gives it the freedom to establish as many subsidiary bodies as necessary, finally, it urges the creation of a defense committee in charge of the implementation of articles 3 and 5.

Articles 10 to 14 refer to formal things such as the procedure for a state to become a party (Article 10), the conditions for the treaty to enter into force (Article 11), the possibility of reviewing the treaty by request of any party after it has been in force during ten years (Article 12), the option of notice of denunciation by a party after the treaty has been in force for more than twenty years (Article 13), and the place of deposit of the treaty (Article 14) that for this purpose was the archives of the Government of the United States of America.



11. Zoltan Barany, “NATO at Sixty”, *Journal of Democracy*, vol. 20, num. 2, April 1 2009, p.110.

12. The North Atlantic Treaty, Op. cit.

13. The North Atlantic Treaty, Op. cit.

14. Zoltan Barany, Op. cit., p.109.

However, these last five articles are not that important given the purpose of the present paper. Finally, it can be said that although opinions about NATO's *raison d'être* and democratic identity may be contradictory, one thing is clear and is that at the moment of constitution and throughout its enlargements "NATO's members entered freely and could not be compelled to take part in it against their will. [Also] [t]he Alliance has always had a European secretary-general, and its structure has allowed genuine and active participation by member states".<sup>15</sup>

## 1.2 The core rules of International Humanitarian Law

In order to describe the principles of International Humanitarian Law, a difference must be made between *jus ad bellum* and *jus in bello*. "The *jus ad bellum*, in the first place, consists of the UN Charter rules on resort to force. Thus, states may use force only in response to an armed attack (as per Article 51) or with Security Council authorization".<sup>16</sup> Nevertheless, as it has been observed in International Public Law, States may go to war based on one of three situations that come from doctrine, namely anticipatory self-defense, national security, or humanitarian intervention.

"(...) [T]he state resorting to force must then assess whether the use of force meets the requirements of necessity and proportionality. Necessity "determines whether the situation warrants the use of armed force". (...) If so, proportionality then requires assessment of the means to accomplish the legitimate objective. Will the cost of achieving that objective in terms of civilian lives lost and destruction of civilian property and the natural environment exceed the value of the objective?"<sup>17</sup>

Alternatively, "[t]he *jus in bello* consists of the many treaties, rules of customary international law, and general principles that govern the conduct of force -whether lawful under the *jus ad bellum* or not".<sup>18</sup> Special emphasis is to be made on this last remark. The fact that whether the war is lawful or not under *jus ad bellum*, *jus in bello* still applies is critical because sometimes although the justification to go to war is lawful under the UN Charter, the means used during the conflict are not, and the State that committed such acts must respond before an international court for having violated International Humanitarian Law.

15. Zoltan Barany, Op. cit., p.112.

16. Mary Ellen O'Connell, "Reviewed work(s): Necessity, Proportionality and the Use of Force by States by Judith Gardam" *The American Journal of International Law*, vol. 100, num. 4, October 2006, p.973.

17. *Ibid.*

18. *Ibid.*, p.974.



International Humanitarian Law (IHL) seeks “to moderate the conduct of armed conflict and to mitigate the suffering which it causes. It follows that persons who are not or are no longer participating in the hostilities, such as civilians, wounded and sick combatants, and prisoners of war, must be protected during the conflict and allowed to benefit from humanitarian care”.<sup>19</sup> As mentioned before, four main principles compose IHL, they are codified in the Additional Protocol I to the Geneva Conventions and they are recognized as International Custom.

The first principle is that of distinction. It is contained in Article 48 of the Additional Protocol I and points that “a war is waged only against the armed forces of the enemy and thus requires distinctions to be drawn between civilians and combatants and between civilian property and military objectives (...) The civilian population as such, as well as individual civilians, shall not be the object of attack. In other words, the civilian population and civilian property (...) must be protected in all circumstances”.<sup>20</sup> Hence, defining what is considered a military object is crucial when applying the principle of distinction. According to Additional Protocol I “military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”.<sup>21</sup>

Nowadays it has become difficult to identify some objects which are used both for civilian and military purposes. These “dual purpose objects” as defined by Annie-Sophie Massa have to be clearly identified as objects that contribute effectively to military action, because if there is room for doubt, they are presumed to be civilian, as stated in Article 52(3) of the Protocol: “In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used”.<sup>22</sup>

The principle of *proportionality* comes in second place. It “prohibits an attack that “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.<sup>23</sup> In addition, the principle of *precaution* has been codified in Article 57 of the Additional Protocol I (AP I), where a series of precautions are to be taken at “different levels of the military hierarchy in order to avoid civilian casualties”.<sup>24</sup> Some of these precautions are to spare the civilian population, civil-

19. Anne-Sophie Massa, Op. cit., p.621.

20. *Ibid.*

21. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.]

