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**Foreign policies of the EU and selected EU member countries in the event  
of the Kosovo conflict**

**Master Thesis**  
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I declare that I have prepared this work by myself based on the mentioned sources and literature.

In Olomouc date 10. 1. 2021

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*Signature*

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## List of used abbreviations

AD	Additional Protocol
Atex.	Attempted execution
Beat	Beatings
Det	Detentions
Disp.	Forced displacement
Exec	Executions
EU	European Union
GC	Geneva Conventions
Hars.	Harassment
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
Lab	Forced labor
Miss	Missing persons
NATO	North Atlantis Treaty Organization
Prop	Private property destruction
Rob	Robbery
Sep.	Separations of men, women, and children
Shell	Indiscriminate shelling
UČK / KLA	Kosovo liberation Army
UN	United Nations
USA	United States of America

## Introduction

The aim of this work is to answer on the Kosovo case study whether international legal norms, despite their low enforceability, are properly observed by subjects of international law, or whether international law is perceived by states and supranational organizations only as a universally inapplicable social construct. Using the example of the Kosovo War, I will try to find out whether the end of this war was due to the observance of international law by all stakeholders, or whether it was only under the threat of using more intensified military force.

I will base the assessment of the course of military operations on the principle of international humanitarian law *Jus in Bello* and *Jus ad Bellum*. Based on these principles, I will follow the position and interpretation of international law by the European Union in the case of the Kosovo conflict. Then I will focus on the following two principles of IHL and their compliance in the Czech Republic which was at that time a non-member state of the EU but a new accessor to NATO. Moreover, I will analyse the position of the Republic of Austria which was the member state of the EU but not NATO. In comparing the approach of these two countries, I will observe whether there have been different interpretations of international law even in such a legal nature of close countries.

The research questions of the work will therefore be exposed to the interpretation of these international principles, specifically to the legitimacy of military intervention. In the course of my work, I will try to find out *"what was the EU's position on the Kosovo conflict?"* moreover *"Was non-compliance with the principles of Jus in Bello one of the motives for deciding of Czech republic and Austria for participation/non-participation in the NATO military intervention in Kosovo?"* and *"Was the scope and manner of troop intervention in line with the principles of Jus ad Bellum?"* The assessment of compliance with the above principles will serve me to analyse the validity of international law in times of war. Because of the possible non-compliance with these principles argued by many authors that states are willing to comply with certain international rules only to the extent that they are beneficial to them. A partial research question of this work will be, *"Is international law always clearly interpretable in cases of war and whether supranational organizations have the full support and authority to act from their member states in these procedures?"*

One of the motives for choosing this topic was the fact that views on the approach to the Kosovo conflict were and still are quite different in many countries. Different approaches to international law are also one of the reasons why I decided to put my work into that theoretical framework. A partial output of the work should be to point out whether international law is always clearly interpretable even in these cases of war conflict and whether supranational organizations have the full support and authority to act from their member states in these procedures.

The work will be divided into two parts. In the first part, I will deal with the theory of social constructivism. I will present its essence, historical development, use in practice, and its application in legal sciences. Part of the theoretical part of the work will be the introduction of international law principles *Jus in Bello* and *Jus ad Bellum*, their entrenchment in the Czech and Austrian legal systems. What is the wording of these principles and their enshrinement in the Czech and Austrian legal systems?

In the second part of the work, I will focus on the presentation of the Kosovo conflict and what was its development. Subsequently, I will examine whether the principles of international law *jus in Bello* and *jus ad Bellum* were observed during the war. Based on the results of this analysis, I will focus on the position of the European Union and two selected states on this conflict. These countries will be the Czech Republic and Austria. I will follow the interpretation of international law in these two countries, and the case study of the Kosovo War will help me answer the above research questions and reach the very goal of the work. Its beginning, course, and end from the point of view of international law. In this part, I will use the knowledge from the theoretical part of the work and apply it to selected examples.

The research method in this work is relatively trivial, as I use a descriptive analysis of a case study. However, I believe that the chosen method is sufficient to grasp this topic and reach the goals of the work. Incorporating the work into the theoretical concept of social constructivism by Berger and Luckmann, the social order is constantly evolving, changing, and thus exists only as a product of human activity. It is a compromise of individuals who have adopted social rules that will lead to their higher well-being. According to many authors, a similar situation can be observed in the international legal environment, the use of this theory, and case studies will help me reveal the extent to which these authors are right. Last but not least, it should be mentioned that in the concretization of international law, I will use only selected

principles that will allow me to monitor the behavior of this law intense situations, such as war. All the above-mentioned methodological tools will help me to achieve the set goal of the work. However, I must also take into account some of the pitfalls that research will face.

I see the limits of this work primarily in the assessment of international law in the theoretical concept of social constructivism. This type of law has proved it is worth several times in history, but we have also witnessed several times that international law, especially in cases of war, has been delayed and disregarded. For a clear definition of whether or not international law is a social construct, it will not be easy to find answers that cannot be refuted. Another pitfall for quality research work will be the low number of foreign authors who deal with this case study. From the survey so far, I came across several monographs focusing on the Kosovo war conflict, however, in a large part of them, their authors were former Yugoslavs. As I mentioned above, approaches to military intervention and interpretations of international law often differ in the case of the Kosovo conflict. When these differences can be largely observed by experts dealing with this conflict. All the more so if they are former Yugoslavs. A different approach and interpretation of international law or justification for the use of international law principles will be used by a Serbian, Bosnian, or Albanian expert. In my work, I will try to maintain the maximum objectivity and expertise of the resources used.

Countless monographs and scholarly articles have been written on the subject of the war in Kosovo. However, in my opinion, this topic still remains unspent. The Kosovo conflict reveals several failures in the foreign policy of supranational organizations such as the UN, the EU, or NATO, but also individual European states. Therefore, I decided to grasp the Kosovo conflict from the perspective of international law and international law principles using the theory of social constructivism. Only a few authors have chosen this view of this conflict. One of them is Alexander Wendt and his publications *Anarchy is What States Make of It: the Social Construction of Power Politics in International Organization* and *Social Theory of International Politic*. Moreover, I would like to mention author Jutta Brunnée from the University of Toronto and her article *Constructivism and International Law*.

In the first part, I, therefore, focused on the presentation of constructivism and social constructivism, which is based on the teachings of Immanuel Kant and his work *Critique of Pure Reasons*. In this work, Kant focuses on the realm of human knowledge

and reason. Kant believes that human knowledge does not arise in direct contact of the senses with things. All the meanings and judgments of the human mind in looking at the world can change over time. Human knowledge and reason are therefore only the subjective reality of our own experience. It was this reasoning that gave rise to the theory of constructivism. I perceive this work as timeless, so I decided to use it in the first part of the theory of work.

Kant's thoughts were later followed by other authors and experts in the field of sociology. For my work, however, I decided to choose two authors important for the emergence of a new theory of social constructivism, which is the main theory of this work. These are Peter Berger and Thomas Luckmann and their work *Social Construction of Reality*. They focused on man as an individual and a man in society. How these variables interact and form with each other. Their work was a revolution in the perception of society as a social construct. The authors conclude that society is the creation of man, but also that society is an objective reality and man is the creation of society. Both works are highly regarded by academia and have received little criticism. The combination of these works helped me to understand and introduce the theory of social constructivism to which this work is exposed. The authors use examples in their works that can be well understood and then applied to the example I selected. Such examples and knowledge have fundamentally helped me to understand the perception and behavior of international law in the theory of social constructivism.

Other fundamental sources for the theoretical part of the work were the Geneva Conventions and their amendments, which are extensively discussed by Marek Jukl in his publication *Geneva Conventions and Additional Protocols*. Mr. Jukl's work helped me in interpreting the individual points of the Geneva Conventions, on which the international principle of Jus in Bello is based. In this work, Jukl discusses the development and relationship of individual parts of the Geneva Conventions, which subsequently helped me to a better combination of the analyzed points of the conventions on the example of the Kosovo war. Last but not least, it is necessary to mention the UN Charter, which I used to present the principles of Jus ad Bellum, which are then important for achieving the goal of the work. Marek Jukl is based on the exact wording of the Geneva Conventions, while the UN publishes a literal original of the original UN Charter. Therefore, I evaluate both sources as valid for the introduction of both legal principles.



In the practical part, I rely on several monographs that deal with the development and course of the war in Kosovo. Among the most important of them is the work *Kosovo* by Patrik Girgl, then the work *States of the Western Balkans* in the past quarter-century by Jan Pelikán, Tomáš Chrobák, Jan Rychlík, et al. And last but not least, the publication *Notes from the Time of the Bombing and Yugoslavia - Serbia - Kosovo* by Václav Štěpánek. All the mentioned works focus on the vanguard of the war, what was the situation among the local population, what were the economic factors and problems of then Kosovo until what led to the beginning of the war. In the work of Jan Pelikán et al., I was then able to find out what the war was like and how some states and supranational organizations reacted to it. I subsequently verified all the above information with data recorded in reports from Human Rights Watch, which published *Under Orders: War Crimes in Kosovo*. All published issues have undergone double verification to avoid misleading conclusions. The Kosovo conflict still faces different perspectives on why the war began, whether it was legitimate, and how many victims were actually recorded. These data may differ for Serbian or Serbian-oriented authors. Since the practical part is based on some sources from authors originating in the Balkans, I decided to re-verify these data. The publication of Human Rights Watch is therefore very important for my work in view of the above data.

In the last part of the work, in which I follow the position of the European Union, the Czech Republic and Austria on the conflict in Kosovo, I had to rely mainly on Internet articles and reports concerning the attitude of the public and political representation in the countries studied. For both countries, only a minimum of publications are written on this topic, and therefore this part cannot be based on a professional publication that would confirm my conclusions. However, I believe that I have found enough internet articles on the monitored position of the EU, the Czech Republic, and Austria, which are a valid source of information. These include reports from Czech Television, *Hospodářské noviny*, Czech Radio, and the *iDnes* daily. In the case of Austria, I also relied on publications published on the website of the Austrian Ministry of Defense, and by Karen Donfried, *Kosovo: International Reactions to NATO Air Strikes*. In her publication, she discusses the attitudes of NATO and non-NATO nations to military intervention in Kosovo.

Overall, the work is dominated by professional literature and monographs over Internet articles. However, I see the selection and extent of resources as one of the other

limits of work, as I work in it with only a minimal amount of data. I believe that even a seemingly theoretical topic like mine can be covered in numbers. However, there was no time for better processing and use of, for example, regression analysis for some variables, and therefore I leave this completion for a possible dissertation.

# 1 Theoretical part: Social constructivism and principles of international law

In this chapter, I will focus on the theory of social constructivism, specifically what this theory deals with, what this theory is based on, and what was its historical development. In this theory, I will focus mainly on its application in social science issues and its application in international law. The analysis of the latter point will probably be the most crucial for the research of the work, as there are still different approaches to its perception and observance in the approach to international law. The main reason for these differences is above all the view of the normative will and the lack of subordination of international legal entities. One of the basic features of international law is the principle of sovereign equality, therefore no superior centralized legislative, executive, or judicial power is assumed in this environment. International law thus affects states only to the extent that they themselves allow it.<sup>1</sup>

Therefore, in order to comply with international law, international legal entities have decided to voluntarily associate in supranational organizations such as the UN, the IMF, the WB, and others. In the territory of these organizations, they lead a discussion and try to enforce obligations and obligations arising from legal norms. However, the acts of these organizations are legally non-binding for sovereign states, and it is again entirely up to them to assess whether they will comply with these standards. Again, I return to the approach of subjects of international law, more specifically states, and their perception of international law. This different conception of the approach to law can be identified with the theory of social constructivism, which was introduced in their work “The social construction of reality” by Berger and Luckmann.

Another topic of the theoretical part of this work will be the international legal principles of *Ius in Bello*, *Ius ad Bellum*. In connection with these principles, I will focus on their wording. Their historical development and use in practice. I will deal with this topic in the second part of the chapter.

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<sup>1</sup> MALENOVSKÝ, Jiří. *Mezinárodní právo veřejné*. Brno: Doplněk, 2002, Pp. 17-18.

## 1.1 Historical development of social constructivism

Constructivism is a relatively recent theory, its origins can be traced to the late 1980s on the theoretical stage, coming into its own in the 1990s and 2000s. It has supplanted Marxist theories as to the third major international relations theory alongside realism and liberalism.<sup>2</sup> However, we will encounter the very beginnings of social constructivism much earlier. Social constructivism emerges as one of the new theories following Kant's original constructivism of moral obligations and practical reasons. In his "Critique of Pure Reason", Immanuel Kant focuses on the study of human experience. It deals with the aspects that affect the human experience, mentions the sensory and intellectual side, where it defines the fundamental differences between their relationship to our experience.<sup>3</sup> The main difference is the fact that one of these aspects is given to us in advance "a priori", while the other is created additionally "a posteriori". It was this reasoning that gave rise to the foundations of early constructivism, as the idea was based on this idea that human knowledge does not arise in direct contact with the senses and things. It is variously conditioned by our a priori categories. Thus, meanings are not given in advance to things and objects but are attributed to them by social actors. All the meanings and judgments of the human mind in looking at the world can thus change over time. It is therefore a subjective reality of our own experience.<sup>4</sup>

In his work, Kant also deals with the analysis of the obligation of commits him to a kind of constructivism, which is best understood in contrast to competing views of moral obligation. Kant holds that all previous ethical theories have failed to account for moral obligation because they have failed as theories of practical reason. They have failed, above all, in the question of what role our views play in our lives, as our views are misleading, and in several areas their relationships to our final decisions are misrepresented. Kant's charge is directed against all previous moral doctrines, but his

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<sup>2</sup> TAYLOR, Steven. *30-second politics: The 50 most thought-provoking theories in politics, each explained in half a minute*. London: Icon Books. 2018, Pp. 296.

<sup>3</sup> KUNEŠ, Jan. *Kantova kritika čistého rozumu* [online]. reflexe.cz [cit. 21. 12. 2020]. Available from: <[https://www.reflexe.cz/Reflexe\\_26/Kantova\\_kritika\\_cisteho\\_rozumu.html](https://www.reflexe.cz/Reflexe_26/Kantova_kritika_cisteho_rozumu.html)>

<sup>4</sup> KANT, Immanuel. *Critique of Pure Reasons*. London: MacMillan Company. 1922.

arguments specifically address sentimentalism and ‘dogmatic rationalism.’<sup>5</sup> To avoid too much turning from the topic to Kant's philosophy and perception of human reason in this section. I will try to use an example in which I will briefly introduce the Kantian basis of social constructivism.

In his work, Kant argues that one's own experience, which has been created since prenatal childhood, is essential for human reason. One learns behavioral procedures and learns cognitive functions, such as speech and control of various tools. Based on this experience, he is aware of the relationship between the use of speech as a communication tool and his surroundings. With the help of speech and different habits, he can give weight to various objects or subjects, which is then perceived as an objective reality for a long time. However, Kant realizes that none of the objects has a predetermined meaning, as they are the people who attribute this meaning to them by their behavior.<sup>6</sup> The result of this theory may be that the perception of the world is very subjective, as everything is based on our own experience.

Over the years, the theory of constructivism has undergone several tests and additions by experts in the field of sociology. One of the greatest refinements of constructivism is the work of Berger and Luckmann, “The Social Construction of Reality”. These authors laid the foundations of today's social constructivism. To this day, several authors deal with their theory, discussing individual parts of “The Social Construction of Reality”. The most famous of them are Manfred Prisching, Thomas Eberle, Trevor Pinch, Harry Collins, Hubert Knoblauch.<sup>7</sup> The last of these authors focus on the fact that many of today's scientists deal with the work of Berger and Luckmann without reading this famous book themselves. Many of the reflections and critiques of this book are based on a misunderstanding of the true nature of some of the arguments that both authors mention in their book. The theory of social constructivism has been so widely accepted that it is taught in all schools around the world. For this reason, it was met by perhaps all today's sociologists, who gained the interpretation of this book through the spoken word. Knoblauch, therefore, comes up with a new form of

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<sup>5</sup> *Constructivism in Metaethics*, *Stanford Encyclopedia of Philosophy* [online]. plato.stanford.edu, 23. 6. 2017 [cit. 24. 12. 2020]. Available from: <https://plato.stanford.edu/entries/constructivism-metaethics/#KantCons>.

<sup>6</sup> KANT: *Critique.....*, Pp. 56-72.

<sup>7</sup> KNOBLAUCH, Hubert, PFADENHAUER, Michale. *Social Constructivism as Paradigm*. London: Routledge. 2016. Pp. 275-276.

communicative construction, which is to distinguish Berger's social constructivism with Luckmann from other theories. According to this theory, social action must always be perceived as communicative action. The spoken word and language, in general, are transmitted, as Kant states, knowledge and objective reality are created. Knoblauch is therefore aware of the possible misinterpretation of reality he sees in social behavior on the example of this book. This brings about the creation of a new social construct.<sup>8</sup>

One of the main critics of this work was Pierre Bourdieu and Jochen Dreher. The second mentioned author focuses on the fact that Berger and Luckmann in their work neglected the dimension of power that institutionalized constructs have at their disposal. Dreher believes that the theory of social constructivism has a clear conceptual framework of power. This view is supported by the concept of relevance by Aldred Schültz and Thomas Luckmann, who analyzed the subjective power of constitutions. Simply put, it is a relationship between two aspects of objective knowledge, the subjective experience of individualities, this clearly explains that each individual will have different strength and position within society that cannot be achieved by the concept of habitation. The strength of individuals and institutions is therefore based on one's own experience and objective knowledge.<sup>9</sup>

## **1.2 Theory of social constructivism according to Berger and Luckmann**

In their work “The social construction of reality”, the authors deal with human nature, on which they follow the development of our social order. In the second chapter, entitled “Society as an Objective Reality”, Berger, and Luckmann discuss human nature and belonging to a specific place. In this case, they use comparisons with animals, in which they observe several differences from humans. The main difference between human nature and animals is our low instinctive equipment. Our biological equipment does not include predetermined traits that would define the nature of our behavior, however, from birth we become part of the natural order, where we build a relationship

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<sup>8</sup> KNOBLAUCH, PFADENHAUER: *Social Constructivism as Paradigm*....Pp. 279.

<sup>9</sup> DREHER, Jochen. The Social Construction of Power: Reflections Beyond Berger/Luckmann and Bourdieu. *Cultural Sociology*, 2016, vol. 10, no. 1, Pp. 53–55.

to the environment, but also to the social order. From an early age, we are instilled in various rules of ideas and principles on which our society operates. We are therefore exposed to the constant socially determining influence that shapes us. And it is in this respect that the difference from animals is most obvious. Man is very malleable and can adapt to virtually any socio-cultural or geographical conditions. However, all this is the influence of one person on another person. It follows from the above that it is people who shape their own nature. A lonely individual is a being at the level of an animal, but we enter the society of more individuals, we can observe socio-cultural formations that form this group of individuals. This is the so-called social order.<sup>10</sup>

The social order is constantly evolving, changing, and thus exists only as a product of human activity. It is a compromise of individuals who have adopted social rules that will lead to their higher well-being. At this point, social behavior is institutionalized. All human activity is subject to habitization over time. This means that certain procedures are applied in the company, which are repeated in the future and become a habit. The habit thus gives rise to accepted social patterns, according to which people subsequently behave. Thus, some situations can be predicted in advance and only the choice of their further development is adjusted. This is a certain type of social behavior. Based on this typification, the institutionalization of social behavior emerges.<sup>11</sup>

Institutions thus naturally arise as part of the development of human society. The close connection between these three dialectical components of social reality is thus apparent at first sight. This is mainly because each of these ties is a reflection of the social world. After the generalization of this theory, it follows that society is the creation of man. However, society is also an objective reality and man is the creation of society.<sup>12</sup>

At this stage, I will stop for a moment and use this theoretical concept in the field of law. It follows from the above that it is human nature to function within a larger society. However, this society is created by people themselves, they still modify it and

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<sup>10</sup> BERGER, Peter, LUCKMANN, Thomas. *Sociální konstrukce reality*. Brno: Centrum pro studium demokracie a kultury. 1999. Pp. 91-92.

<sup>11</sup> Ibid., Pp. 91-94.

<sup>12</sup> KABELE, Jiří. Social Constructivism. *Czech Sociological Review*, 1996, vol 32, no. 3, Pp. 317-321.

accept its features as a set of established rules or customs. In this part, it is about society and the social order of today. Social customs subsequently shape social objective reality and behavioral procedures in society for future generations. In our case, these are established rules or laws or legal arrangements. At this stage, the formulas are accepted as immutable. They are only further observed and possibly modified. Thanks to these formulas, human influence is no longer only external, but also internal. Because it is the rules just adopted that give rise to institutionalization and subsequently influence man and his further behavior. These components thus express the origin of society, the adoption of the legal order, its subsequent observance, but also that we adapt our behavior to this order, which comes from our own nature of society.

**Example of an international legal environment:**

At the level of international relations, respectively international law, it is assumed that all subjects are already based on some socio-cultural environment, where their features are already given, but the nature of social behavior and compliance with the rules remains the same.

Subjects of international law behave outwardly in the long run, and their nature of behavior influences the behavior of other subjects. Their behavior has certain features and character as individuals. Thus, after some time, subjects can predict each other's reactions. After some time, these reactions become a habit that both subjects follow. This is customary law, one of the main sources of international law. These customs are then institutionalized over time and subsequently observed. And their nature in the future influences the further behavior of subjects of international law.<sup>13</sup> It is therefore the principles created by the subjects themselves to set a certain social order, which is accepted over time and create an objective reality that future generations accept as unchanging. However, this objective reality also further influences the very nature of the behavior of subjects, and there is a two-way influence and rules of an international law nature are born here.

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<sup>13</sup> HORÁK, Ondřej. Všeobecný zákoník občanský a zvyklosti průběhem století. [online]. *iuridictum.pecina.cz*. [cit. 23. 12. 2020]. Available from: [https://iuridictum.pecina.cz/w/Zvykové\\_právo](https://iuridictum.pecina.cz/w/Zvykové_právo)



Returning to Berger's and Luckmann's theory, it is necessary to mention that the authors discuss other aspects in their book, one of which is the legitimation of established procedures and rules. This phase occurs at the moment when the old generation passes on the set of institutions to the new generation. Legitimization "*explains the institutional order by attributing cognitive value to its objectified meanings.*"<sup>14</sup> This means that the new generation will accept functioning institutions as credible and the established social order as right and unchanging. The institutionalization process is therefore successful.

The re-use of the example in international law will involve the adoption of rules of international law that have proved their worth in the past and have thus been adopted by international bodies. The concept and legal order, therefore, seem to be legitimate and the subjects are willing to follow them further.

### **1.3 The principle of international law Jus in Bello**

International humanitarian law, or Jus in Bello, is the law that determines the rules and manner of warfare. Jus in Bello and international humanitarian law can therefore be seen as synonymous. The aim of these two concepts is to enshrine a set of rules of international law, which by their nature regulate the behavior of stakeholders during the war. Jus in Bello also strives to reduce the hardships of war as much as possible during military conflicts. It focuses on the fate of wounded and sick members of the armed forces, the treatment of prisoners of war, the legitimate use of weapons, and especially the protection of civilians during the war. The essence of Jus in Bello is therefore not to assess which of the parties is the aggressor of the conflict or the victim but to establish the proper rules according to which the war is waged.<sup>15</sup>

The first efforts to regulate the conduct of war can be seen in the Middle Ages. However, these efforts to set the rules of war did not have a significant real impact. The first successful reflection on the introduction of rules for waging war was introduced in 1864 by the Swiss author Hanri Dunant in his book *A Memory of Solferino*.<sup>16</sup> The book

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<sup>14</sup> BERGER, Peter, LUCKMANN, Thomas. *Sociální konstrukce reality*. Brno: Centrum pro studium demokracie a kultury. 1999. Pp. 93-94.

<sup>15</sup> *What are jus ad bellum and jus in bello?* [online]. icrc.org. 22. 1. 2015. Available from: <<https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0>>

<sup>16</sup> *Origin of the twin terms jus ad bellum/jus in bello*. [online]. icrc.org, 31. 10. 1997 [cit. 23. 12. 2020]. Available from: <<https://www.icrc.org/en/doc/resources/documents/article/other/57jnuu.htm>>.

is based on his own experience during the war for Solferino. More than 40,000 soldiers who did not receive any medical care were killed or wounded in the battle.<sup>17</sup> This led Dunant to the idea that there should be an independent humanitarian aid agency that would help the victims of the war independently of both parties. Through the Swiss government, a conference was convened in Geneva in 1864. The conference was attended by 16 countries from Europe and the USA.<sup>18</sup>

The outcome of this conference was the establishment of the International Red Cross and the drafting of the so-called First Geneva Convention. The Committee of the Red Cross has largely contributed to the emergence of international humanitarian law and the accession of other states to this convention. By 1900, more than 50 states had acceded to the first Geneva Convention, which meant the practical acceptance of the conventions around the world, given the number of states and the state of power at the time. This created the basic legal norms valid during the wars. War and law have not been mutually exclusive since then.<sup>19</sup>

Their main principle is that the dignity of the human being must be respected at all times and every effort must be made to prevent or at least alleviate the suffering, especially of those who are not directly involved in the conflict and those who have been excluded from the conflict as a result of illness, injury or captivity. However, the conventions have been revised over the years and supplemented by several other areas affected by the war. In 1899 a chapter on naval conflicts was added, in 1906 and then in 1929 a chapter on prisoners of war. After the end of World War II, in which 50% of the victims were civilians, all conventions were revised and reformulated as the Geneva Conventions on the Protection of Victims of Armed Conflict.<sup>20</sup>

**To this day, valid ones include:**

- 1) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Field.

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<sup>17</sup> The battle of Solferino (24. June 1859) [Online]. *icrc.org*, 6. 4. 1998 [cit. 23. 12. 2020]. Available from: < <https://www.icrc.org/en/doc/resources/documents/misc/57jivr.htm>>

<sup>18</sup> Solferino and the International Committee of the Red Cross [online]. *icrc.org*, 1. 6. 2010 [cit. 23. 12. 2020]. Available from: < <https://www.icrc.org/en/doc/resources/documents/feature/2010/solferino-feature-240609.htm>>

<sup>19</sup> Ibid

<sup>20</sup> SHAW, Malcolm. Geneva Convention [online]. *Encyclopedia Britannica*, 4. 3. 2020 [23. 12. 2020]. Available from: <<https://www.britannica.com/event/Geneva-Conventions>>.

2) Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked in Armed Forces at Sea.

3) Geneva Convention relating to the Treatment of Prisoners of War.

4) Geneva Convention relative to the Protection of Civilian Persons in Time of War.

After the Vietnam War and the use of napalm, additional protocols were added to 1977, which are considered part of customary law and are binding on all members of the international community. A total of 600 articles of code of standards have been taken into account to date. Only some of them will be important for this work, so I will only mention the amendments related to the case of the Kosovo war.

The first supplement is Article 35 of the I. Additional Protocol (AP), which generally defines prohibited means and methods of warfare. The article lists the means or, if you like, the methods that are forbidden during the war - eg biological weapons (1972), chemical weapons (1993), anti-personnel mines (1997). Furthermore, Art. 53 I. AP, resp. Article 16 II.AP, prohibiting hostilities against cultural property. It is worth mentioning the "Convention for the Protection of Cultural Property in the Event of Armed Conflict" (1954) and, last but not least, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict "(2000).<sup>21</sup>

### **1.3.1 Jus in Bello and the Geneva Conventions**

In this subchapter, I will focus on the individual points of the Geneva Conventions that are essential for this work. The introduction of these points is necessary for understanding the principles of humanitarian law / Jus in Bello, on the basis of which, in the practical part, I will assess whether or not to what extent Jus in Bello was observed during the Kosovo war. I included among the key points the implementation of the Geneva Conventions and some of their main principles, the division of armed conflicts and their rules for the prosecution or protection of civilians, the prohibited methods and means of waging war, and the procedures for prosecuting violations of the Geneva Conventions.

The first point is the actual implementation of the Geneva Conventions (GC). These are carried out only with the assistance of a third non-participating party or

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<sup>21</sup> SHAW: Geneva Convention [online]...

multinational organization. In the event of arbitration, all parties to the conflict shall provide the multinational organization with all the means and information to carry out its independent observation. All armed forces must have legal advisers, the wording of the Embassy must be disseminated and known to the civilian population, and once an armistice is reached, qualified personnel is needed to assess and carry out the Embassy for the performance of the activities of the Protecting Powers. Contractual principles must be observed in the same way when implementing all points of the GC.<sup>22</sup>

**Principles:**

- 1) GC are applied in every armed conflict and in the occupation (although it did not meet with resistance) - regardless of whether the war is legal, whether it was declared, whether the parties recognize each other, etc.
- 2) it is not possible to deviate from the provisions of the Geneva Convention under any circumstances (eg even if they are violated by the opponent)
- 3) protected interests must not be the subject of reprisals (ie even in the case where a given state violates a certain international legal obligation, it is not possible to limit the obligations arising from the GC and thus force the given state to fulfill this obligation).
- 4) no adverse differences based on nationality, political affiliation, nationality, race, religion, gender, social status, and similar characteristics can be made in the application of the GC.
- 5) The GC establishes the personal responsibility of each member of the Contracting Party and is binding on both military and civilian persons
- 6) any denunciation of the Geneva Convention shall not enter into force during the conflict (even for the duration of the occupation, until the end of the repatriation of prisoners or internees, etc.)
- 7) no provision of the GC may be construed as a justification for aggression or unauthorized use of force,

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<sup>22</sup> JUKL, Marek. *Ženevské úmluvy a dodatkové protokoly*. Praha: Český červený kříž. 2005. Pp. 2-4

8) no provision of the Embassy may be construed to restrict the activities of the Protecting Powers, ICRC.

9) The CCs represent a minimum standard of protection, they encourage all contracting parties to supplement it by mutual agreements or practice.