22. *Ibid.*

23. Anne-Sophie Massa, Op. cit., p.623.

24. *Ibid.*, p.624.



ians and civilian objects; to verify that the targets to be attacked are strictly military objectives; to cancel or suspend the attack if special conditions are presented<sup>25</sup>; to give an effective advance warning for the attacks that may affect the civilian population, among others.

Finally, the *use of weapons* is mentioned in Article 35 (3) of the (AP I) which “bans the use of weapons “of a nature to cause superfluous injury or unnecessary suffering.” As far as the protection of the environment is concerned Article 35(3) excludes the use of means of warfare that would cause “widespread, long-term and severe damage to the natural environment”.<sup>26</sup> The use of weapons is mentioned in other conventions where the use of certain types of weapons is prohibited since they violate “the laws or customs of war”.

The violation of the principles of distinction, proportionality and the use of weapons constitutes a war crime, and although the violation of the principle of precaution does not constitute a war crime itself “if a violation of the principle leads to a direct attack on civilians or civilian property, or an indiscriminate attack, the lack of precaution indirectly contributes to the commission of war crimes”.<sup>27</sup> These elements described above show that actions committed in war must be carefully regulated since a single imprudence can constitute the violation of a principle that is both codified in treaties ratified by most countries in the world and an International Custom. Now that some concepts of International Humanitarian Law have been explained, this paper will focus on describing NATO’s Operation Allied Force with the purpose of analyzing specific events in the light of *jus in bello*.

## 2. Operation Allied Force and its consequences based on *jus in bello*

After the Rambouillet negotiations failed and due to the continuous attacks against the Albanian population that caused a massive flood of refugees, NATO decided to implement Operation Allied Force with the objective of putting an end to Serbs’ actions. “However, the NATO air strikes, far from stopping the humanitarian crisis, “added a new dimension” to it, thereby contributing to the greatest exodus of refugees since the Second World War”.<sup>28</sup>

25 “If it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” Article 57 (2b) Additional Protocol I.

26. Anne-Sophie Massa, Op. cit., p.625-626.

27. *Ibíd.*, p.625.

28. *Ibíd.*, p.613.

“On June [10] 1999, [after months of air strikes] the United Nations (UN) Security Council adopted Resolution 1244 to provide for the deployment of international civil and security presences to Kosovo under the auspices of the UN in accordance

with a peace plan agreed to by the FRY [ The Military Technical Agreement]. Acting under Chapter VII of the UN Charter (...), the Security Council authorized the UN Secretary General to establish an international civil presence to provide an interim administration for Kosovo [UNMIK], and further authorized the Member States of the UN and relevant international organizations to establish an international security presence, with substantial NATO participation and operating under ‘unified command and control’, in order to establish a safe environment for all people in Kosovo”.<sup>29</sup>

However, during the intervention questions about the way in which NATO was conducting the attacks started rising. NATO argued that it was not violating the rules of warfare and that rather it was following Additional Protocol I, but the incidents occurred probed wrong in the eyes of some scholars. The purpose of this section is to describe both briefly and concisely the incidents in question which later will be useful to analyze in the light of International Humanitarian Law.

## 2.1 Four incidents reflecting Operation Allied Force’s controversial planning and implementation phases

“On April 23, 1999, NATO aircrafts bombed the Serbian State Television and Radio in Belgrade without denying that it was their intended target. The nature of the target is at issue in this case”.<sup>30</sup> It has already been mentioned that the nature of the objective to be attacked has to be clearly defined, especially with the denominated “dual-use objects”. The ICRC has included television stations within the category of potential military objectives, however, it clarifies that the nature of the objective has to be established in a case-by-case basis. The attacks occurred past 2 AM, however, NATO forces knew that the building was staffed twenty-four hours.