10) a contracting party cannot release itself or another party from the obligations under the Embassy

11) protected persons may not (even in part) waive the rights given by the embassy

12) in a situation not resolved in the GC or other IHL standard, protected persons remain under protection derived from the principle of humanity and the requirements of public conscience according to the Martens clause

13) if the interest of the persons protected by the GC is concerned, especially in a dispute between the warring parties over the interpretation of the GC, the parties are obliged to attend the meeting proposed by the Observation organisation, the representative may send an ICRC.<sup>23</sup>

All of the above principles will be crucial in assessing whether the principles of Jus in Bello were followed in the Kosovo War and whether any breach was not an incentive for multinational organizations acting as protection organizations to intervene.

In order to understand the relationship between the contracting parties arising from the Embassy, it is also necessary to define the subjects of the conflict. The GCs were originally written primarily for the prevention of armed conflicts between the two states. Over the course of several years, they were supplemented by other entities. International law itself has included separatist organizations among its protagonists. As the Yugoslav wars were a rather specific conflict from the point of view of the contracting parties, it will be necessary to define which types of wars apply to the GC.<sup>24</sup>

The break-up of Yugoslavia was accompanied by several separatist wars, in which the citizens of Yugoslavia fought against each other. So it was practically a civil

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<sup>23</sup> JUKL: *Ženevské úmluvy a dodatkové protokoly*. Pp.5-6.

<sup>24</sup> DAVID, Vladislav; SLADKÝ, Pavel; ZBOŘIL, František. *Mezinárodní právo veřejné s kazuistikou*. Praha: Leges, 2008. 432. Pp 121-122.

war for the independence of several ethnic groups.<sup>25</sup> This was also the case in Kosovo itself. Historical developments in Kosovo were linked to the displacement of the Albanian diaspora, which over the course of several years of disintegration sensed its chance and began to strive for its independence from the Serbs. Thus, the unleashed armed conflict was not a war between two states, but the struggle of nations against colonial and racist regimes for self-determination.<sup>26</sup> Therefore, in the next part, I will focus on the characteristics of protective measures of Geneva Conventions in this type of conflict. (Basic guarantees, special protection of civilians, and prosecution of Geneva conventions).

### **Basic guarantees**

They represent the minimum standards of protection that are guaranteed to every human being. It is above all the protection of physical and mental health, the right to human treatment, respect for persons, their honor, and their political and religious beliefs. The basic warranties further state what is always prohibited. There must never be a risk to physical or mental health in the form of murder, torture, corporal punishment, mutilation, or failure to provide medical care. Other points that are forbidden at all times and in all places are abusive treatment and any obscene conduct. hostage-taking, collective punishment, threats of any of the above acts. The rules for minimum protection also include rules for prosecution.<sup>27</sup>

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<sup>25</sup> According to Kalyvas's theory, civil war is defined by two basic features. It is a conflict between at least two parties, which includes a large, militarily equipped insurgent organization and which has recruits fighting to the fullest. According to Kalyvasov, this distinguishes civil war from terrorism, common crimes, or genocide. Another feature of the civil war is the fact that it is an act of assault against the sovereign authority. KALYVAS, Stathis N. Civil Wars: What is a civil war and why study it [online]. *The Oxford Handbook of Comparative Politics*, 2007 [cit.25. 12. 2020]. Available from: <<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199566020.001.0001/oxfordhb-9780199566020>>.

<sup>26</sup> The development of the type of armed conflict has been so great in the last few years that the Contracting States have decided to include in the Geneva Convention virtually all armed conflicts in the territory of one party. At present, the Geneva Conventions provide for conflicts such as A) armed conflict between states, including occupation, B) fight against the occupation, the struggle of nations against colonial and racist regimes for self-determination, C) armed conflict in the territory of a Contracting Party between its armed forces and other organized armed groups in command and control of a part of the territory that allows for permanent and coordinated military operations and the application of the RA. This does not include isolated acts of violence, internal unrest, D), any other armed conflict in the territory of a Contracting Party.

<sup>27</sup> *Vyhláška č. 65/1954 Sb. Vyhláška ministra zahraničních věcí o Ženevských úmluvách ze dne 12. srpna 1949 na ochranu obětí války.* [online]. [zakonyprolidi.cz](https://www.zakonyprolidi.cz/cs/1954-65). [cit. 23. 12. 2020]. Available from: <https://www.zakonyprolidi.cz/cs/1954-65>

### **Rules for the prosecution:**

They stipulate that sentences can only be carried out on the basis of a proper and independent court respecting the generally accepted principles of court proceedings - proper and prompt acquaintance of the accusation, respect for the presumption of innocence, right of defense, the prosecution can be initiated on personal responsibility, can be punished only for acts that were criminal under the international law or state law to which the person was subject at the time, the prosecuted persons cannot be forced to confess, the trial always takes place in the presence of the accused, the accused has the right to present witnesses in his favor and hear witnesses against him, it is not possible to prosecute again, if the proceedings have been closed, the right to a verdict in public, instructions on remedies, the death penalty cannot be imposed on a person under 18 years of age. Other basic guarantees focus on the protection of children and women, the evacuation of children, and the protection of journalists. However, they will not be relevant for this work, so we will skip them.<sup>28</sup>

### **Special protection of civilians**

The Geneva Conventions focus on the protection of the civilian population in a relatively detailed and comprehensive manner. However, only some points in this chapter of the Geneva Conventions will be relevant to my work. One of the main characteristics of the protection of the civilian population is the clause on respect for the civilian population and objectives. It must therefore not be the target of any of the attacks. Civilians have the right to perform their normal tasks during the war, but these tasks must not be associated with military cooperation. The material and objects of civilians are protected and inviolable by the armed forces, so it is prohibited to carry out attacks that do not distinguish between civilian and military objects. Another important part of the Geneva Conventions is the point of dealing with civilians in the power of foreign parties enjoying special protection. Thus, collective sanctions, terrorist measures, looting or illegal acquisition of property or enforcement of information on the civilian population are prohibited. All these points must be observed in accordance with the Geneva Conventions, but also according to the original criminal law of the occupied territory.<sup>29</sup>

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<sup>28</sup> JUKL: *Ženevské úmluvy a dodatkové protokoly...*, Pp. 8.

<sup>29</sup> *Vyhláška č. 65/1954 Sb. Vyhláška ministra zahraničních věcí.*

**As a final point in the Geneva Conventions, I will present how its violations are prosecuted.** All parties are obliged to maintain and ensure compliance with the GC principles in all situations and circumstances. Both parties must prosecute any breach of the conventions themselves. The combatants must be acquainted with their superiors with the wording of the SPA. Their superior is responsible for the combatants' actions, but this does not relieve them of their full responsibility, as each person is responsible for violating the GC, even if he has done so at the behest of his superior. All GC violations must be punished. The method of punishment in these cases may be determined by the states themselves or by the arbitrator of the dispute.

Serious violations of the GC include intentional acts or omissions that seriously violate the physical or mental health or the life of persons in the power of the other party. Furthermore, a breach of conventions that results in death or serious injury. This is divided into leading an attack on prohibited targets, such as civilians, civilian objects or civilian organizations, medical units, or the demilitarized area). The second division is to lead the attack in a forbidden way or means. In this case, the severity and treachery of the attack are assessed, whether it was an indiscriminate attack, the abuse of neutral features, or an attack on a person excluded from combat. The last category is acted intentionally violating the GC. These include several points for my work, but prohibitions of torture, hostage-taking, deportation, forced relocation of civilians, relocation of their own population to the occupied territory, degrading treatment, illegal appropriation of property or unjustified destruction of cultural monuments will be important. Each of the parties is obliged to investigate and prosecute these acts.<sup>30</sup>

#### **1.4 International legal principle Jus ad Bellum**

The principle of jus ad Bellum sets out the conditions under which states are entitled to use military force. The exceptions to the use of armed force between states are enshrined in the United Nations charter of 1945. Until the end of World War I, armed use of force was considered a legitimate solution to conflicts. Questions of the use of force began to be discussed only in 1919 at the convention of the League of Nations and then in 1928 in the Briand-Kellogg Pact. However, these international

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<sup>30</sup> *Ženevské konvence a Dodatkové protokoly* (plné znění těchto norem), Praha: FV ČSČK. 1992.



treaties were seriously violated during World War II. Their basic shortcoming was the absence of a clause that would enforce their observance or punish entities who committed violations of their rights.<sup>31</sup>

With the end of the bloodiest conflict in human history, World War II, it became clear to all that rules for the legitimate use of force would be needed for future peace-keeping or at least the proper use of military force. These rules were also important for post-war international criminal tribunals, which considered war crimes committed during the war. During the Nuremberg trials, war crimes were assessed under Law No. 10 before US military tribunals. This tribunal was established on the basis of the London Agreement on the Prosecution of War Criminals of August 1945. The signing of the Treaty of London gave rise to the first principles of international justice, which marked a reversal in the perception of state sovereignty and enforcement of international law.<sup>32</sup>

The adoption of the UN Charter in 1945 subsequently confirmed the trend, the legal anchoring of war acts of states. The signatories of the Charter undertook not to use instruments of force or the threat of war in matters of their international relations. However, the UN Charter also contains situations in which states are entitled to use individual or collective self-defense in response to aggression by another state. All these exceptions are enshrined in Chapters VI. and VII.

I will first introduce Chapter No. VI, which is important for understanding how, according to modern principles of international law, a decision is made on the choice of means for resolving war disputes. Chapter No. VI. is named *Peaceful Dispute Resolution*. Parts of Articles 33, 36, and 37 will be particularly important for my work.

***Article 33:***

*1. The Parties to any dispute the duration of which might jeopardize the maintenance of international peace and security shall first seek its settlement by negotiation, investigation, mediation, conciliation, arbitration or judicial*

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<sup>31</sup> SCHÄFER, Peter. *Prezidenti USA: od George Washingtona po Billa Clintona*. Praha: Mladá fronta, 1995. Pp. 538.

<sup>32</sup> ŠONKA, Jaroslav. *Jaroslav Šonka: Norimberský proces, mezinárodní právo a sdílená suverenita* [online]. *hlidacipes.org*, 19. 8. 2015 [cit. 1. 11. 2020]. Available from: <<https://hlidacipes.org/jaroslav-sonka-norimbersky-proces-mezinarodni-pravo-a-sdilena-suverenita/>>

*proceedings, the use of regional authorities or arrangements or other peaceful means of their choice.*

**Rule 36:**

*1. The Security Council may, in any period of a dispute of nature referred to in Article 33 or of a situation of a similar nature, recommend appropriate procedures or modalities for adjustment.*

**Rule 37:**

*1. If the parties fail to settle the dispute of nature referred to in Article 33 by the means specified therein, they shall refer it to the Security Council.*

*2. If the Security Council considers that the duration of this dispute could indeed jeopardize the maintenance of international peace and security, it shall decide whether to act in accordance with Article 36 or to recommend such terms and conditions as it considers appropriate.<sup>33</sup>*

The combination of the three articles of the Charter implicitly states that, if the conflict is not resolved by conciliation, arbitration or judicial proceedings, the Security Council may proceed to a solution it deems appropriate, such as authorizing military intervention by foreign troops. sovereign state. However, all this only under the conditions discussed in Chapter VII.

Chapter No. VII. called action in case of threat to peace, violation of peace, and acts of aggression. Following the decision on the mentioned articles of Chapter VI. is Article 39, which states that the Security Council shall determine whether there has been a threat to peace, a breach of the peace or an act of aggression, and shall recommend or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security. However, prior to this decision, the Security Council calls on the Parties concerned to take interim measures to prevent further deterioration if the interim measures are not met. The Security Council shall take due account of this and decide on further action to calm the situation and establish peace.

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<sup>33</sup> *Charter of the United Nations*. [online]. *un.org*. [cit. 26. 12. 2020]. Available from: <https://www.un.org/en/charter-united-nations/>

The first measures of force are the so-called soft power instruments, where the Security Council decides which measures not involving the use of armed force are to be applied to states that have committed violations of international law. The Council may subsequently call on the members of the United Nations to apply such measures to those States. These measures include the total or partial interruption of economic relations, rail, sea, air, postal, telegraph, radio, and other communications, as well as the interruption of diplomatic relations. In the event that the conflict between the two parties does not calm down even after the use of these instruments, the Security Council may act in accordance with Article 42.<sup>34</sup>

Article 42 states that if the Security Council decides that the measures provided for in Article 41 are insufficient to resolve the conflict. The Council may call on the Member States of the United Nations to use air, naval, or ground force against States in breach of international law. This use of force is justifiable as it is considered necessary for the maintenance and restoration of international peace and security. Such actions may include demonstrations, blockades, and other operations by United Nations air, naval or ground forces.

Article 43 is used to carry out all operations, which obliges UN members to make their armed forces available to the Security Council at its request under a specific agreement or agreements in order to maintain international peace and security.<sup>35</sup> This obligation includes the right of foreign troops to pass through or operate in the territory of a Member State. The agreements will include, inter alia, the determination of the number and type of forces, their level of readiness and general deployment, as well as the nature of the services and assistance to be provided.