Also, even if the objective is cataloged as a military one, in order to be destroyed the military advantage obtained by doing so has to be considerable. Where no or few military advantage is obtained, the destruction of the target constitutes a violation of *jus in bello*. The reasons given by NATO to justify the attacks were that the Radio Television Station “was playing a propaganda role in the conflict, [and also] contended that the television station was a dual-purpose object because it was part of the military broadcast network”.<sup>31</sup> Three hours later after the bombing occurred, the broadcasting recommenced.



29. Anne-Sophie Massa, Op. cit., p.627.

30. *Ibíd.*, p.628.

31. *Ibíd.*, p.630.



“During an attack that occurred in the middle of the day on April 12, 1999, two bombs hit a civilian passenger train while it was crossing a bridge. The object of the attack was the bridge, not the train. Whereas the dropping of the first bomb on the train is attributable to the Alliance’s failure to verify the train schedules and the high altitude that apparently prevented the pilots from getting a precise view of the target at the time of the attack; the dropping of the second bomb is inexplicable”.<sup>32</sup> This was known as the *Grdelica Railroad Bridge Incident*, the explanations given NATO stated that the pilot who dropped the second bomb “had understood the mission was to destroy the bridge regardless of the cost in terms of civilian casualties”.

The third event is known as *The Djakovica-Decan Road Incident*. Several ethnic Albanians were killed and over 100 were hurt when NATO, on April 14; bombed several refugee convoys. At first NATO denied its responsibility arguing that the attack had been conducted by Yugoslav forces, but then it “admitted that aircrafts from the Alliance had carried out the bombing but argued that the pilots thought they were attacking military vehicles”.<sup>33</sup> After the attack there was no evidence that military vehicles were present among the civilian population, and even if there were, Article 50 (3) of the Additional Protocol I states that “[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character”.<sup>34</sup> It is worth mention that after the attack, NATO changed the altitude at which the pilots were required to fly from 15.000 feet and above to as low as 6.000 feet “in order to get a visual confirmation of the absence of civilians in the vicinity of the target (...)”.<sup>35</sup>

Finally, *The Nis Incident* that occurred on May the 7th at noon consisted in NATO dropping cluster bombs in two residential areas of the mentioned city. The bombs were dropped around the market place and the main hospital, fourteen civilians were killed and about thirty got injured. “According to Amnesty International, the bombs fell on a busy part of town at a time when people were out in the streets and at the market, not protecting themselves in the bomb shelters where they had spent the night”.<sup>36</sup> NATO argued that the incident had resulted from a weapon that had missed its objective given that the real targets were “a nearby airfield used by the Serbian army and the aircraft, air defense systems, and support vehicles located there, <<targets to which cluster munitions are appropriately suited>>”.<sup>37</sup> After the incident, United States issued a directive where it asked for the restriction of the use of cluster bombs.

32. *Ibid.*, p.630.

33. *Ibid.*, 631.

34. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. *Op. cit.*

35. Anne-Sophie Massa, *Op. cit.*, p.631-632.

36. *Ibid.*, p. 632

37. *Ibid.*

Having described the four incidents that occurred in the course of NATO's Operation Allied Force, this paper will now focus on presenting some arguments from scholars pointing at NATO's violations of International Humanitarian Law, in addition, arguments defending NATO's actions are illustrated, given that it is considered necessary to take into account both sides in the conflict. As mentioned before, this paper does not intend to take sides but just to present the case within the frame of IHL.

## 2.2 Arguments concerning NATO's actions in Kosovo

This section presents some arguments referred to the events mentioned supra. In first place the Radio-Television Station (RTS) incident poses several doubts as to the targeting of the (RTS) as a military objective by NATO, and because no significant military advantage was gotten given that three hours after the bombings occurred the broadcasting restarted. Also it is argued that there was no evidence that the target was used by the Serb military broadcast network for command, control and communication purposes. Some scholars argue that whether the (RTS) was a military objective and a significant advantage was acquired, NATO still violated the principle of precaution given that it did not warn the people working at the place in question knowing that it was occupied twenty-four hours, as Anne-Sophie Massa states "it is difficult to see how the probable death or injury of a substantial number of civilians could not be qualified as excessive when compared to an anticipated military advantage of disrupting broadcasting for a few hours past 2 AM".<sup>38</sup>

With regard to the *Grdelica Railroad Bridge* incident the main argument posted is that the pilot must have realized that the bomb had hit the train, not the bridge, and thus abstain of dropping the second one. The bombing of the train, clearly a civilian objective, poses the suggestion that NATO's pilot committed "willful killing of civilian and indiscriminate attack causing excessive civilian casualties or damage".<sup>39</sup> Different arguments struggle to define if the violations were imputable to the pilot or to his superiors, and hypothesis concerning the knowledge of the commanders about the train give different degrees of responsibility to both the person who executed the action and the ones who ordered it, but among scholars it is clear that NATO had committed war crimes in this particular incident.