Other articles of Chapter VII. They deal mainly with the organization of these military operations and the obligations arising from them. A very important article that will still need to be mentioned in Article 51, which reads as follows:

Nothing in the present Charter shall, in the event of an armed attack on a Member of the United Nations, restrict the natural right to individual or collective self-defense until the Security Council has taken measures to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense

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<sup>34</sup> Ibid

<sup>35</sup> Ibid

shall be notified immediately to the Security Council; they do not affect in any way the powers and responsibilities of the Security Council to take at any time, in accordance with this Charter, such action as it considers necessary for the maintenance or restoration of international peace and security.<sup>36</sup> In the practical part of the work, this article will be important for the assessment of Serbian military operations by the European Union as a whole and then by the two monitored states of the Czech Republic and Austria. Jus in Bello and Jus ad Bellum in the Czech and Austrian legal systems

## **1.5 Jus in Bello and Jus ad Bellum in Czech and Austrian legal system**

### **Jus in Bello and Jus ad Bellum in the Czech legal system**

The Geneva Conventions have long been part of the rule of law. According to Article 10 of the Constitution of the Czech Republic, they are superior to the laws of the Czech Republic as international agreements. Article 10 of the Constitution clearly states that if Parliament has given its consent to the ratification of an international treaty by which the Czech Republic is bound, then if the international treaty provides otherwise than by law, the international treaty shall apply.<sup>37</sup>

The Czech Republic / Czechoslovakia adopted the individual Geneva Treaties and its amendments continuously from 1954 to 2007. The first four main authorities on the protection of victims of the wars of 1949 - were already signed at a conference in Geneva by the representative of Czechoslovakia Dr. Winkler. Their publication in the Collection of Laws of the Czech Republic under number 65/1954 Coll. However, did not take place until 1954. The other two additional protocols from 1977 were not adopted into the Czech legal system until 1991, under the number 168/1991 Coll. And last but not least, in 2007 it was published in the collection of international treaties under. No. 87/2007 Coll. m.s. Additional Protocol of 8 December 2005. For this work, it will be important to mention one of the standards implementing the implementation of some provisions of the Land Register. It is primarily Act No. 140/1961 Coll., The Criminal Code [since 1 January 2010, the Criminal Code No. 40/2009 Coll.], which

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<sup>36</sup> *Charta Organizace spojených národů*. [online]. osn.cz [cit. 25. 12. 2020]. Available from: <<https://www.osn.cz/wp-content/uploads/2015/03/charta-organizace-spojenych-narodu-a-statut-mezinarodniho-soudniho-dvora.pdf>>

<sup>37</sup> *Ústava České republiky*. [online]. psp.cz. [cit. 26. 12. 2020]. Available from: <<https://www.psp.cz/docs/laws/constitution.html>>

regulates, among other things, the punishment of violations of the Embassy. This standard was especially important for assessing the consent of the intervention of the Czech Armed Forces in the territory of Kosovo in the joint NATO action.<sup>38</sup>

In the case of the adoption of the UN Charter, it was again an international treaty, which by its nature takes precedence over national legal norms. The Ministry of Foreign Affairs adopted the Charter into Czech law by Decree No. 30/1947. It was a matter of accepting in full all the conclusions of the United Nations Conference on International Organization in San Francisco.<sup>39</sup>

### **Jus in Bello and Jus ad Bellum in Austrian law**

As was the case in the Czech Republic, the Geneva Conventions have long been in force in Austria. Austria, as one of the main signatory countries, was represented at the Geneva conference by Dr. Bluehdorn. The actual ratification and adoption of the four Geneva Conventions did not take place in Austria until 1953. Subsequently, both Additional Protocols of 1977 were adopted and published in the Collection of Laws of all Federal Republics in 1982. Last but not least, the Third Additional Protocol was adopted in 2009. The adoption of international treaties in Austrian law is relatively different from the Czech procedure. The Austrian Constitution provides that generally accepted rules of international law form part of Austrian federal law, which subsequently provides for the incorporation of international agreements into Austrian law (general and special transposition of international agreements into national law). The position of the provisions of an international agreement in the national legal order in relation to the laws of the Federal Republic of Austria is determined by their content. The approval process is therefore a bit more complicated, but as a result, all four conventions and amendments have been approved as international treaties, which take precedence over all national federal standards.<sup>40</sup>

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<sup>38</sup>Trestní zákoník [online]. *business.center.cz*. [cit. 26. 12. 2020]. Available from:<https://businesscenter.podnikatel.cz/pravo/zakony/trestni-zakonik/>

<sup>39</sup> Sdělení federálního ministerstva zahraničních věcí [online]. *epravo.cz* [cit. 26. 12. 2020]. Available from: < <https://www.epravo.cz/top/zakony/sbirka-zakonu/sdeleni-federalniho-ministerstva-zahranicnich-veci-o-vazanosti-ceske-a-slovenske-federativni-republiky-dodatkovymi-protokoly-i-a-ii-k-zenevskym-umluvam-z-12-srpna-1949-o-ochrane-obeti-mezinarodnich-ozbrojenych-konfliktu-a-konfliktu-nemajicich-mezinarodni-charakter-prijatych-v-zeneve-dne-8-cervna-1977-11600.html>>

<sup>40</sup> Treaties, States Parties and Commentaries. International Committee for Red Cross [online]. *Ihl-databases.icrc.org*. [cit. 16. 12. 2020] Available form: <[https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp\\_countrySelected=AT](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=AT)>

In the case of Austria, the adoption of the UN Charter was a bit longer, as Austria was considered one of the defeated states after World War II. Until 1955, it was divided into four occupation zones as well as Germany. Unlike Germany, Austrian dividing zones were ended based on the agreement between allies and the Soviet Union. The agreement was based on the exit of militaries of the USA, Great Britain, France, and the Soviet Union from Austria under the condition that Austria will become the neutral country and will not join any international organization except United Nations. Since 1955, Austria should have had the status of an neutral country, following the example of Switzerland, but the condition for the departure of foreign troops from the territory of Austria was the country's accession to the UN. Austria thus adopted the UN Charter in 1955 and became 70 members. As in the case of the Geneva Conventions, the UN Charter has been approved by all the Federal Republics and is superior to any national rule of law.<sup>41</sup>

## **1.6 Relationship between Jus in Bello and Jus ad Bellum**

In this part of the work, I presented the origin and development of international legal principles jus in Bello and jus ad Bellum. Both principles are perceived in international law as independent of each other. The idea that both principles operate autonomously is firmly rooted in legal literature, state practice, the jurisprudence of national and international courts, and several treaties such as Geneva Conventions and Charter of UN.

However, both principles have been exposed to several challenges in recent years, calling into question their independence of one principle from another. The validity of this division has been questioned mainly in modern conflicts associated with the so-called humanitarian intervention. These doubts were thus largely linked to the war in Kosovo. When interpretations of international law in the light of the Kosovo conflict called into question the protection of certain subjects of international law. In assessing the Kosovo conflict, some states (Spain, Romania, Slovakia, Cyprus, Greece) viewed separatist organizations as entities bound by the rights of the war Jus ad Bellum as sovereign states. However, in the case of the protection of these entities in the light of

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<sup>41</sup> Austria and the United Nations [online]. *Federal Ministry Republic of Austria European and International Affairs*. bmeia.gv.at [cit. 10. 12. 2020]. Available from: <<https://www.bmeia.gv.at/en/european-foreign-policy/austria-and-the-united-nations/>>

jus in Bello, they no longer derive any benefit from compliance with international humanitarian law.<sup>42</sup>

Based on demands and the position to Kosovo conflict, I would like to mention in the light of Yugoslavian wars, some socialist states perceive a certain possibility of subordination to the principle of Jus in Bello under Jus ad Bellum. Between those states belong mainly China and Russia which not recognized insurgents of KLA as the party which should have not benefited from standards of protection of principle Jus in Bello. The principle of supremacy jus ad Bellum, according to their interpretation, is based on the consideration that, in the event of aggression by separatist organizations, international humanitarian law should not ensure the protection of these entities. Thus, aggressors should not be allowed to invoke duties under the IHL, but should only be bound by the principles of warfare.<sup>43</sup>

Interpretations of these international principles will be the subject of the practical part of this work. I will therefore focus on which of the interpretations was used by the EU as a whole and then by its Member States, specifically the Czech Republic and Austria. Based on this finding, I will be able to follow what were the main motives of these entities for permission to intervene in their troops in Kosovo.

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<sup>42</sup> BUGNION, Francois. Jus ad Bellum, Jus in Bello and Non-International Armed Conflicts [online]. *icrc.org*, 6. 11. 2016, [cit. 26. 12. 2020]. Available from: <https://www.icrc.org/en/doc/resources/documents/article/other/francois-bugnion-article-150306.htm>.

<sup>43</sup> MARTINEZ, Jenny, BOUVIER, Antonie. 2006. „The realtionship between Jus ad Bellum and Jus in Bello, Past, Present, Future“. *Jstore.org*. Vol. 100. pp. 109-112. [online]. 29. 3. 2006. Available form: <<https://www.jstor.org/stable/pdf/25660071.pdf>>

## **2 Practical part**

After presenting the theoretical framework, in this part I will focus on a case study of the Kosovo War, which will monitor whether international law norms, despite their low enforcement, were properly observed by international law, or whether international law is perceived only by states and supranational organizations as a universally inapplicable social construct. I will come to this conclusion through an analysis of the Kosovo conflict, specifically focusing on the development of the conflict, what role the European Union has played in this development and how the approach of this supranational organization and its member states to Kosovo has changed over time. After presenting the escalation of the conflict, I will focus on whether the war itself and its effects on the civilian population. At the same time, I will monitor the causality between the EU's approach to Kosovo and the violation of the principles of Jus in Bello and Jus ad Bellum. In studying this causality, I will then try to answer the research questions, what was the EU's position on the Kosovo conflict? Moreover, was non-compliance with the principles of Jus in Bello one of the motives for deciding of Czech Republic and Austria for participation/non-participation in the NATO military intervention in Kosovo? and whether the scope and manner of troop intervention were in line with Jus ad Bellum.

### **2.1 The Introduction of Kosovo conflict**

To understand the historical development in the Balkans, I would like to present the circumstances that accompanied the establishment and subsequent disintegration of the Federal Republic of Yugoslavia. To grasp this topic, it will be necessary to go back to the post-war period and 1945. It was in this period that the new federal republic of Yugoslavia was formed. These years and the attitudes of the Yugoslav political representation determined the further development and direction in Yugoslavia.

Given that the European continent was in a situation after two world wars in which most states were completely economically exhausted by the war, the idea of humanism was destroyed, the world order based on the balance of power system in Europe ended, and the norms of international law were acts of war. spread. A new order needed to be established to guide further developments in Europe. After the reversal of



World War II, discussions began on the topic of the recovery of the world market economy.<sup>44</sup>

After the defeat of Nazi Germany, the European great powers were indeed significantly weakened, thus completing what had already begun with the First World War, namely the dismantling of the Balance of Power system.<sup>45</sup> European states were very economically but also morally exhausted by the war. After the war, their main focus was on the reconstruction of their own internal economies and the restoration of a democratic political order. The victors of World War II were not Great Britain or France or Germany, but the United States with the Soviet Union. These two states greatly contributed to the reversal of the course of the war, they emerged from the war even stronger than they entered it. From the Balance of Power system of several great powers, a bipolar system of two superpowers emerged, which were ideologically miles away. Both in political and economic matters. Different approaches to further development in Europe were evident very shortly after the war. Both states sought to expand their influence and their ideal image of the world to as many states as possible. Here the United States built on its accepted foundations of the theory of monetarism. After all, post-war Europe represented unprecedented investment opportunities for the expansion of American products.

The United States is thus coming up with an economic and political plan, which included the so-called Truman Doctrine, which was addressed to affected Greece and Turkey. It was military and financial assistance to defeat communist influence (communist detention policy) in order to gain strategic territory on the Bosphorus into its sphere of influence. Following the Second Paris Conference of 1947, at which 17 European states asked the United States for financial assistance, the United States came up with the Marshall Plan, which was addressed to all affected European countries, including the Soviet Union.<sup>46</sup>

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<sup>44</sup> GIRGLE, Patrik. *Kosovo*. Praha: Libri, 2006. Pp. 42.

<sup>45</sup> Some Anglo-Saxon historians use the term Great War as the period from the First to the End of World War II. Where they aptly point out that much of the political change begun by the First World War subsided with the end of the Second Great War.

<sup>46</sup> The terms of the Marshall Plan were set so that it was clear in advance that the Soviet Union would refuse this assistance. One of them was, for example, the publication of state budgets and the damage caused by the war.

The Soviet Union soon sensed that this was another policy of holding back communism, as in several cases the plan was associated with the defeat or exclusion of the Communist Party from politics, as was the case in France and Italy. The Secretary-General of the Soviet Union, Stalin, therefore urged the representatives of the states of the Free People's Republics, in which he exercised his influence immediately after the war, not to accept the invitation to the Marshall Plan conference.<sup>47</sup>

One of these states, which was called upon not to accept the invitation to the conference, was Yugoslavia. In the eyes of the Allies, it leaned towards the Eastern bloc, which controlled the USSR. However, it was not long before the first disputes arose between the Secretary-General of the Soviet Union Stalin and the Minister of Foreign Affairs of Yugoslavia Josip Broz Tito. Tito's idea of the further development of Yugoslavia differed markedly from Stalin's idea of a united Eastern bloc. Tito sought to create his own alliance in the Balkans, which would act as an independent entity with its own decision-making center and its own model of communism. After the exchange of several threatening letters between Tito and Stalin and several attempts to assassinate Tito, the Communist Party of Yugoslavia was expelled from the united Cominform on June 28, 1948. This led to the consolidation of Yugoslav communism's own form in the state. All this led to the approval of the new law on "self-government". Yugoslavia was thus to be a special type of independent socialism, in which profits were redistributed among employees in state-run enterprises. In the area of business, greater freedom should be guaranteed, including in matters of deciding on one's own money. The role of central planning has thus been significantly weakened compared to other communist states.<sup>48</sup>

Based on this separation from the Soviet Union, he included Yugoslavia in the 1950s among the countries of the "Free World". This led to the provision of financial assistance to Yugoslavia, which initially declined an invitation to the Marshall Plan. Officially, it was no longer part of the plan, but the United States, along with five other Western states, provided Yugoslavia with several financial aids over the course of 50 years. Thus, according to Tito, Yugoslavia was "the only truly free country in the

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<sup>47</sup> Marshall Plan. [online]. *history.com*, 5. 6. 2020 [cit. 27. 12. 2020]. Available from: <<https://www.history.com/topics/world-war-ii/marshall-plan-1>>

<sup>48</sup> MCLAUGHLIN, William. The Yugoslavian Leader Who Survived Waves of Stalin's Assassins and Hitler's Best Troops [online]. *historycollection.com* [cit. 28. 12. 2020]. Available from: <<https://historycollection.com/meet-the-founding-mothers-and-backbone-of-america/10/>>

world", it was not anchored even in the Eastern bloc, and because of its communist ideology, not even in the Western world. The earth has lived its own life for so long. During the second half of the 1950s, it even prospered significantly economically thanks to money from the West and the strict practices of the communist regime. And life in Yugoslavia was in several ways close to the standard of living of the states of Western Europe. From a political point of view, however, communist practices persisted. Uncomfortable people were removed, and any signs of anti-government defiance were prosecuted, so the regime could go on cheerfully with minimal opposition force. The multinational population got along well, and the so-called Frozen Conflict seemed to be long overdue.<sup>49</sup>

All this lasted until 1980. After the death of Josip Broz Tito, the country found itself in crisis. Several socialist parties ran for him, but none of them succeeded in establishing the same order as in Tito's era. Along with the frequent changes of state officials, Yugoslavia was hit by the economic crisis. The products were uncompetitive, the state was enormously indebted, and employees across economic sectors were not paid for a long time. Yugoslavia found itself in chaos and a sharp decline in living standards. The whole situation culminates in the unsuccessful monetary reform and the arrival of the Serbian nationalist Slobodan Milosevic in the presidency.<sup>50</sup>

After Tito's death, a multi-member presidency was established to represent the individual states of the federation. However, with the outbreak of the deep economic crisis and the deterioration of moods in the individual regions, this presidency was replaced by a new political generation that promoted a new nationalist idea of nation-states compared to their socialist predecessors.<sup>51</sup> Of all the states in the federation, the economic crisis has had the strongest impact on Kosovo. The meeting of the Central Committee of the Serbian Communist Party on August 14, 1981, also addressed the issue of the impact of the economic crisis on individual regions. economic system.<sup>52</sup>

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<sup>49</sup> UVALIČ, Milica. The rise and fall of market socialism in Yugoslavia [online]. *doc-research.org*, 27. 3. 2018 [cit. 28. 12. 2020]. Available from: <<https://doc-research.org/2018/03/rise-fall-market-socialism-yugoslavia/>>.

<sup>50</sup> Ibid

<sup>51</sup> MACDONALD, David. *Tito's Yugoslavia and after*. Manchester: Manchester University Press. 2018. Pp. 183-184.

<sup>52</sup> ŠTĚPÁNEK: Václav. *Jugoslávie-Srbsko-Kosovo*, Pp. 292-293.

In Kosovo, labor productivity was even a third lower than the then Yugoslav average, and in terms of efficiency, the results were even worse. The leadership of the Communist Party therefore commissioned an economic analysis of the Kosovo economy. It was clear from this that the individual sectors were relatively unbalanced. However, it was not due to high demand or economic growth of the federation, but to the socialist employment policy. The heavy industry sector has gradually stopped absorbing the working population, which in a few years has turned the trend from 100% employment to one of the fastest-growing unemployment rates in the federation. All these economic factors gradually caused social and political unrest, which created a mushroom for nationalist ideas.<sup>53</sup>

With the effects of the economic crisis, nationalism and the pursuit of independence grew in the federation. The first separatist states were Slovenia and Croatia, which were aware that they were the economic engine of the entire federation. Thanks to the economic strength of these nation-states, living standards have risen throughout the federation. However, this directly proportionally hampered the socio-economic development of the two countries. Since 1980, conflicts between Ustasha Croats and Albanian Bosniaks, Orthodox Serbs, and economically more advanced Slovenes have escalated within Yugoslavia. This tension within the federation ends with the gradual disintegration of the federation, which was accompanied by several bloody wars.<sup>54</sup>

First, the more economically advanced Slovenia disconnects almost without a fight. However, his separation provokes even greater separatist tendencies in other states of the federation. The majority of Serbs no longer want to admit that. Thus, comes the long and bloody Yugoslav war, at the end of which several new states and protectorate establishments emerge.<sup>55</sup> However, the last act of the war was to be Kosovo. The area is mostly populated by Kosovo Albanians with a large Serbian minority. A place where Serbian chronicles date the origin of the Serbian nation, but at the same time a place is interwoven with war history and conflicts with national and

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<sup>53</sup> MERTUS, Julia. *Kosovo: How myths and truths started a war*. Berkeley: University of California Press. 1999. Pp. 89.

<sup>54</sup> Ibid

<sup>55</sup> 8th of October. 1991 Establishment of Croatia, March 1, 1992 Establishment of the Protectorate of Bosnia and Herzegovina, June 3. 2006 establishment of Montenegro,

religious subtext. The rehabilitation of nationalism in this area was reflected in ethnic violence. Disputes were no longer just about discrimination, but also in many respects of crime. There was a rape of women, forcible deprivation of property, murders, market degradation of real estate, and more. The wave of Serbian, as well as for Albanian nationalism, peaked in 1986 after the announcement of a massive anti-Albanian campaign.<sup>56</sup>

While the Serbs tried to keep the federation together, the Kosovars tried to take advantage of common nationalist synergies within the federation and declared the seventh independent republic of Yugoslavia in the early 1990s. They supported their independence by drafting a constitution and subsequently announcing an independence referendum. However, none of this was acknowledged by anyone outside Kosovo people itself. Kosovo thus remained part of the federation until February 22, 1998, when the war for Kosovo's independence broke out.<sup>57</sup>

## **2.2 Escalation of the Kosovo conflict**

The solution to the Kosovo issue was a problem that affected the functioning of post-war Yugoslavia throughout the middle of the 20th century. The complexity of solving this problem lies in its origin, as it concerns problems not only interethnic, but also religious, economic-social, cultural-political, but also international law.<sup>58</sup> However, I will focus on the period before Tito's death until the beginning of the war.

We need to start with a key event that will play an impact on the future assessment of Kosovo's separatist tendencies in the light of international law. This event is the Brionic Plenum held in 1966. In this plenary session of the Yugoslav communist leadership, the supporters of the conservative conception of Yugoslavia, led by Alexander Rakovice, and the liberal wing, which promoted significantly higher autonomy and decentralization of individual Yugoslav territorial units, sat against each other. Edvard Kardelje led the liberal wing. The victory of the Liberal wing meant that the Albanian Communists gained a fundamental position and granted Kosovo broad

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<sup>56</sup> FINLAN, Alastair. *The Collapse of Yugoslavia 1991–1999*. Ospray: Welingtonborough. 2014. Pp. 16-17.

<sup>57</sup> PELIKÁN, Jan and coll. *Státy západního Balkánu v uplynulém čtvrtstoletí a perspektivy jejich vývoje*. Praha: Univerzita Karlova. 2016. Pp. 283-284.

<sup>58</sup> ŠTĚPÁNEK, Václav: *Jugoslávie – Srbsko – Kosovo...Pp. 279*.

autonomy. The Albanian communists also sought the status of a republic, but they did not succeed, which will be crucial for other parts of the work.<sup>59</sup>

Following the granting of autonomy, the already growing Albanian majority asserted increasing dominance over the Serbian minority. Their harsh attitude and violation of the rights of the Serbian population thus forced several hundred Serbs to move back to Serbia. Kosovo, as one of the poorest regions, benefited from positive discrimination in the 1970s. Throughout this decade, subsidies have been sent to it to support and develop the economy of selected regions. However, due to their autonomy, the Kosovo communists did not have to ask anyone what the money was used for. This encouraging consumption in Kosovo and the construction of various national symbols rather than restructuring the economy.<sup>60</sup>

The independence tendencies of Albanian politicians grew to the point where the Kosovo Communist Party ceased to fully perceive its subordination to the Serbian Communist Party, which represented an island between the autonomy of the province and the federation. After Tito's death, the sphere of Albanian influence thus continued to grow and relations between Serbs and Albanians deteriorated significantly. In Serbia, nationalism is subsequently resuscitated, clinging to the myth of the Kosovo field. After several years of growing nationalist tendencies, the situation is calming down after Slobodan Milosevic entered top politics. Milosevic was elected President of Serbia in 1990, and his newly formed Socialist Party won a majority of parliamentary seats.<sup>61</sup> Even before his election, however, thanks to his pressure, constitutional amendments were changed, which significantly regulated Kosovo's autonomy. Kosovo Albanians responded to these changes by declaring proclamatory independence from Serbia and holding a secret referendum reaffirming their will to secede. They elected their own president and formed their parallel society with their own authorities, education, and health systems.<sup>62</sup>

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<sup>59</sup> PELIKÁN, Jan. *Novými cestami. Kosovo v letech 1958-1969*. Praha: Univerzita Karlova. 2014. Pp. 117

<sup>60</sup> ARHSIEN, Patrick. Yugoslavia, Albania and the Kosovo Riots. *The World Today*, 1981, vol. 37, no. 11. Pp. 420-421.

<sup>61</sup> Ibid

<sup>62</sup> BIEBER, Florian, DASKALOVSKI, Zidas. *Understanding the War in Kosovo*, London. 2005. Pp. 98.

At this stage, there was a major intervention in the further development of Yugoslav disputes by the European Union. The European Commission has played a key role as a mediator in the conflicts of the disintegrating Yugoslavia, which is still accused of completely forgetting Kosovo in order to find the intersection of all solutions for individual separatist republics. We can take as a precedent the decision of the arbitration body of the Badinter Commission, which stated that Yugoslavia had in fact disintegrated, and therefore the members of this commission do not consider the right to independence of the former Yugoslav republics to be illegitimate. The Commission further noted that the republics were becoming the basis for the emergence of new states in the territory of the former Yugoslav federation, thus practically supporting the further growth of secessionist tendencies. According to her interpretation, new states should emerge from the former republics, in accordance with all the texts of the UN Charter.<sup>63</sup>

However, this process did not concern Kosovo, as it had the status of only an autonomous province of Serbia. The EU states were afraid of the excessive fragmentation of Yugoslavia on this point, so when Kosovo submitted its request for independence in 1991, the EU rejected it. Kosovo was partly addressed by the Carrington Conference held on October 23, 1991.<sup>64</sup> The main outcomes of the conference were to guarantee the extension of autonomy for national and ethnic minorities. They should have the possibility of the right to a second nationality, including their own education system, the establishment of their own legislative body, their entire administrative structure, which included the regional police, courts and others.<sup>65</sup>

However, such concessions were not enough for the Kosovo Albanians. The highlight of their disappointment was the conclusions of the Dayton peace talks. The Kosovo issue has been excluded except for one brief mention of all proposals for peace talks. The reason for omitting the Kosovo issue was purely pragmatic. The European Union, represented by representatives of the member states, has evaluated Serbian political leader Slobodan Milosevic as a strategic partner to help them persuade Bosnian

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<sup>63</sup> TUMIS, Stanislav. 2016. *Státy západního Balkánu v uplynulém čtvrtstoletí a perspektivy jejich vývoje: Kosovo*. Praha: Univerzita Karlova. Pp. 281-283.

<sup>64</sup> MORTON, Jeffrey and coll. *Reflection on the Balkan Wars: Ten Years after the Break-Up of Yugoslavia*. New York: Palgrave Macmillan. 2004. Pp. 72

<sup>65</sup> TUMIS: *Státy západního Balkánu v uplynulém čtvrtstoletí...*, Pp. 286-287

Serbs to sign the conclusions of the Dayton Conference. The Commission therefore did not want to lose this partner because of Kosovo. The decision was also influenced by fears of setting Kosovo's precedent, which could weaken the already fragile ceasefire in the Western and Southern Balkans. Last but not least, it must be said that the subject of the Dayton Conference from the beginning was to end the bloody war in Bosnia, which was a more serious problem than Kosovo. On the other hand, both the Commission and the EU Member States were already well aware at this stage that there have been long-standing violations of civil and human rights on both sides in Kosovo. At this point, however, it was more pragmatic not to interfere in the conflict. Was it a question of closing the EU's eyes to violations of fundamental human and international rights in order to reach the necessary compromise in another part of the former Yugoslavia?<sup>66</sup>

### **2.3 The beginning of the war**

After the election of Milosevic to the head of the disintegrating Yugoslavia and the victory of the Serbian Socialist Party in the 1989 elections, several new laws were approved and the constitutional amendments to Kosovo's independence were amended. New 1989 laws criminalized the sale and purchase of the real estate in Kosovo without special permission from the authorities, and thousands of Albanians were fired from state-owned enterprises. Albanian students have been restricted from studying. In schools with most Albanians, Serbian began to be taught and a Serbian interpretation of history was given. And last but not least, Serbian police have increasingly arrested and brutally attacked Albanians.<sup>67</sup> From these examples, it is clear that in pre-war Kosovo, civil and human rights were regularly violated on the ethnic population. But was this violation a sufficient factor for the intervention of the international armed forces?

As was mentioned above, in 1990, the Kosovo Albanians elected their own President, Ibrahim Rugov, who, in response to Serbian reprisals, pushed for the creation of its own parallel society with its own authorities, education, and health systems. As a follower of Gandhian politics, Rugova called on all Kosovo Albanians to the ceasefire, believing that his non-violent resistance would attract the attention of supranational organizations, which would in turn help Kosovo achieve independence. However, he

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<sup>66</sup> Ibid

<sup>67</sup> CAPLAN, Richard. International Diplomacy and the Crisis in Kosovo, in *International Affairs*, 1998. roč. 74. č. 4. 1998. Pp. 13



was significantly involved in this, because the European Union, together with the states of the Czech Republic and Austria that I was monitoring, turned a blind eye to this problem.<sup>68</sup>

When it became clear that the conclusions of the Dayton Conference did not address Kosovo in any way and that multinational organizations did not want to address this issue out of much concern, the support of militant groups called Ushtria Clirimtare e Kosoves (KLA) began to rise sharply in Kosovo. However, international disinterest in Kosovo had two levels, the first of which radicalized Kosovo Albanians and KLA troops, and the second level encouraged Serbian troops to launch a violent offensive against Kosovo Albanians. Over time, terror broke out on both sides. At this stage, international organizations such as the UN sought to force Milosevic to proceed more moderately with their soft tools by imposing sanctions on the Federal Republic of Yugoslavia and preventing it from becoming a full member of some supranational organizations such as the International Monetary Fund and the World Bank. However, the approach to Yugoslavia was not strategic at all, as most sanctions were lifted as a token of gratitude for peace in Bosnia. In addition, the Yugoslav regime was economically maintained by the Member States of the European Union, which had incomplete access to the Kosovo issue, and some of them, therefore, sought to gain influence in the Yugoslav market.<sup>69</sup>

The culmination of an unsystematic approach to the Kosovo issue was the designation of KLA troops by US Ambassador Gelbard as a terrorist organization. Based on this designation, Serbia launched a strong offensive against Albanian militant troops, arguing that it was trying to fight terrorist organizations in the same way as the rest of the world.<sup>70</sup>

The international community, led by the EU, did not increase its diplomatic activities until 1998 when information came to the surface about the treatment and repression of Kosovo Albanians. Over the years, their basic human and civil rights have been suppressed. The Serbian side was indiscriminate in resolving the conflict and attacked civilians and civilian targets as part of the anti-Albanian campaign, which was

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<sup>68</sup> TUMIS: *Státy západního Balkánu v uplynulém čtvrtstoletí....*, Pp. 283.

<sup>69</sup> SINGH, Jasvir. *Problem of Ethnicity: The United Nations and Kosovo Crisis*. Lodz: Unistar Books. 2001. Pp. 62.

<sup>70</sup> PELIKÁN: *Státy západního Balkánu v uplynulém čtvrtstoletí....*, Pp. 287.

practically ethnic cleansing, which was subsequently confirmed by the massacre in the town of Račak. In January 1999, 45 victims of Serbian massacres were found. Among the victims were women, children, and the elderly. All bodies were found at one mass execution site/grave.<sup>71</sup>

In response to a humanitarian catastrophe throughout the war, the UN Security Council issued Resolution 1199 in 1998, which condemned Serbian behavior in Kosovo. Following this, NATO threatened to start bombing Serbian targets if the violence did not end. Following these threats of threat, several formal peace negotiations took place by force. However, neither was successful. After the massacre in the town of Račak was committed, further negotiations took place in Rambouillet and subsequently in Paris. However, the Serbian side did not accept any of the agreements but instead launched another offensive against Albanian targets in Kosovo. In response, NATO launched airstrikes on the Federal Republic of Yugoslavia.

## **2.4 Assessment of compliance of the international legal principles Jus in Bello and Jus ad Bellum in the Kosovo War.**

After presenting the development and course of the conflict, in this chapter, I will focus on the observance of international law principles, which I presented in the theoretical part. The first point to consider is whether the implementation of the Geneva Conventions has been made possible at all, ie whether both parties to the conflict have been given access to information for the purpose of conducting an independent observation.

### **Implementation of the Geneva Conventions**

In this case, it can be stated that the parties allowed the independent EU Commission of Inquiry and the UN Contact Group on Kosovo. Access to information and the movement of these investigators were in principle respected throughout the war. The second thing, however, is the extent to which the information provided on the attacks and the arguments of the scale of the war were credible. There were drastic attacks on both sides not only on the armed forces but also on the civilian population, to

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<sup>71</sup> TZIFAKIS, Nikolaos. The European Union in Kosovo, reflecting on the credibility and efficiency deficit. *Problems of Post-Communism*, 2013, vol. 60, no. 1, Pp. 43–45.

which neither side wanted to admit. Another subject of assessment is the extent to which the Geneva Conventions have been disseminated and known to the civilian population. In the case of the Yugoslav People's Army, it can be assumed that the soldiers were well aware of the proper manner and extent of the conduct of the fight, yet they committed many war crimes on the orders of their superiors. For KLA units, it is difficult to determine whether this condition of the conventions has been complied with. It is based primarily on the structure of this organization, which was made up of recruits and did not have the nature of a professional army. On the other hand, KLA units were largely supported by the Albanian army, which certainly had this awareness. It can therefore be assumed that at least the leadership of these armed forces were familiar with the principles of fighting.