The third Incident also points at the willful killing of civilians since precautions were not taken by NATO before the air strikes occurred.



38. *Ibid.*, p.629.

39. Statute of the International Tribunal for the Former Yugoslavia

Negligence is also imputed given that the pilots “mistook the convoy for a military column”<sup>40</sup> plus NATO acknowledged that after the attack no aircraft descended to “double check” if it was indeed a military target. In this case the debate of imputing individual criminal responsibilities to the pilots and their superiors is also present. Finally, arguments related with the Nis Incident point at an inappropriate choice of weapons and a violation of the principle of distinction. The former can be explained given that NATO’s commandants knew that the location of the military target lay near civilians and according with this they should have used other type of armory, the latter is explained by the following statement:

[t]he fact that cluster weapons were used on a target in proximity to a civilian area, and at a time of day when civilians were on the streets and most likely to be harmed, raised serious concerns as to whether NATO was indeed taking the proper steps to distinguish between military targets and civilians and civilian objects, and whether it was taking all the necessary precautions to ensure that civilians were not put at risk.<sup>41</sup>

Opinions by NGO’s, scholars and some states arguing that the events mentioned deserved a proper investigation, led to ICTY Prosecutor Louise Arbour to establish a Committee whose objective was to determine if there was sufficient basis to start an investigation on the way NATO’s Operation Allied Force was conducted. “[O]n June 2, 2000, after considering her team’s assessment of NATO’s conduct in the campaign, the Prosecutor of the ICTY, Carla del Ponte, who had taken over for former Prosecutor Louise Arbour (...), concluded “that there [was] no basis for opening an investigation into any of the allegations or into other incidents related to the NATO air campaign.”<sup>42</sup>

The Prosecutor argued that although some mistakes were committed, knowing that NATO had not made “deliberate targeting of civilians or unlawful military targets” was enough not to proceed with an investigation. This decision generated different feelings among people, some defending the conclusion at which the Prosecutor had arrived while other claimed that political considerations had biased her judgment.

40. Anne-Sophie Massa, Op. cit., p.631.

41. *Ibíd.*, p.632.

42. *Ibíd.*, p. 611.

## Conclusions

“Although the use of military force in extreme circumstances for humanitarian purposes may be arguably justified, it has to be said, especially with hindsight, that the 1999 NATO Operation Allied Force against Serbia over Kosovo raises in that respect some serious questions and doubts”.<sup>43</sup>

This paper has dealt with NATO’s Operation Allied Force conducted in Kosovo in 1999 which led to the demise of Serb forces attacking Albanian population, but also to the death of civilians in particular air strikes conducted within the conflict. The fact that at the moment there is not yet a consensus among scholars about NATO’s responsibilities shows that *jus in bello* principles although recognized within the International Community are not always easy to apply and have to be analyzed in a case-by-case basis. Some important groups like Amnesty International point that an investigation of the facts was necessary; others go beyond and argue that there was an abusive exercise of prosecutorial discretion within the final decision not to investigate. Nevertheless, as it has been mentioned supra, the purpose of this paper is limited to present the case within the frame of International Humanitarian Law, thus inviting the reader to research deeper into the subject and analyze more arguments posted by outstanding scholars within International Law.

The present paper has been structured in two parts. Within the first one a few arguments concerning NATO’s democratic identity were presented and its Constitutive Treaty was described. Then *jus ad bellum* and *jus in bello* were mentioned followed by a presentation on the core principles of the latter (i.e. the principle of distinction, proportionality, precaution and use of weapons). The second part described four incidents occurred within the Kosovo war that arguably violate the principles already mentioned and to conclude some arguments concerning both the events and the principles were explained.

43. Rein Müllerson, “Precedents in the Mountains: On the Parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia”, Chinese Journal of International Law, vol. 8, num. 1, march 1 2008, p.9.

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