### **Principles of the Geneva Conventions**

The first point is the actual implementation of the Geneva Conventions (GC). These are carried out only with the assistance of a third non-participating party or multinational organization. In the event of arbitration, all parties to the conflict shall provide the multinational organization with all the means and information to carry out its independent observation. All armed forces must have legal advisers, the wording of the GC must be disseminated and known to the civilian population, and once a ceasefire has been reached, qualified personnel is needed to assess and carry out the GC for the activities of the Protecting Powers. Contractual principles must be observed in the same way when implementing all points of the GC.

Of these 13 Jus in Bello principles, several were violated during the war in Kosovo. The main violations occurred mainly in the case of point 2 when both parties deviated from the Geneva Conventions during the war when they carried out repressive measures on the civilian population. Point two is followed by point 3. Deviations from the Geneva Conventions, coupled with an aggressive approach by the fighting, provoked a reaction from other parties, protected interests such as human rights, humanitarian treatment of prisoners and the civilian population was thus violated as retaliation for previous offenses. If I focus on point 4 and thus the action of unfavorable differences based on nationality, political affiliation, race, religion, and gender. Serbian military attacks were often based on racial subtext. The Serbian leadership justified the nature of some of the attacks based on the need to enforce the Serbian cult, where

Kosovo Albanians should not claim the same rights as Serbs. It was almost a chauvinistic approach to this national minority.<sup>72</sup>

Other violations of the policy in several respects included the principle of a minimum standard of protection. Negotiations on the terms of the war between the two parties involved were practically non-existent. However, this does not change the fact that several war crimes were committed during the war, in which the principles of minimum protection were not taken into account to a minimal extent. The penultimate point I would make in this chapter is the principle of the impossibility of relieving oneself of the obligations arising from the Geneva Conventions. Since 1998, the Serbian side has considered the Kosovo Liberation Army to be a terrorist organization that did not have the status of a subject of international law and was therefore not subject to the various principles of the Geneva Conventions. They, therefore, justified the drastic leadership of the fight with KLA units by the fact that the defeat of terrorist groups requires the maximum deployment of military forces, as is the case in Western states. Slobodan Milosevic even said in several interviews that this was not even a war, as it did not fight two military parties, but only an army against an insurgent group that carried out terror against the civilian population in a limited area.<sup>73</sup> However, in the theoretical part, we have already defined the war in Kosovo as a civil war, which according to Kalyvas's theory is defined by two basic features. It is a conflict between at least two parties, which includes a large, militarily equipped insurgent organization and which has recruits fighting to the fullest. According to Kalyvas, this distinguishes civil war from terrorism, common crimes, or genocide.

Last but not least, I would like to mention Mertens' clause on the principle of humanity and the requirements of public conscience. This applies when the Geneva Conventions do not touch on certain points of conduct of the parties involved during the war. The scale and manner of the fighting in Kosovo were so complicated and so intertwined with many racial, religious, political contexts, that in some cases this clause was violated. From the above paragraph, it is therefore clear that in the case of the basic principles of observance of the principle of *Jus in Bello*, there have been many violations of these international rights.

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<sup>72</sup> GIRGLE, Patrik. *Kosovo*. Praha: Libri, 2006. Pp. 47.

<sup>73</sup> Under Orders: War Crimes in Kosovo [online]. *Human Rights Watch*, [cit. 30. 12. 2020] Available from: <<https://www.refworld.org/docid/3c2b204a0.html>>.

## **Basic guarantees of the Geneva Conventions**

Another point of examination of this part of the work will be the basic guarantees set out in the Geneva Conventions. I will show the breaches of these guarantees in specific cases. Following the launch of NATO's air campaign, Serbian attacks on Albanians lost virtually all barriers. Between 24 March and 12 June 1999, there were several violations of fundamental human rights and freedoms. Violation of these fundamental rights is also closely linked to violations of the fundamental guarantees of the Geneva Conventions.

After the replacement of the general in the Yugoslav army in 1998, a plan was prepared for a strong offensive and taking control of Kosovo. The Serbs mobilized their forces and in the winter and between February and March began the so-called winter exercise around the areas of Vucitrn and Pudujevo. It involved the deployment of the army and police on virtually all major road and rail routes that controlled and bullied Albanian civilians. They were often stopped, their cars inspected and crews exposed to death threats. Kosovo Albanians had their mobility restricted, and military and police forces often confiscated their property during inspections.<sup>74</sup>

However, after the launch of the NATO air campaign, the situation worsened several times. The fighting no longer took place in the countryside and in the hills but also moved to the cities. Attacks on the civilian population continued to rise, leading to the forced eviction of up to 850,000 ethnic Albanians from Kosovo.<sup>75</sup> At this stage of the war, the Serbian army sought to take advantage of the NATO bombing situation on Serbian targets by responding with a massive offensive targeting rebel KLA units and their bases. The attacks were also aimed at the population and their homes, who were helping the units. The Serbian attacks were so widespread that 90% of Kosovo's ethnic Albanians were forced to flee their homes under severe attacks on their people or homes. The most affected areas were Glogovac and Srbica in the Drenica region. Then

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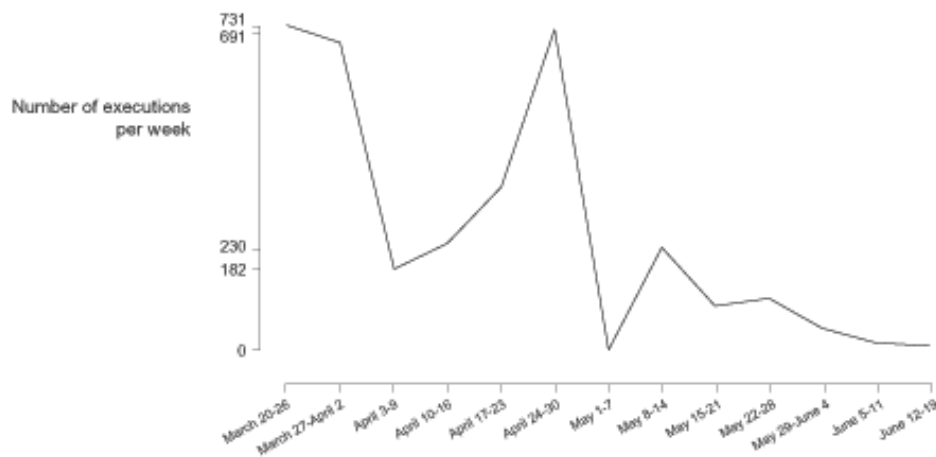
<sup>74</sup> Under Orders: War Crimes in Kosovo [online]. *Human Rights Watch*, [cit. 30. 12. 2020]. Available from: <<https://www.refworld.org/docid/3c2b204a0.html>>.

<sup>75</sup> Ibid

in the area of Djakovica, Orahovac, Suva Reka. Up to 65% of all documented attacks against civilian targets were committed in these five areas.<sup>76</sup>

The graph shows an increased intensity of attacks during the period of the NATO air campaign. The highest rate of attacks was recorded in the period from 20 to 26 March and subsequently between 24 and 30 April.

**Graph 1: Graph of the intensity of attacks on the civilian population since the start of the NATO military campaign.**



**Source:** Graph published by organization Human Right Watch – Under Orders: War Crimes in Kosovo.<sup>77</sup>

Civilians who were often forced to leave their homes were often stopped by Serbian troops while fleeing Kosovo. During these inspections, all documents, license plates from cars, or anything that would prove their Kosovo origin were taken from the refugees. The Serbs took these steps to virtually deprive the refugees of their identities, thus preventing them from returning to the country. In the course of these inspections, women were often raped, civilians were murdered on suspicion of an unproven connection to KLA units, or out of retaliation.<sup>78</sup>

We can therefore say that the attacks on the civilian population all violated the basic guarantees of protection. In the case of physical and mental protection, civilians were frequently physically attacked and humiliated in front of their families.

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<sup>76</sup> Ibid

<sup>77</sup> Under Orders: War Crimes in Kosovo [online]. *Human Rights Watch*, [cit. 30. 12. 2020]. Available from: <<https://www.refworld.org/docid/3c2b204a0.html>>.

<sup>78</sup> Ibid

Demonstration of their origin or religion. Albanians were deprived of all their property under the threat of death or rape of their wives. The rape itself that Serbian troops did can even be divided into three categories. Rape of women in their homes during attacks on civilian targets, rape during inspections, and during the fight. During the war, there were physical and mental attacks, degrading treatment, corporal punishment, mutilation, immoral treatment, and collective punishment.

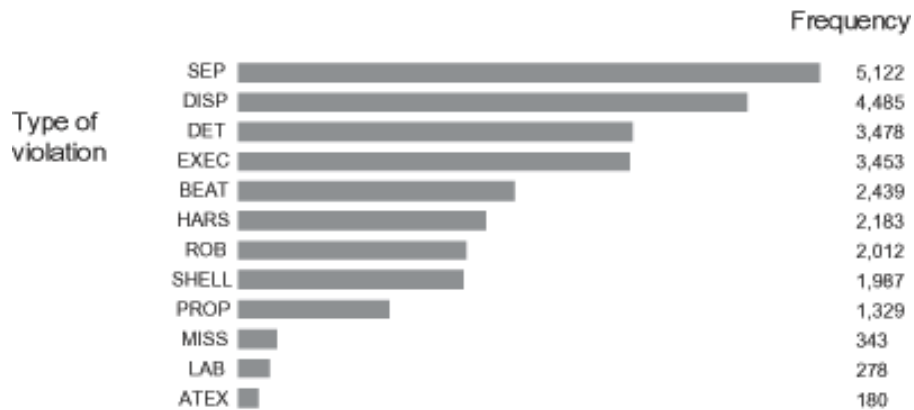
### **Special protection of civilians**

If I make a summary of all the transgressions against the Geneva Conventions that I follow in this work. I can then say that the special protection of the civilian population has been violated on several points.

1. During the war, it was attacked on the civilian population and civilian targets. There were frequent attacks on ethnic Albanians living in Kosovo. Attacks have often been interpreted as an attack on targets and individuals who aid insurgent units. In many cases, however, there was no evidence for this.
2. During the war, the civilian population has the right to perform its ordinary tasks. These rights were denied to civilians after massive dismissals due to their ethnicity, the closure of schools for Kosovo Albanians. After being unable to travel between cities by the police or due to frequent ethnically motivated attacks in many other areas of everyday life.
3. During the massive Serbian offensive during NATO airstrikes, Yugoslav troops stopped distinguishing between civilian and military targets. Many people were therefore forced to leave their homes. After the conquest of these places, there was often further terror of the inhabitants, who did not manage to escape. As mentioned above, these people were often physically and mentally assaulted. Their property was confiscated or threatened with death.

The graph below (graph 2) shows which principles of international law were violated during the Kosovo conflict.

**Graph 2: Graph of violated principles of international law during the Kosovo conflict.**



**Source:** Graph published by organization Human Right Watch – Under Orders: War Crimes in Kosovo.

Sep. - separations of men, women, and children - 5122 cases, disp. - forced displacement - 4485 cases, det - detentions - 3478 cases, exec - executions - 3453 cases, beat - beatings - 2439 cases, hars. - harassment - 2183 cases, rob - robbery - 2012 cases, shell - indiscriminate shelling - 1987 cases, prop - private property destruction - 1329 cases, miss - missing persons - 343 cases, lab - forced labor - 278 cases, atex. - attempted execution - 180 cases.<sup>79</sup>

In 2001, the International Criminal Tribunal for the former Yugoslavia exhumed 4,300 bodies to be victims of illegal attacks on civilians.<sup>80</sup> The actions of the combatants were by no means exceptional, the behavior of the soldiers was justified by both parties and was not prosecuted in any way. As I stated above, both parties were fully aware of the wording of the Geneva Conventions, and although the leadership is responsible for the actions of the combatants, some mass murderers were not prosecuted in any way. At the same time, it follows from the above text that during the war there were intentional violations and omissions of the Geneva Conventions or acts intentionally violating these conventions. Serbian authorities argued that they used all possible means to defeat terrorist organizations on their own territory, which do not enjoy the same rights as other subjects of international law, such as state groups, and the exercise of power on their own sovereign territory, which the EU itself did not

<sup>79</sup> Under Orders: ....[online].

<sup>80</sup> Ibid



recognize as territory, which according to their assessment would be entitled to independence.<sup>81</sup>

These negotiations were therefore one of the main justifications for the intervention of the NATO Armed Forces, which also acted as EU troops on this issue. The EU member states troops thus, participated in the Kosovo conflict, with full awareness of the EU. The European Union and NATO further sealed this cooperation at the 1998 Saint-Malo and Cologne European Councils in June 1999, strengthening European security and defense policy.<sup>82</sup> This meeting was followed by several other meetings in Helsinki, Berlin, etc. However, they are not so important for this work. In the last part, I will therefore focus on the position of the EU and selected the Member States of the Czech Republic and Austria on the Kosovo conflict after the conference in Saint-Malo and Cologne.

## **2.5 The position of the European Union and two selected Member States of the Czech Republic and Austria on the Kosovo conflict in the light of the international legal principles Jus in Bello and Jus ad Bellum**

The European Community had already had a long-standing good relationship with the Federal Republic of Yugoslavia. The Community had been the subject of several trade agreements with Yugoslavia. It was one of the first connections of the Community with one of the Eastern countries. Up to 60% of Yugoslav exports were directed to the countries of the Community. It was a very strategic partnership for both parties. Therefore, since 1968, Yugoslavia has been the first Eastern European country to have an accredited diplomatic mission to represent its interests with the European Commission. In 1970, it negotiated trade agreements with the Community for the import of European goods, and in 1980, the Community had its own mission in Belgrade to develop a strategic partnership. The last agreement between the former

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<sup>81</sup> Úder na Jugoslávii zastavil genocidu v Kosovu. Zeman ho tehdy sám schválil, dnes lituje [online]. *ct24.ceskatelevize.cz*, 23. 3. 2019 [cit. 31. 12. 2020]. Available from: <<https://ct24.ceskatelevize.cz/svet/2761238-uder-na-jugoslavii-zastavil-genocidu-v-kosovu-zeman-ho-tehdy-sam-schvalil-dnes-lituje>>

<sup>82</sup> GINSBERG, Roy. *The European Union in international politics: Baptism by fire*. Lanham: Rowman & Littlefield Publishers Inc. 2001. Pp. 152.

Yugoslavia and the European Community was not even signed until 1989. It focused on developing cooperation between the two parties in several other areas.<sup>83</sup>

The European Union, as the largest supranational organization on the European continent, had to act to stop a bloody Yugoslav war. It was forced to do so not only by war crimes and the scale of the war itself but by the Western media, which published the break-up of Yugoslavia daily in all European countries. The European Union's inaction in this case would undermine all the values on which the EU stands. The European Union, therefore, responded to the development of the Yugoslav wars with the largest external involvement in the region. It stood for post-war reconstruction and represented a peacemaker in the region. At the same time, the so-called European perspective was established for the region in order to create new states that would contribute to the stabilization of the region. The term "Western Balkans" was coined in the context of the Stabilization and Association Process (SAP). SAP was developed as a common framework governing relations with the Western Balkans until their accession to the EU. Recognizing that the EU does not have military capabilities, EU officials believed that peace-building and other non-coercive efforts could be a credible means of the EU's external involvement in conflict resolution and could also be a new "feature" of the institution.<sup>84</sup>

This approach was represented by the EU towards the disintegrating Yugoslavia until 1998 and the Sain Malo Declaration. Until now, NATO has been the guarantor of security in Europe and the EU, together with the UN peacemaker, who will provide political and economic assistance to the affected countries. Thanks to the Yugoslav war, some of the EU Member States, led by the United Kingdom and France, have concluded that they need to have their own instrument for resolving conflicts through effective external action. The EU would thus not have to rely on US decision-making on these issues, but this cooperation will continue to be based on NATO's alliance. The European Union has thus begun to be taken into account not only as an organization using its soft power, but it is perhaps its diplomatic effort to enforce its hard power through military pressure from individual member states. The Kosovo conflict thus provided an

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<sup>83</sup> ZUPANIČ, Rok, PEJIČ, Nina. The EU's Affair with Kosovo. In: Limits to the European Union's Normative Power in a Post-conflict Society [online]. *link-springer.com*, 18. 4. 2018 [cit. 29. 12. 2020]. Available from: <[https://doi.org/10.1007/978-3-319-77824-2\\_3](https://doi.org/10.1007/978-3-319-77824-2_3)>.

<sup>84</sup> ZUPANIČ, PEJIČ: The EU's Affair with Kosovo.....[online]

opportunity for the EU to present itself as a strong actor in peace-building and able to use its normative power to influence the reconstruction of the country.

The change in attitude towards the EU's approach in Kosovo was largely based on an initiative by France, which was one of the main critics of NATO's air campaign. Allied troops never succeeded in completely destroying Serbia's anti-aircraft defenses, and therefore expanded from military targets to industrial areas, in which civilians were often affected. France thus demanded a reduction in the bombing of civilian targets, but also systematic decision-making over military operations. It was the victims of civilians during NATO's military campaign that were the main motive for changing the EU's approach to this conflict. NATO was tainted as a non-human organization by footage sent by Serbian television to the rest of the world, so the EU had to react. Under pressure from the media in response to the British military's response in Kosovo, the United Kingdom is joining France in responding to its own operational force.<sup>85</sup>

These two main strategic countries were subsequently supplemented by Germany, which was initially very reluctant to engage in conflict. Following a speech by German Defense Minister Rudolf Scharping in Budapest, who likened the need for NATO intervention in Kosovo to NATO's need for Germany in the post-war years during the Cold War and the subsequent reunification of Germany. He said, among other things, that Germany would not passively watch the massacres. *"It's not like in Bosnia, where we were forced to watch the worst-type massacres helplessly."* Germany subsequently joined the NATO campaign. The air campaign after the revelation of the Racak massacre received the full support of German politicians. This decision was quite crucial for Germany, as it was the first involvement of the German armed forces in a war conflict since World War II. Given the position of these three countries and their importance within the EU, other Member States joined in their response.<sup>86</sup> In the next part, I will focus on the position of one of the member states of Austria and compare it with the position of the candidate country for membership in the Czech Republic.

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<sup>85</sup> BBC obrátila válku v Kosovu naruby.2000 [online]. *iDnes.cz*. 13. 3. 2000. Available from: <[https://www.idnes.cz/zpravy/zahranicni/bbc-obratila-valku-v-kosovu-naruby.A000313123739zahranicni\\_mhk](https://www.idnes.cz/zpravy/zahranicni/bbc-obratila-valku-v-kosovu-naruby.A000313123739zahranicni_mhk)>.

<sup>86</sup> Úder na Jugoslávii zastavil genocidu v Kosovu. Zeman ho tehdy sám schválil....,[online]

## **Attitude and interpretation of international law in the Czech Republic and Austria in the case of the Kosovo conflict**

The comparison of these two countries is quite interesting for several reasons. The Czech Republic became a member of NATO on March 12, 1999, at a time when an air campaign was launched against Serbian targets. However, in those years it was not yet a member of the European Union and its approach to the conflict could thus differ from the member states of the Union in many respects. On the other hand, Austria as a member of the EU since 1995 has had a short experience as one of the member countries, but it has not been a member of NATO until today. It will therefore be interesting to compare the approach of these two selected countries to the Kosovo conflict and their interpretation of international law principles.

The two selected states took a surprisingly different approach to the Kosovo conflict. After China and Russia voted against the Security Council's decision to intervene in Kosovo, NATO and the European Union took on the role of the major international player in Kosovo. NATO has described military operations in Kosovo as a necessary humanitarian intervention to prevent further destabilization of the region. In the Czech Republic, this intervention was also supported by the then President Václav Havel, who considered the solution of military intervention a necessary step to establish peace and end the bloodshed. President Havel then commented on the decision as *"an action in which Yugoslavia was attacked without a direct mandate from the UN. However, this did not happen out of arbitrariness or aggression or out of disrespect for international law. On the contrary, it happened out of respect for the law. But to a law higher than that which protects the sovereignty of states. Namely out of respect for human rights"*<sup>87</sup>

The decision of the President of the Republic was also supported by both chambers of parliament, however, his position was perceived by Czech society as highly controversial, as the Security Council never gave its consent to the intervention, thanks to a veto by Russia and China. It was a practically illegal war on the territory of a sovereign state, which was a long-term and good strategic partner of the Czech Republic. Due to the fact that the Czech Republic was a member of NATO for only two

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<sup>87</sup> Václav Havel. Prohlášení k situaci v Kosovu 25. 3. 1999. [online]. *Česká televize*, 25. 3. 1999 [cit. 23. 12. 2020]. Available from:< <https://ct24.ceskatelevize.cz/svet/2761238-uder-na-jugoslavii-zastavil-genocidu-v-kosovu-zeman-ho-tehdy-sam-schvalil-dnes-lituje>>

weeks and had already taken part in a joint action against a state that was resolving its own national conflict in the case of an alliance member, the Czech participation in the conflict aroused considerable social outrage.

The need for this intervention in the Czech environment was justified on the basis of compliance with the higher principle of protection of human and civil rights of civilians affected by the war. However, this argument was largely odd, as violations of fundamental human rights by the UN Charter took place on both sides. To this day, approaches to resolving the Kosovo conflict vary widely across the Union. Differences in the perception of Kosovo can be seen, among other things, in the case of its recognition. To date, five Member States of the Union have not recognized its independence. These are, in particular, Cyprus, Spain, Slovakia, Greece, and Romania. All of these states explain the non-recognition of Kosovo on the basis of the separatist war when under international law the Albanian ethnic minority in Kosovo did not have the right to declare independence. It should be added, however, that all these states themselves face the problem of separatist tendencies in some of their regions. Cyprus disputes the Turkish occupied part of the island, Spain has long refused secession of Catalonia and the Basque Country, Slovakia solves the problem of a significant Hungarian minority on the border, Greece has disputed the name and origin of the northern part of the country with Macedonia.<sup>88</sup>

However, the Czech UN Special Rapporteur on Human Rights in Yugoslavia, Jiří Dienstbier, opposed the intervention in Kosovo. He believed that the threat of military force would not force Milosevic to act and that NATO airstrikes would be a military fiasco.<sup>89</sup> Most of the statements of Czech politicians can then be summarized as distancing themselves from participating in the attacks on Serbian targets. We sent a field hospital and an unarmed fighter jet to Kosovo.<sup>90</sup> Whether it was a clear pragmatic move by the Czech army to argue that neither she nor her technique was involved in combat operations is nowhere to be traced.

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<sup>88</sup> KULIDAKIS, Thomas. Bombardování Jugoslávie nepřispělo ke stabilitě Balkánu [online]. *i.ROZHLAS.cz*, 26. 3. 2019.. [cit. 2. 1. 2021]. Available from: <[https://www.irozhlas.cz/komentare/komentar-kulidakis-nato-bombardovani-valka-jugoslavie-pouceni-srbsko-kosovo\\_1903260615\\_pla](https://www.irozhlas.cz/komentare/komentar-kulidakis-nato-bombardovani-valka-jugoslavie-pouceni-srbsko-kosovo_1903260615_pla)>

<sup>89</sup> Úder na Jugoslávii zastavil genocidu v Kosovu. Zeman ho tehdy sám schválil....,[online]

<sup>90</sup> KULIDAKIS: Bombardování Jugoslávie...

Czech foreign policy in resolving this conflict was quite confusing, as the formulations of interests in Kosovo were not clear from the actions of our political elite. The Czechia was also the last country to approve a military operation in Kosovo, five days after it began. Twenty years after the Kosovo intervention, Zeman added this to the contradictory decision. *"I consider this to be a mistake and I believe that it was an act of a certain arrogance of power,"*<sup>91</sup> Zeman added that the Czech Republic, as a three-week-old member of the alliance, had to present itself as a member with common NATO interests. It implicitly follows from these words that the Czech political leadership did not decide on intervention in Kosovo on the basis of the norms of international law, but on the basis of pragmatism and its operation in the new supranational organization.

The argument of the intervention of the Czech troops was, of course, based on the violation of the basic international legal principles of Jus in Bello, but the reality was somewhat different. Because the Czech Republic did not want to prove to be an unreliable partner right at the beginning of NATO membership.

The Czech effort to resolve the conflict through diplomacy was subsequently underpinned by a Czech-Greek initiative, which was presented to NATO Secretary-General Javier Solana. It was a four-day interruption of fighting with the aim of resuming diplomatic negotiations. Both the Czech and Greek sides believed that NATO's military action had led to an intensification of the Serbian offensive and an increase in civilian casualties on both sides. The Czech-Greek effort assumed that after the interruption of the air campaign, the Yugoslav troops would be withdrawn from Kosovo and all paramilitary groups would be disbanded. This would resolve the conflict again under Article 39 of Chapter VII. Thanks to the Council's recommendations, a peaceful settlement of the conflict was to be achieved in accordance with Articles 33 and 36 of the Charter. However, the individual countries of the Alliance strongly objected to NATO's actions appearing reckless and ineffective.<sup>92</sup>

This proposal was originally initiated by Foreign Minister Jan Kavan. The wording of the Czech-Greek initiative was later changed after the criticism of the

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<sup>91</sup> Úder na Jugoslávii zastavil genocidu v Kosovu. Zeman ho tehdy sám schválil....[online]

<sup>92</sup> Solana prakticky odmítl česko-řecký plán [online]. *iDnes.cz*, 26. 5. 1999 [cit. 2. 1. 2021]. Available from: <[https://www.idnes.cz/zpravy/zahranicni/solana-prakticky-odmitl-cesko-recky-plan.A\\_990525\\_102334\\_zahranicni\\_jkl](https://www.idnes.cz/zpravy/zahranicni/solana-prakticky-odmitl-cesko-recky-plan.A_990525_102334_zahranicni_jkl)>

alliance partners and the Czech politicians themselves and subsequently withdrew from it. However, the Czechia seemed to be quite an illegible partner for further cooperation. However, the fact that the Czech political elites did not make decisions according to the interpretation of the norms of international law and the articles of the UN Carta, but on the basis of the obligation to fulfill their obligations arising from NATO membership, is crucial for the work, even though both the president and the prime minister were acquainted. with the fact that the military action did not receive permission from the UN Security Council and according to the principles of jus ad Bellum, the war was illegal.<sup>93</sup>

Austria, on the other hand, as a non-NATO member state, had significantly freer decision-making about its involvement in the war. Unlike Germany, Austrian dividing zones were ended based on the agreement between allies and the Soviet Union. The agreement was based on the exit of militaries of the USA, Great Britain, France, and the Soviet Union from Austria under the condition that Austria will become the neutral country and will not join any international organization except United Nations. Since 1955, Austria should have had the status of an neutral country, following the example of Switzerland, but the condition for the departure of foreign troops from the territory of Austria was the country's accession to the UN. Austria gradually became a member of the UN, but not NATO, and therefore did not engage in any military operations of the alliance. Therefore, from the beginning, the then Austrian political representation also held a neutral attitude towards the Kosovo conflict.

Defense Minister Werner Fasslabend rejected Austria's involvement in the Kosovo conflict because the intervention was not approved by the Security Council, as referred to in Article 39 of Chapter VI and Articles 41 and 42 of Chapter VII. The development of the war and the approach of supranational organizations to it show that the permanent members of the Security Council have allowed the use of so-called soft instruments, and most countries have applied sanctions and a trade blockade to Yugoslavia. These possibilities are enshrined in Chapter VI, Article 39. However, what the Council never approved was the resolution on the intervention of troops in

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<sup>93</sup> Úder na Jugoslávii zastavil genocidu v Kosovu. Zeman ho tehdy sám schválil....[online]

Yugoslavia, as required by Articles 41 and 42 of Chapter VII. The war would thus be illegitimate, according to the UN Charter.<sup>94</sup>

As mentioned above, following the veto of Russia and China, the Council Resolution on the Intervention of UN Troops in Kosovo transferred the main military initiative to NATO. This was to enable more prompt and effective decision-making on operations in Kosovo. Another positive factor for the members of the alliance was that the organization did not block Russia with China. However, Austria did not have a NATO membership either. It, therefore, decided to respect the principles of international law *jus ad Bellum* and refused to take part in the war. In the light of international law principles, Austria has also forbidden Allied forces from taking off and flying over their territory, which would be bound by Article 43 of Chapter VII. Charter, should the Council really issue a mandate for a military operation. Until this situation, Austria was a state that fully respected international legal norms.

However, a change in Austria's position took place at the Berlin Summit in 1999, which addressed the focus of crisis management. The summit focused largely on the EU's further foreign policy approach to the Kosovo war. Politicians sought to avert NATO's air campaign, but the outcome of the summit was that President Slobodan Milosevic had full responsibility for the raids on Serbian targets. act to avert a humanitarian catastrophe. The Austrian representation led by Chancellor Viktor Klima also agreed with this conclusion. He said that Austria had a great understanding of the need to conduct these military operations, as they were fully aware of the evolving situation of the civilian population in Yugoslavia. In recent years, Austria has received more than 5,000 Kosovo refugees and approximately 324 refugees from Macedonia, despite the country's long-standing Serbian minority. The country thus provided an independent refuge for all civilians who were forced to leave their homes due to the Yugoslav wars.<sup>95</sup>

Austria argued that war crimes were taking place on both sides and that, despite their drastic nature, the dispute could still be resolved through mediation through the

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<sup>94</sup> DONFRIED, Karen. Kosovo: International Reactions to NATO Air Strikes [online]. *hsl.org*, 21. 4. 1999 [cit. 2. 1. 2021]. Available from: <https://www.hsl.org/?view&did=451447>

<sup>95</sup> VESELÝ, Josef. Berlínský summit unie ve znamení řešení krizí [online]. *Hospodářské noviny*, 24. 3. 1999 [cit. 2. 1. 2021]. Available from: < <https://archiv.ihned.cz/c1-795376-berlinsky-summit-unie-ve-znameni-reseni-krizi> >



curls of OSCE members, even in a situation where the Serbian offensive against ethnic Albanians intensified. Austria thus became directly involved in the war militarily only after the end of the NATO air campaign, as one of the countries cooperating in the KFOR peacekeeping mission. Austria joined the peacekeeping missions with its 150 soldiers, who, together with German and Italian troops, was part of the operational reserve forces. Furthermore, Austria provided military equipment, specifically Agusta Bell 2012 helicopters.<sup>96</sup>

In comparison with both countries, these were completely opposite motives for involvement and non-involvement in the war. The Czech Republic, as a new member of NATO, agreed, despite reservations that the conflict should be resolved through diplomatic channels, to the intervention of their troops in Kosovo. The decision, in this case, was not based on the wording of the principles of *jus ad Bellum*, but on the argumentation of the higher principle of humanity, where military intervention in the territory of a sovereign state is to prevent further violations of human rights. At the same time, there was a purely pragmatic decision, as the Czech political representation did not want to act unreliable as a new member of the alliance.

Despite all the pressure from the EU, where individual member states were directly involved in the conflict, Austria still respected the principles of international law and did not directly participate in the conflict without the consent of the UN Security Council. Even if inhumane methods of warfare were clearly reported, including attacks on civilians and their homes, mass murder, rape, forced displacement, burning of houses and villages, destruction of crops and materials needed for civilian life, deprivation of identity, disrespectful treatment of the basis of ethnicity and religion and other transgressions against human rights and the principles of humanity, which in itself gives countries a sufficient basis for launching an attack on a sovereign state. Although, although Russia and China have vetoed a resolution on the involvement of Allied forces in Kosovo, Article 51 of Chapter VI states that Nothing in this Charter restricts, in the event of an armed attack on a United Nations member, the natural right to individual or collective self-defense until the Council security measures will not be taken to maintain international peace and security. Measures taken by members in the exercise of this

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<sup>96</sup> The Austrian Armed Forces in Kosovo [online]. *bundesheer.at*. [cit. 2. 1. 2021]. Available from: <[https://www.bundesheer.at/english/td\\_international/artikel.php?id=42](https://www.bundesheer.at/english/td_international/artikel.php?id=42)>

right of self-defense shall be notified immediately to the Security Council; they do not affect in any way the powers and responsibilities of the Security Council to take, at any time, any action under this Charter which it considers necessary for the maintenance or restoration of international peace and security.

Here it is necessary to recall that many attacks were conducted by the Yugoslav army in the territory of a UN member of Albania. At the same time, it called on the Security Council to address this situation, as the war affected a large part of its ethnic population. Although Albania's demands were not heard for fear of connecting Kosovo to the rest of Albania and disrupting the region, NATO forces could use this article as a sufficient argument to involve them in the war.

However, interpretations of the need for military involvement were different. As mentioned several times above, it was mainly about

1. Guilt over inaction in the conflict in Bosnia,

2. Peace and security in the region (British Prime Minister Blair spoke of "the likelihood of an outbreak of conflict in Albania, the destabilization of Macedonia and certain effects on the situation in Bosnia and the possible future increase in tensions between Greece and Turkey"

3. Protection of human rights and humanity

4. NATO credibility<sup>97</sup>

Another argument against the involvement of Allied forces in Kosovo was the fact that NATO and the European Union until the end of the year considered KLA troops a terrorist organization against which the Serbian government had the right to use all means to defeat it. However, after the publication of information about civilian casualties after the Serbian attacks, the view of the international community changed and the KLA units began to be considered a liberation army.

In conclusion, war crimes took place on both sides of the Kosovo war. Although the involvement of NATO alliances reached an end to armed disputes, it brought together an intensification of the Serbian offensive, which resulted in many more civilian casualties. The actions of the EU and NATO member states were thus not

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<sup>97</sup> ZÁVĚŠICKÝ, Jan. První válka NATO [online]. *listy.cz*. [cit. 2. 1. 2020]. Available from: <<http://www.listy.cz/archiv.php?cislo=052&clanek=020511>>

effective in this case and even legitimate according to the interpretation of international law.

The above text also implicitly answers the research questions of this work, so that one of the main motives for the Czech Republic's involvement in the war was the violation of the basic principles of humanity and human rights, which directly correlate with the principles of *jus in Bello*. Another factual motive, according to some Czech politicians, was pure pragmatism resulting from new membership in NATO. On the other hand, it must be said that the intervention of the armed forces violated international law principles *jus ad Bellum* and the participation of Czech troops in Yugoslavia was illegal.

In the case of Austria, both questions can be answered in the negative, as Austria did not participate in NATO's armed campaign and upheld all the principles of international law. The approach to these principles therefore differed significantly between the two countries. In the case of the entire Kosovo war, it can be stated that international law principles have been violated several times by the main actors in the war in Yugoslavia and the Kosovo Liberation Army, but also by supranational communities. Such behavior of international legal entities in practice proves that international law is only a social construct, which is observed only to the extent that it derives benefits. As many other authors have commented on this issue, it is mainly due to the absence of a sovereign enforcer of these obligations and obligations arising from international treaties. Thus, in extreme situations, such as the war in Kosovo, the only effective tool is again a tool of force. I, therefore, assume that the further development of the enforcement of international law will be the subject of scrutiny by many other experts in international law and armed conflict.

## Conclusion

In this work, I focused on the principles of international law at the level of the theory of social constructivism by Berger and Luckmann. International law has long been disputed in connection with its observance and complex enforcement, which is caused by the horizontal equality of subjects of international law. States commit themselves to the rule of law and, in order to enforce it, transfer part of their powers and sovereignty to supranational organizations such as the United Nations or the European Union. However, practice shows that international legal norms are often violated during war conflicts. The norms of international law are to some extent restrictive for states during the course of war conflicts, and their observance ceases to be advantageous for the given state. It is this pragmatic approach that is discussed in the theory of social constructivism.

International law is an objective reality created by man in order to institutionalize their behavior externally. However, this interpretation can only be honored as long as it is beneficial for the state. Social order and international law are a social construct that influences society, but this influence also works the other way around, as society accepts and changes this construct in order to create a norm of behavior that can be predicted in the future. Any violation of international law can therefore set a precedent for further violations and the creation of a construct of conduct for other actors.

This conclusion is based on the practice of the functioning of international law in the light of social constructivism, which was the first part of the work. In this part, the development of constructivism and its use in legal sciences was presented. The output of the theoretical part is that the subjects of international law in the long term somehow behave externally and their nature of behavior affects the behavior of other subjects. This behavior has certain features and character as in individuals. Thus, after some time, subjects can predict each other's reactions. After some time, these reactions become a habit that both subjects follow. This is customary law, one of the main sources of international law. These customs are then institutionalized over time and subsequently observed. And their nature in the future influences the further behavior of subjects of international law. It is therefore the principles created by the subjects themselves to set a certain social order, which is accepted over time and create an objective reality that

future generations accept as unchangeable. However, this objective reality also further influences the very nature of the behavior of subjects.

Following the behavior of international legal entities, I focused on the principles of international law *jus in Bello* and *jus ad bellum*, which set the rights and obligations for the conduct of states and supranational organizations in armed conflicts. The main sources of *jus in Bello* principles to this day are the Geneva Conventions. The work is constantly working with a case study of the Kosovo conflict, so I decided to select only some points of the Geneva Conventions that were useful for assessing compliance with these legal principles in the Kosovo war. The analysis of the Kosovo war and possible violation of the principles of *jus in Bello* was crucial for the practical part of the work and the subsequent answer to the research question whether *"Was non-compliance with the principles of Jus in Bello one of the motives for deciding of Czech republic and Austria for participation/non-participation in the NATO military intervention in Kosovo?"*

The UN Charter was used as a source of the principle of *jus ad Bellum*, in which I focused mainly on Chapters VI. and VII. These chapters set out the conditions for resolving conflicts by non-military as well as military means. The chapters contain clear criteria that must always be met when assessing armed conflict. Based on the wording of Articles 33, 36, 37, 39 of Chapter VI. and Articles 41, 42, 43 and 51 of Chapter VII. I was then able to find out that the intervention of the NATO armed forces in Kosovo was illegitimate. This in itself answers the research question of the work, *"was the extent and manner of the intervention of troops in accordance with the principles of Jus ad Bellum?"* Since the war was illegitimate, any operation of foreign forces in the territory of a sovereign state was a violation of international law.

In the practical part of the work, I, therefore, focused on the development and course of the Kosovo war to be able to say which principles of *jus in Bello* and *jus ad Bellum* were violated. Based on the violation of these principles, I further observed how the approach of two selected countries to this conflict is changing. The first case was the Czech Republic, which was a new member of NATO. Another country monitored was Austria, which was not a member of NATO but was part of the European Union, which largely supported military operations in Kosovo.

In this part of the work, I was able to find out that during the war all monitored attributes of the principles Jus in Bello and jus ad Bellum were regularly violated. In the case of the Czech Republic and the decision to intervene in this conflict, it turned out that the main motive for the involvement of their armed forces was due to loyalty to the newly attached NATO organization when aspects of international law and legitimacy of this action were relegated to second place. Although some Czech politicians preferred a diplomatic solution to the dispute, the Parliament of the Czech Republic approved a decision on the intervention of Czech troops in Kosovo with only a minimal number of votes against it. As in the case of other intervening states, the main argument for intervention was to stop the humanitarian catastrophe.

In the case of Austria, on the other hand, it was a consistent approach to this conflict. Austria, not forced to intervene by supranational organizations, respected international law principles and did not participate significantly in the war, even though the Austrian political representation expressed its understanding of intervening in Kosovo on the need to address this humanitarian catastrophe. However, during the war, the Austrian side did not become significantly more involved in the conflict. Austria was a refuge for several hundred civilian refugees and did not send its first troops to Kosovo until after the war, as a peacekeeping mission.

From the practical part, it is clear that the motive for NATO intervention in Kosovo was primarily a violation of the principles of Jus in Bello. The decision to involve the joint forces of the North Atlantic Alliance was to help stop the humanitarian catastrophe. However, despite all the reasons for the need for intervention, the attack on NATO forces was illegitimate, violating international law by all stakeholders. This example has shown that international law is indeed often bent and violated in the event of military or more serious conflicts. However, the case study of the Kosovo war proves that not only individuals directly involved in the conflict tend to violate, but can also be large supranational organizations such as the EU and NATO.

International law can therefore be considered, on the example of this war, as a universally inapplicable social construct, which states have really decided to decide only to the extent that rules and norms do not significantly restrict them. The Kosovo war also showed the world the problem of deciding on military actions of this nature. As in Rwanda, the UN approval procedure has proved to be slow and inefficient. Thanks to its structure with the US leadership, the involvement of NATO forces was to

be a faster and more effective tool for resolving this conflict. The European Union also learned from the war, which, after the Kosovo fiasco, renewed its thinking about creating a common European army that would not be subject to NATO's decision-making structure. Last but not least, it is important to say that the Kosovo conflict has set a precedent for the intervention of the joint armed forces in the territory of a sovereign state without a UN Security Council mandate. This situation was subsequently repeated in Iraq or Afghanistan.

Deciding in such complex situations is always complicated. On the one hand, human rights and freedoms, on which the values of Western civilization and most supranational organizations stand, are being violated. On the other hand, there should be no violation of the principles of international law by such a large subject of international law as NATO or the EU. Inaction may require several more civilian casualties, and commitment will set a precedent for further possible violations and institutionalization of such behavior.

The causality between observance of international law in times of peace and non-observance in times of war is clear from the work. For further research, it would be at least interesting to focus on this causality, what are the correlating factors. This more professional methodological approach would give more weight to the results of the work. The quality of the methodology is one of the limits of the work that needs to be mentioned. However, due to time constraints, I decided to keep this approach until further research.

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## **Abstract**

The diploma thesis focuses on the principles of international law *Jus in Bello* and *Jus ad Bellum* in light of the theory of social constructivism. In my work, I looked at a case study of the Kosovo war, whether these principles are violated during the period of armed conflicts, and how the supranational organizations of the EU and two selected states, the Czech Republic and Austria, react to possible violations. For this purpose, the theory of social constructivism, sources of international legal principles *Jus in Bello* and *Jus ad Bellum* and their mutual relationship were introduced. In the practical part of the work, I focused on the development and course of the Kosovo war. Specifically, I monitored whether there were violations of the two mentioned principles of international law and how the European Union and then the states of the Czech Republic and Austria built a possible violation of these principles. In both countries, I observed whether violations of international law were one of the main motives for intervention/non-intervention in the Kosovo war and whether the manner and extent of the intervention were in line with the principle of *Jus ad Bellum*. Using the example of the Kosovo war, I managed to show completely different approaches to this conflict in the light of international law. In the case of the Czech Republic, together with the rest of NATO, international law has been violated in order to prevent a humanitarian catastrophe. Austria, on the other hand, respected international law throughout the conflict and did not participate in the war. Finally, the conclusions of the thesis show that violations of international law in war conflicts do occur, even from entities such as NATO or the EU, so international law appears to be a generally imperceptible social construct.

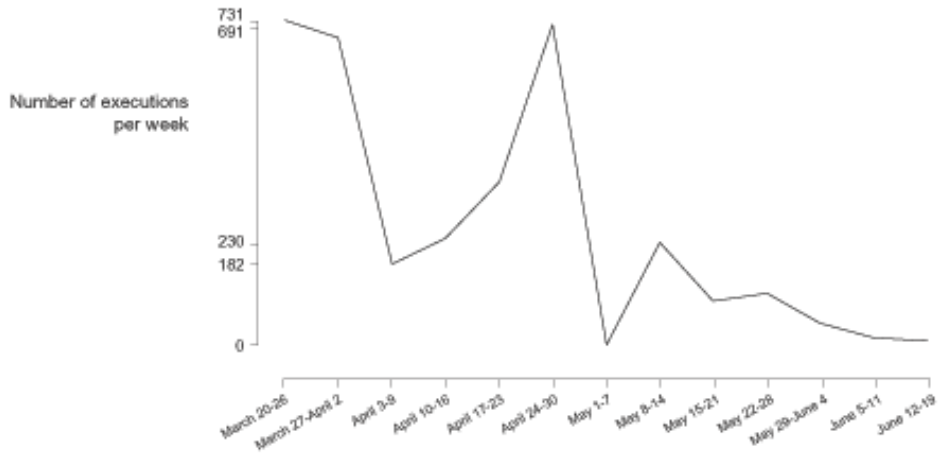
## **Keywords**

Yugoslavia, Kosovo, Social constructivism, Jus in Bello, Jus ad Bellum, International humanitarian law, principles of international law, European Union, Czech Republic, Austria, NATO



# Attachments

## Graph 1



## Graph 2

